

SB245 INTRODUCED



1 AY49Q7-1
2 By Senator Givhan
3 RFD: Judiciary
4 First Read: 25-Apr-23
5
6 2023 Regular Session



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SYNOPSIS:

This bill would make changes to the Alabama Business and Nonprofit Entity Code 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 would 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.

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



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29 the Alabama Nonprofit Corporation Law and conform with the
30 other entities governed by the Alabama Business and Nonprofit
31 Entity Code by amending Sections 10A-1-1.03, 10A-1-1.08,
32 10A-1-3.32, 10A-1-8.01, 10A-1-8.02, 10A-1-9.01, 10A-2A-1.40,
33 10A-2A-1.43, 10A-2A-1.51, 10A-2A-2.02, 10A-2A-2.06,
34 10A-2A-7.04, 10A-2A-7.20, 10A-2A-7.32, 10A-2A-8.10,
35 10A-2A-8.21, 10A-2A-8.22, 10A-2A-8.24, 10A-2A-10.06,
36 10A-2A-10.07, 10A-2A-10.08, 10A-2A-11.02, 10A-2A-11.06,
37 10A-2A-12.02, and 10A-2A-14.13, Code of Alabama 1975; adding
38 Sections 10A-2A-10.00 and 10A-2A-10.10 to the Code of Alabama
39 1975; and amending Sections 10A-5A-2.03, 10A-5A-10.07,
40 10A-8A-9.08, 10A-9A-2.02, and 10A-9A-10.08, Code of Alabama
41 1975.

42 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

45 CHAPTER 3A. ALABAMA NONPROFIT CORPORATION LAW.

46 ARTICLE 1. GENERAL PROVISIONS.

47 DIVISION A. SHORT TITLE AND SAVINGS PROVISIONS.

48 §10A-3A-1.01. Short title and application of chapter.

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

52 (b) The provisions of this chapter relating to
53 nonprofit corporations shall apply to:

54 (1) All nonprofit corporations organized hereunder; and

55 (2) All nonprofit corporations heretofore organized

56 under any act hereby or heretofore repealed, for a purpose or



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57 purposes for which a nonprofit corporation might be organized
58 under this chapter.

59 (c) The provisions of this chapter relating to foreign
60 nonprofit corporations shall apply to all foreign nonprofit
61 corporations conducting affairs in Alabama for a purpose or
62 purposes for which a nonprofit corporation might be organized
63 under this chapter.

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

71 §10A-3A-1.02. Chapter definitions.

72 As used in this chapter, unless otherwise specified or
73 unless the context otherwise requires, the following terms
74 have the following meanings:

75 (1) CERTIFICATE OF INCORPORATION means the certificate
76 of incorporation described in Section 10A-3A-2.02, all
77 amendments to the certificate of incorporation, and any other
78 documents permitted or required to be delivered for filing by
79 a nonprofit corporation with the Secretary of State under this
80 chapter or Chapter 1 that modify, amend, supplement, restate,
81 or replace the certificate of incorporation. After an
82 amendment of the certificate of incorporation or any other
83 document filed under this chapter or Chapter 1 that restates
84 the certificate of incorporation in its entirety, the



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85 certificate of incorporation shall not include any prior
86 documents. When used with respect to a nonprofit corporation
87 incorporated and existing on December 31, 2023, under a
88 predecessor law of this state, the term "certificate of
89 incorporation" means articles of incorporation, charter, or
90 similar incorporating document, and all amendments and
91 restatements to the articles of incorporation, charter, or
92 similar incorporating document. When used with respect to a
93 foreign nonprofit corporation, a business corporation, or a
94 foreign business corporation, the "certificate of
95 incorporation" of that entity means the document of that
96 entity that is equivalent to the certificate of incorporation
97 of a corporation. The term "certificate of incorporation" as
98 used in this chapter is synonymous to the term certificate of
99 formation used in Chapter 1.

100 (2) BOARD or BOARD OF DIRECTORS means the group of
101 individuals responsible for the management or direction, and
102 oversight, of the activities and affairs of the nonprofit
103 corporation, regardless of the name used to refer to the group
104 or other persons authorized to perform the functions of the
105 board of directors.

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

109 (4) BYLAWS means the code or codes of rules (other than
110 the certificate of incorporation) adopted for the regulation
111 or management of the affairs of the nonprofit corporation,
112 regardless of the name or names by which the rules are



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113 designated.

114 (5) DELIVER or DELIVERY means any method of delivery
115 used in conventional commercial practice, including delivery
116 by hand, mail, commercial delivery, and, if authorized in
117 accordance with Section 10A-3A-1.03, by electronic
118 transmission.

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

123 (7) DISTRIBUTION means a direct or indirect transfer of
124 cash or other property from a nonprofit corporation to a
125 member, director, or officer of that nonprofit corporation in
126 that person's capacity as a member, director, or officer, but
127 does not mean payments or benefits made in accordance with
128 Section 10A-3A-6.41.

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

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

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

135 (11) ELECTRONIC MAIL ADDRESS means a destination,
136 commonly expressed as a string of characters, consisting of a
137 unique user name or mailbox (commonly referred to as the
138 "local part" of the address) and a reference to an internet
139 domain (commonly referred to as the "domain part" of the
140 address), whether or not displayed, to which electronic mail



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141 can be sent or delivered.

142 (12) EMPLOYEE does not include an individual serving as
143 an officer or director who is not otherwise employed by the
144 nonprofit corporation.

145 (13) ENTITLED TO VOTE means entitled to vote on the
146 matter under consideration pursuant to the certificate of
147 incorporation or bylaws of the nonprofit corporation, or
148 applicable provisions of this chapter or Chapter 1.

149 (14) ENTITY includes nonprofit corporation; foreign
150 nonprofit corporation; business corporation; foreign business
151 corporation; estate; trust; unincorporated entity; foreign
152 unincorporated entity; and state, United States, and foreign
153 government.

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

156 (16) FOREIGN BUSINESS CORPORATION means a business
157 corporation incorporated under a law other than the law of
158 this state which would be a business corporation if
159 incorporated under the law of this state.

160 (17) FOREIGN NONPROFIT CORPORATION means a nonprofit
161 corporation incorporated under a law other than the law of
162 this state which would be a nonprofit corporation if
163 incorporated under the law of this state.

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

167 (19) FUNDAMENTAL TRANSACTION means an amendment of the
168 certificate of incorporation, an amendment to the bylaws, a



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169 merger, a conversion, a sale of all or substantially all of
170 the assets, or the dissolution of a nonprofit corporation.

171 (20) GOVERNING STATUTE means the statute governing the
172 internal affairs of a nonprofit corporation, foreign nonprofit
173 corporation, business corporation, foreign business
174 corporation, unincorporated entity, or foreign unincorporated
175 entity.

176 (21) INCLUDES and INCLUDING denote a partial definition
177 or a nonexclusive list.

178 (22) INTEREST means:

179 (a) a share;

180 (b) a membership or membership interests; or

181 (c) either or both of the following rights under the
182 governing statute governing an organization other than a
183 nonprofit corporation, foreign nonprofit corporation, business
184 corporation, foreign business corporation:

185 (i) the right to receive distributions from that
186 organization either in the ordinary course or upon
187 liquidation; or

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

192 (23) INTEREST HOLDER means a person who holds of record
193 an interest.

194 (24) KNOWLEDGE is determined as follows:

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

196 (1) has actual knowledge of it; or



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197 (2) is deemed to know it under law other than this
198 chapter.

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

200 (1) knows of it;

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

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

205 (4) is deemed to have notice of the fact under
206 subsection (d).

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

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

213 (1) matters included in the certificate of
214 incorporation upon filing;

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

217 (3) conversion or merger under Article 13 or Article
218 12, 90 days after a statement of conversion or statement of
219 merger becomes effective;

220 (4) conversion or merger under Article 8 of Chapter 1,
221 90 days after a statement of conversion or statement of merger
222 becomes effective; and

223 (5) revocation of dissolution and reinstatement, 90
224 days after certificate of revocation of dissolution and



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225 reinstatement under Section 10A-3A-11.06 becomes effective.

226 (e) A member's knowledge, notice, or receipt of a
227 notification of a fact relating to the nonprofit corporation
228 is not knowledge, notice, or receipt of a notification of a
229 fact by that nonprofit corporation solely by reason of the
230 member's capacity as a member.

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

234 (25) MEANS denotes an exhaustive definition.

235 (26) MEMBER means a person in whose name a membership
236 is registered on the records of the membership nonprofit
237 corporation and who has the right to (i) select or vote for
238 the election of directors or (ii) vote on any type of
239 fundamental transaction.

240 (27) MEMBERSHIP or MEMBERSHIP INTERESTS means the
241 rights and any obligations of a member in a membership
242 nonprofit corporation or a foreign membership nonprofit
243 corporation.

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

248 (29) NONMEMBERSHIP NONPROFIT CORPORATION means a
249 nonprofit corporation whose certificate of incorporation
250 provides that it will not have members.

251 (30) NONPROFIT CORPORATION, except in the phrase
252 foreign nonprofit corporation, means a nonprofit corporation



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253 incorporated under or existing under this chapter.

254 (31) ORGANIZATIONAL DOCUMENTS means the public organic
255 record and private organizational documents of a nonprofit
256 corporation, foreign nonprofit corporation, business
257 corporation, foreign business corporation, or other
258 organization.

259 (32) PRINCIPAL OFFICE means the office (in or out of
260 this state) where the principal executive offices of a
261 nonprofit corporation or foreign nonprofit corporation are
262 located.

263 (33) PRIVATE ORGANIZATIONAL DOCUMENTS means (i) the
264 bylaws of a nonprofit corporation, foreign nonprofit
265 corporation, business corporation, or foreign business
266 corporation or (ii) the rules, regardless of whether in
267 writing, that govern the internal affairs of an unincorporated
268 entity or foreign unincorporated entity, are binding on all
269 its interest holders, and are not part of its public organic
270 record, if any. Where private organizational documents have
271 been amended or restated, the term means the private
272 organizational documents as last amended or restated.

273 (34) PROCEEDING includes any civil suit and criminal,
274 administrative, and investigatory action.

275 (35) PUBLIC ORGANIC RECORD means (i) the certificate of
276 incorporation of a nonprofit corporation, foreign nonprofit
277 corporation, business corporation, or foreign business
278 corporation, or (ii) the document, if any, the filing of which
279 is required to create an unincorporated entity or foreign
280 unincorporated entity, or which creates the unincorporated



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281 entity or foreign unincorporated entity and is required to be
282 filed. Where a public organic record has been amended or
283 restated, the term means the public organic record as last
284 amended or restated.

285 (36) RECORD DATE means the date fixed for determining
286 the identity of the nonprofit corporation's members and their
287 interests for purposes of this chapter. Unless another time is
288 specified when the record date is fixed, the determination
289 shall be made as of the close of business at the principal
290 office of the nonprofit corporation on the date so fixed.

291 (37) SECRETARY means the corporate officer to whom the
292 certificate of incorporation, bylaws, or board of directors
293 has delegated responsibility under Section 10A-3A-8.40(c) to
294 maintain the minutes of the meetings of the board of
295 directors, committees, and the members, and for authenticating
296 records of the nonprofit corporation.

297 (38) SHARES means the units into which the proprietary
298 interests in a domestic or foreign business corporation are
299 divided.

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

305 (40) UNINCORPORATED ENTITY means an organization or
306 artificial legal person that either has a separate legal
307 existence or has the power to acquire an estate in real
308 property in its own name and that is not any of the following:



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309 a corporation, foreign corporation, nonprofit corporation,
310 foreign nonprofit corporation, a series of a limited liability
311 company or of another type of entity, an estate, a trust, a
312 state, United States, or foreign government. The term includes
313 a general partnership, limited liability company, limited
314 partnership, business trust, joint stock association, and
315 unincorporated nonprofit association.

316 (41) UNITED STATES includes a district, authority,
317 bureau, commission, department, and any other agency of the
318 United States.

319 (42) VOTE, VOTING, or CASTING A VOTE includes the
320 giving of consent in writing without a meeting. The term does
321 not include either recording the fact of abstention or failing
322 to vote for a candidate or for approval or disapproval of a
323 matter, whether or not the person entitled to vote
324 characterizes that conduct as voting or casting a vote.

325 (43) VOTING GROUP means one or more classes of members
326 that under the certificate of incorporation, bylaws, or this
327 chapter are entitled to vote and be counted together
328 collectively on a matter at a meeting of members. All members
329 entitled by the certificate of incorporation, bylaws, or this
330 chapter to vote generally on the matter are for that purpose a
331 single voting group.

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

335 §10A-3A-1.03. Notice.

336 (a) A notice under this chapter must be in writing



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337 unless oral notice is reasonable in the circumstances. Unless
338 otherwise agreed between the sender and the recipient, words
339 in a notice or other communication under this chapter must be
340 in English.

341 (b) A notice or other communication may be given by any
342 method of delivery, except that notice or other communication
343 by electronic transmission must be in accordance with this
344 section. If the methods of delivery are impracticable, a
345 notice or other communication from the nonprofit corporation
346 may be given by means of a broad non-exclusionary distribution
347 to the public (which may include a newspaper of general
348 circulation in the area where published; radio, television, or
349 other form of public broadcast communication; or other methods
350 of distribution that the nonprofit corporation has previously
351 identified to its recipients).

352 (c) A notice or other communication to a nonprofit
353 corporation or to a foreign nonprofit corporation registered
354 to transact business in this state may be delivered to the
355 registered agent of the nonprofit corporation or the foreign
356 nonprofit corporation at that registered agent's registered
357 office or to the secretary at the principal office of the
358 nonprofit corporation or the foreign nonprofit corporation.

359 (d) A notice or other communication from a nonprofit
360 corporation to a member may be delivered by electronic mail to
361 the electronic mail address for that member maintained
362 pursuant to Section 10A-3A-4.01(d), unless that member has
363 previously notified the nonprofit corporation in writing that
364 the member objects to receiving notices and other



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365 communications by electronic mail. Any notice or other
366 communication may be delivered to a member by another form of
367 electronic transmission if consented to by that member or if
368 authorized by subsection (j). Any notice or other
369 communication from a nonprofit corporation to any other person
370 may be delivered by electronic transmission if consented to by
371 the recipient or if authorized by subsection (j). Any consent
372 under this subsection or subsection (j) may be revoked with
373 respect to future notices or communications by the person who
374 consented by written notice to the person to whom the consent
375 was delivered.

376 (e) A notice or other communication may no longer be
377 delivered to an electronic mail address or other electronic
378 transmission address pursuant to subsection (d) if (i) the
379 nonprofit corporation receives notice from the information
380 processing system into which the notice or other communication
381 was entered that two consecutive notices or other
382 communications given by electronic transmission have not been
383 delivered to the electronic mail address or other electronic
384 transmission address to which the notice or other
385 communication was directed, and (ii) the notice of
386 non-delivery becomes known to the secretary or an assistant
387 secretary, or another person responsible for the giving of
388 notices or other communications for the nonprofit corporation;
389 provided, however, that the inadvertent failure to recognize
390 the notice of non-delivery as a cessation of authority to
391 provide a member with notice by electronic mail or other
392 electronic transmission shall not invalidate any meeting or



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393 other action.

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

397 (1) it enters an information processing system directed
398 to: (i) in the case of a member, the electronic mail address
399 for the member maintained pursuant to Section 10A-3A-4.01(d)
400 or other electronic transmission address at which the member
401 has consented to receive notice or other communication by
402 electronic transmission; or (ii) in the case of any other
403 recipient, the electronic transmission address at which the
404 recipient has consented to receive notice or other
405 communication by electronic transmission; and

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

408 (g) Receipt of an electronic acknowledgment from an
409 information processing system described in subsection (f)(1)
410 establishes that an electronic transmission was received but,
411 by itself, does not establish that the content sent
412 corresponds to the content received.

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

415 (i) A notice or other communication, if in a
416 comprehensible form or manner, is effective at the earliest of
417 the following:

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

420 (i) a member's address included in the record of



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421 members maintained pursuant to Section 10A-3A-4.01(d);

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

423 or

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

425 (2) if mailed by United States mail postage prepaid and

426 addressed to a member at the member's address included in the

427 record of members maintained pursuant to Section

428 10A-3A-4.01(d), upon deposit in the United States mail;

429 (3) if mailed by United States mail postage prepaid and

430 addressed to a recipient other than a member, at the address

431 of the recipient reflected in the books and records of the

432 nonprofit corporation, the earliest of when it is actually

433 received, or:

434 (i) if sent by registered or certified mail, return

435 receipt requested, the date shown on the return receipt signed

436 by or on behalf of the addressee; or

437 (ii) five days after it is deposited in the United

438 States mail;

439 (4) if sent by a nationally recognized commercial

440 carrier that issues a receipt or other confirmation of

441 delivery, the earliest of when it is actually received or the

442 date shown on the receipt or other confirmation of delivery

443 issued by the commercial carrier;

444 (5) if an electronic transmission, when it is received

445 as provided in subsection (f); and

446 (6) if oral, when communicated.

447 (j) A notice or other communication may be in the form

448 of an electronic transmission that cannot be directly



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449 reproduced in paper form by the recipient through an automated
450 process used in conventional commercial practice only if (i)
451 the electronic transmission is otherwise retrievable in
452 perceivable form and (ii) the sender and the recipient have
453 consented in writing to the use of that form of electronic
454 transmission.

455 (k) If this chapter prescribes requirements for notices
456 or other communications in particular circumstances, those
457 requirements govern. If the certificate of incorporation or
458 bylaws prescribe requirements for notices or other
459 communications, not inconsistent with this section or other
460 provisions of this chapter, those requirements govern. The
461 certificate of incorporation or bylaws may authorize or
462 require delivery of notices of meetings of directors by
463 electronic transmission.

464 (l) In the event that any provisions of this chapter
465 are deemed to modify, limit, or supersede the federal
466 Electronic Signatures in Global and National Commerce Act, 15
467 U.S.C. §§ 7001 et seq., the provisions of this chapter shall
468 control to the maximum extent permitted by Section 102(a)(2)
469 of that federal act.

470 (m) Whenever a notice or communication would otherwise
471 be required to be given under any provision of this chapter to
472 a member, the notice or communication need not be given if the
473 nonprofit corporation is not permitted to deliver the notice
474 or communication by electronic transmission pursuant to
475 subsections (d) and (e) and:

476 (1) notices and communications to members of two



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477 consecutive annual meetings, and all notices and
478 communications of meetings during the period between those two
479 consecutive annual meetings, have been sent to that member at
480 that member's address included in the record of members
481 maintained pursuant to Section 10A-3A-4.01(d) and have been
482 returned undeliverable or could not be delivered; or

483 (2) no address has been provided to the nonprofit
484 corporation by or on behalf of a member and the nonprofit
485 corporation has not otherwise obtained an address for that
486 member it believes to be reliable.

487 In addition if any member to which this subsection (m)
488 applies delivers to the nonprofit corporation a written notice
489 or communication setting forth that member's then-current
490 address, the requirement that notice and communication be
491 given to that member shall be reinstated.

492 (n) Whenever a notice or communication is required to
493 be given, under any provision of this chapter or of the
494 certificate of incorporation or bylaws of any nonprofit
495 corporation, to any person with whom notice to or
496 communication with is unlawful, the giving of the notice or
497 communication to that person shall not be required and there
498 shall be no duty to apply to any governmental authority or
499 agency for a license or permit to give the notice or
500 communication to that person. Any action or meeting which
501 shall be taken or held without notice or communication to the
502 person with whom notice to or communication with is unlawful
503 shall have the same force and effect as if the notice or
504 communication had been duly given. In the event that the



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505 action taken by the nonprofit corporation requires the filing
506 of a certificate or other filing instrument under any of the
507 other sections of this chapter, the certificate or other
508 filing instrument shall state, if that is the fact and if
509 notice or communication is required, that notice or
510 communication was given to all persons entitled to receive
511 notice or communication except those persons with whom notice
512 to or communication with is unlawful.

513 §10A-3A-1.04. Requirements for filing instruments;
514 extrinsic facts.

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

518 (1) Except as provided in subsection (a)(3), the
519 certificate of incorporation, and any other instrument to be
520 filed before the election of the initial board of directors if
521 the initial directors were not named in the certificate of
522 incorporation, shall be signed by the incorporator or
523 incorporators or the successors and assigns of the
524 incorporator or incorporators. If any incorporator is not
525 available then any other instrument may be signed, with the
526 same effect as if the incorporator had signed it, by any
527 person for whom or on whose behalf the incorporator, in
528 executing the certificate of incorporation, was acting
529 directly or indirectly as employee or agent, provided that the
530 other instrument shall state that the incorporator is not
531 available and the reason therefor, that the incorporator in
532 executing the certificate of incorporation was acting directly



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533 or indirectly as employee or agent for or on behalf of the
534 person, and that the person's signature on the instrument is
535 otherwise authorized and not wrongful.

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

538 (i) by any authorized officer of the nonprofit
539 corporation; or

540 (ii) if it shall appear from the filing instrument that
541 there are no authorized officers, then by a majority of the
542 directors or by the directors as may be designated by a
543 majority of the board of directors; or

544 (iii) if it shall appear from the filing instrument
545 that there are no authorized officers or directors, then by a
546 majority of the members or by the members as may be designated
547 by a majority of the members.

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

551 (b) The person executing the filing instrument shall
552 sign it and state beneath or opposite the person's signature
553 the person's name and the capacity in which the filing
554 instrument is signed. The filing instrument may, but need not,
555 contain a corporate seal, attestation, acknowledgment, or
556 verification.

557 (c) Whenever a provision of this chapter permits any of
558 the terms of a plan or a filing instrument to be dependent on
559 facts objectively ascertainable outside the plan or filing
560 instrument, the following provisions apply:



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561 (1) The manner in which the facts will operate upon the
562 terms of the plan or filing instrument must be set forth in
563 the plan or filing instrument.

564 (2) The facts may include:

565 (i) any of the following that are available in a
566 nationally recognized news or information medium either in
567 print or electronically: statistical or market indices, market
568 prices of any security or group of securities, interest rates,
569 currency exchange rates, or similar economic or financial
570 data;

571 (ii) a determination or action by any person or body,
572 including the nonprofit corporation or any other party to a
573 plan or filing instrument; or

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

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

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

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

584 (ii) the registered office of any entity required in a
585 filing instrument;

586 (iii) the registered agent of any entity required in a
587 filing instrument;

588 (iv) the effective date and time of a filing instrument



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589 as determined under Article 4 of Chapter 1; and

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

593 (5) If a provision of a filing instrument is made
594 dependent on a fact ascertainable outside of the filing
595 instrument, and that fact is neither ascertainable by
596 reference to a source described in subsection (c)(2)(i) or a
597 document that is a matter of public record, nor have the
598 affected members, if any, and if none, the affected directors,
599 received notice of the fact from the nonprofit corporation,
600 then the nonprofit corporation shall deliver to the Secretary
601 of State for filing a certificate of amendment to the filing
602 instrument setting forth the fact promptly after the time when
603 the fact referred to is first ascertainable or thereafter
604 changes. A certificate of amendment under this subsection is
605 deemed to be authorized by the authorization of the original
606 filing instrument to which it relates and may be filed by the
607 nonprofit corporation without further action by the board of
608 directors or the members.

609 §10A-3A-1.05. Certificate of existence or registration.

610 (a) The Secretary of State, upon request and payment of
611 the requisite fee, shall furnish to any person a certificate
612 of existence for a nonprofit corporation if the writings filed
613 in the office of the Secretary of State show that the
614 nonprofit corporation has been incorporated under the laws of
615 this state. A certificate of existence shall reflect only the
616 information on file with the Secretary of State. A certificate



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617 of existence must state:

618 (1) the nonprofit corporation's name;

619 (2) that the nonprofit corporation was incorporated
620 under the laws of this state, the date of incorporation, and
621 the filing office in which the certificate of incorporation
622 was filed;

623 (3) whether the nonprofit corporation has delivered to
624 the Secretary of State for filing a certificate of
625 dissolution;

626 (4) whether the nonprofit corporation has delivered to
627 the Secretary of State for filing a certificate of
628 reinstatement; and

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

632 (b) The Secretary of State, upon request and payment of
633 the requisite fee, shall furnish to any person a certificate
634 of registration for a foreign nonprofit corporation if the
635 writings filed in the office of the Secretary of State show
636 that the Secretary of State has filed an application for
637 registration for authority to transact business in this state
638 and the registration has not been revoked, withdrawn, or
639 terminated. A certificate of registration must state:

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

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

644 (3) that the Secretary of State has not revoked the



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645 foreign nonprofit corporation's registration;

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

649 (5) other facts of record in the office of the
650 Secretary of State that are specified by the person requesting
651 the certificate.

652 (c) Subject to any qualification stated in the
653 certificate, a certificate of existence or certificate of
654 registration issued by the Secretary of State is conclusive
655 evidence that the nonprofit corporation is in existence or the
656 foreign nonprofit corporation is authorized to transact
657 business in this state.

658 DIVISION B. RATIFICATION OF DEFECTIVE CORPORATE ACTIONS
659 §10A-3A-1.20. Division definitions.

660 In this Division:

661 (1) "CORPORATE ACTION" means any action taken by or on
662 behalf of the nonprofit corporation, including any action
663 taken by the incorporator, the board of directors, a committee
664 of the board of directors, an officer or agent of the
665 nonprofit corporation, or the members, if any.

666 (2) "DATE OF THE DEFECTIVE CORPORATE ACTION" means the
667 date (or the approximate date, if the exact date is unknown)
668 the defective corporate action was purported to have been
669 taken.

670 (3) "DEFECTIVE CORPORATE ACTION" means (i) any
671 corporate action purportedly taken that is, and at the time
672 that corporate action was purportedly taken would have been,



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673 within the power of the nonprofit corporation, but is void or
674 voidable due to a failure of authorization, and (ii) an
675 overissue.

676 (4) "FAILURE OF AUTHORIZATION" means the failure to
677 authorize, approve, or otherwise effect a corporate action in
678 compliance with the provisions of this chapter, the
679 certificate of incorporation or bylaws, a corporate
680 resolution, or any plan or agreement to which the nonprofit
681 corporation is a party, if and to the extent that failure
682 would render that corporate action void or voidable.

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

684 (i) membership interests of a class in excess of the
685 number, if any, of membership interests of a class the
686 nonprofit corporation has the power to issue under its
687 certificate of incorporation or bylaws at the time of
688 issuance; or

689 (ii) membership interests of any class that is not then
690 authorized for issuance by the certificate of incorporation or
691 bylaws.

692 (6) "PUTATIVE MEMBERSHIP INTEREST" means a membership
693 interest of any class (including a membership interest issued
694 upon exercise of rights, options, warrants, or other
695 securities convertible into a membership interest of the
696 nonprofit corporation, or interests with respect to that
697 membership interest) that was created or issued as a result of
698 a defective corporate action, that (i) but for any failure of
699 authorization would constitute a valid membership interest, or
700 (ii) cannot be determined by the board of directors to be a



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701 valid membership interest.

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

706 (8) "VALIDATION EFFECTIVE TIME" with respect to any
707 defective corporate action ratified under this article means
708 the later of:

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

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

715 The validation effective time shall not be affected by
716 the filing or pendency of a judicial proceeding under Section
717 10A-3A-1.27 or otherwise, unless otherwise ordered by the
718 court.

719 §10A-3A-1.21. Defective corporate actions.

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

723 (b) Ratification under Section 10A-3A-1.22 or
724 validation under Section 10A-2A-1.27 shall not be deemed to be
725 the exclusive means of ratifying or validating any defective
726 corporate action, and the absence or failure of ratification
727 in accordance with this Division shall not, of itself, affect
728 the validity or effectiveness of any corporate action properly



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729 ratified under common law or otherwise, nor shall it create a
730 presumption that any such corporate action is or was a
731 defective corporate action or void or voidable.

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

735 (1) the effectiveness under this article and under
736 Article 9 of an amendment to the certificate of incorporation
737 or bylaws authorizing, designating, or creating that
738 membership interest; or

739 (2) the effectiveness of any other corporate action
740 under this article ratifying the authorization, designation,
741 or creation of a membership interest.

742 §10A-3A-1.22. Ratification of defective corporate
743 actions.

744 (a) To ratify a defective corporate action under this
745 section (other than the ratification of an election of the
746 initial board of directors under subsection (b)), the board of
747 directors shall take action ratifying the action in accordance
748 with Section 10A-3A-1.23, stating:

749 (1) the defective corporate action to be ratified and,
750 if the defective corporate action involved the issuance of a
751 putative membership interest, the number and types of putative
752 membership interests purportedly issued;

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

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

756 (4) that the board of directors approves the



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757 ratification of the defective corporate action.

758 (b) In the event that a defective corporate action to
759 be ratified relates to the election of the initial board of
760 directors of the nonprofit corporation under Section
761 10A-3A-2.04(a)(2), a majority of the persons who, at the time
762 of the ratification, are exercising the powers of directors
763 may take an action stating:

764 (1) the name of the person or persons who first took
765 action in the name of the nonprofit corporation as the initial
766 board of directors of the nonprofit corporation;

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

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

772 (c) If any provision of this chapter, the certificate
773 of incorporation or bylaws, any corporate resolution, or any
774 plan or agreement to which a membership nonprofit corporation
775 is a party in effect at the time action under subsection (a)
776 is taken requires member approval or would have required
777 member approval at the date of the occurrence of the defective
778 corporate action, the ratification of the defective corporate
779 action approved in the action taken by the directors under
780 subsection (a) shall be submitted to the members for approval
781 in accordance with Section 10A-3A-1.23.

782 (d) If the certificate of incorporation of a nonprofit
783 corporation in effect at the time action under subsection (a)
784 is taken requires the approval of a person or group of persons



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785 specified in the certificate of incorporation or would have
786 required approval of that person or group of persons at the
787 date of the occurrence of the defective corporate action, the
788 ratification of the defective corporate action approved in the
789 action taken by the directors under subsection (a) shall be
790 submitted to that person or group of persons for approval in
791 accordance with Section 10A-3A-1.23.

792 (e) Unless otherwise provided in the action taken by
793 the board of directors under subsection (a), after the action
794 by the board of directors has been taken and, if required,
795 approved in accordance with subsection (c) or subsection (d),
796 the board of directors may abandon the ratification at any
797 time before the validation effective time without further
798 action of the members, if any, or the person or group of
799 persons, if any, specified in the certificate of
800 incorporation.

801 §10A-3A-1.23. Action on ratification.

802 (a) The quorum and voting requirements applicable to a
803 ratifying action by the board of directors under Section
804 10A-3A-1.22(a) shall be the quorum and voting requirements
805 applicable to the corporate action proposed to be ratified at
806 the time the ratifying action is taken.

807 (b) If the ratification of the defective corporate
808 action requires approval by the members under Section
809 10A-3A-1.22(c), and if the approval is to be given at a
810 meeting, the membership nonprofit corporation shall notify
811 each holder of valid and putative membership interests,
812 regardless of whether entitled to vote, as of the record date



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813 for notice of the meeting and as of the date of the occurrence
814 of defective corporate action, provided that notice shall not
815 be required to be given to holders of valid or putative
816 membership interests whose identities or addresses for notice
817 cannot be determined from the records of the membership
818 nonprofit corporation. The notice must state that the purpose,
819 or one of the purposes, of the meeting, is to consider
820 ratification of a defective corporate action and must be
821 accompanied by (i) either a copy of the action taken by the
822 board of directors in accordance with Section 10A-3A-1.22(a)
823 or the information required by Section 10A-3A-1.22(a)(1)
824 through (a)(4), and (ii) a statement that any claim that the
825 ratification of the defective corporate action and any
826 putative membership interest issued as a result of the
827 defective corporate action should not be effective, or should
828 be effective only on certain conditions, shall be brought
829 within 120 days from the applicable validation effective time.

830 (c) Except as provided in subsection (d) with respect
831 to the voting requirements to ratify the election of a
832 director, the quorum and voting requirements applicable to the
833 approval by the members, if any, and if none, by the directors
834 shall be the quorum and voting requirements applicable to the
835 corporate action proposed to be ratified at the time of the
836 member or director approval.

837 (d) The approval by members to ratify the election of a
838 director requires that the votes cast within the voting group
839 favoring the ratification exceed the votes cast opposing the
840 ratification of the election at a meeting at which a quorum is



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841 present.

842 (e) Putative membership interest on the record date for
843 determining the members entitled to vote on any matter
844 submitted to members under Section 10A-3A-1.22(c) (and without
845 giving effect to any ratification of putative membership
846 interests that becomes effective as a result of the vote)
847 shall neither be entitled to vote nor counted for quorum
848 purposes in any vote to approve the ratification of any
849 defective corporate action.

850 (f) If the approval under this section of putative
851 membership interests would result in an overissue, in addition
852 to the approval required by Section 10A-3A-1.22, approval of
853 an amendment to the certificate of incorporation under Article
854 9 to increase the number of membership interests of an
855 authorized class or to authorize the creation of a class of
856 membership interests so there would be no overissue shall also
857 be required.

858 (g) If the ratification of the defective corporate
859 action requires approval by a person or group of persons
860 specified in the certificate of incorporation, the directors
861 shall provide that person or group of persons with (i) either
862 a copy of the action taken by the board of directors in
863 accordance with Section 10A-3A-1.22(a) or the information
864 required by Section 10A-3A-1.22(a)(1) through (a)(4), and (ii)
865 a statement that any claim that the ratification of the
866 defective corporate action and any putative membership
867 interest issued as a result of the defective corporate action
868 should not be effective, or should be effective only on



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869 certain conditions, shall be brought within 120 days from the
870 applicable validation effective time.

871 §10A-3A-1.24. Notice requirements.

872 (a) In a membership nonprofit corporation, unless
873 member approval is required under Section 10A-3A-1.22(c),
874 prompt notice of an action taken under Section 10A-3A-1.22
875 shall be given to each holder of a valid and putative
876 membership interest in the membership nonprofit corporation,
877 regardless of whether entitled to vote, as of: (i) the date of
878 the action by the board of directors; and (ii) the date of the
879 defective corporate action ratified, provided that notice
880 shall not be required to be given to holders of a valid and
881 putative membership interest whose identities or addresses for
882 notice cannot be determined from the records of the nonprofit
883 corporation.

884 (b) The notice set forth in subsection (a) must
885 contain: (i) either a copy of the action taken by the board of
886 directors in accordance with Section 10A-3A-1.22(a) or (b) or
887 the information required by Section 10A-3A-1.22(a)(1) through
888 (a)(4) or Section 10A-3A-1.22(b)(1) through (b)(3), as
889 applicable; and (ii) a statement that any claim that the
890 ratification of the defective corporate action and any
891 putative membership interest issued as a result of the
892 defective corporate action should not be effective, or should
893 be effective only on certain conditions, shall be brought
894 within 120 days from the applicable validation effective time.

895 (c) In a membership nonprofit corporation, no notice
896 under this section is required with respect to any action



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897 required to be submitted to members for approval under Section
898 10A-3A-1.22(c) if notice is given in accordance with Section
899 10A-3A-1.24(b).

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

902 §10A-3A-1.25. Effect of ratification.

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

906 (a) Each defective corporate action ratified in
907 accordance with Section 10A-3A-1.22 shall not be void or
908 voidable as a result of the failure of authorization
909 identified in the action taken under Section 10A-3A-1.22(a) or
910 (b) and shall be deemed a valid corporate action effective as
911 of the date of the defective corporate action;

912 (b) The issuance of each putative membership interest
913 purportedly issued pursuant to a defective corporate action
914 identified in the action taken under Section 10A-3A-1.22 shall
915 not be void or voidable, and each putative membership interest
916 shall be deemed to be an identical membership interest as of
917 the time it was purportedly issued; and

918 (c) Any corporate action taken subsequent to the
919 defective corporate action ratified in accordance with this
920 Division B of Article 1 in reliance on the defective corporate
921 action having been validly effected and any subsequent
922 defective corporate action resulting directly or indirectly
923 from the original defective corporate action shall be valid as
924 of the time taken.



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925 §10A-3A-1.26. Filings.

926 (a) If the defective corporate action ratified under
927 this Division B of Article 1 would have required under any
928 other section of this chapter a filing in accordance with this
929 chapter, then, regardless of whether a filing was previously
930 made in respect of the defective corporate action and in lieu
931 of a filing otherwise required by this chapter, the nonprofit
932 corporation shall file a certificate of validation in
933 accordance with this section, and that certificate of
934 validation shall serve to amend or substitute for any other
935 filing with respect to the defective corporate action required
936 by this chapter.

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

938 (1) the name of the nonprofit corporation;

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

941 (3) the defective corporate action that is the subject
942 of the certificate of validation (including, in the case of
943 any defective corporate action involving the issuance of
944 putative membership interests, the number and type of shares
945 of putative membership interests issued and the date or dates
946 upon which that putative membership interest was purported to
947 have been issued);

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

949 (5) the nature of the failure of authorization in
950 respect of the defective corporate action;

951 (6) a statement that the defective corporate action was
952 ratified in accordance with Section 10A-3A-1.22, including the



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953 date on which the board of directors ratified that defective
954 corporate action, and if applicable, the date on which the
955 members approved the ratification of that defective corporate
956 action, and the date on which the person or group of persons
957 specified in the certificate of incorporation approved the
958 ratification of that defective corporate action; and

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

960 (c) The certificate of validation must also contain the
961 following information:

962 (1) if a filing was previously made in respect of the
963 defective corporate action and no changes to that filing are
964 required to give effect to the ratification of that defective
965 corporate action in accordance with Section 10A-3A-1.22, the
966 certificate of validation must set forth (i) the name, title,
967 and filing date of the filing previously made and any
968 certificate of correction to that filing, and (ii) a statement
969 that a copy of the filing previously made, together with any
970 certificate of correction to that filing, is attached as an
971 exhibit to the certificate of validation;

972 (2) if a filing was previously made in respect of the
973 defective corporate action and that filing requires any change
974 to give effect to the ratification of that defective corporate
975 action in accordance with Section 10A-3A-1.22, the certificate
976 of validation must set forth (i) the name, title, and filing
977 date of the filing previously made and any certificate of
978 correction to that filing, and (ii) a statement that a filing
979 containing all of the information required to be included
980 under the applicable section or sections of this chapter to



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981 give effect to that defective corporate action is attached as
982 an exhibit to the certificate of validation, and (iii) the
983 date and time that filing is deemed to have become effective;
984 or

985 (3) if a filing was not previously made in respect of
986 the defective corporate action and the defective corporate
987 action ratified under Section 10A-3A-1.22 would have required
988 a filing under any other section of this chapter, the
989 certificate of validation must set forth (i) a statement that
990 a filing containing all of the information required to be
991 included under the applicable section or sections of this
992 chapter to give effect to that defective corporate action is
993 attached as an exhibit to the certificate of validation, and
994 (ii) the date and time that filing is deemed to have become
995 effective.

996 §10A-3A-1.27. Judicial proceedings regarding validity
997 of corporate actions.

998 (a) Upon application by the nonprofit corporation, any
999 successor entity to the nonprofit corporation, a director of
1000 the nonprofit corporation, any member (if applicable) of the
1001 nonprofit corporation, including any member as of the date of
1002 the defective corporate action ratified under Section
1003 10A-3A-1.22, the person or group of persons (if applicable)
1004 specified in the certificate of incorporation, or any other
1005 person claiming to be substantially and adversely affected by
1006 a ratification under Section 10A-3A-1.22, the designated
1007 court, and if none, the circuit court for the county in which
1008 the nonprofit corporation's principal office is located in



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1009 this state, and if none in this state, the circuit court for
1010 the county in which the nonprofit corporation's most recent
1011 registered office, is located, may:

1012 (1) determine the validity and effectiveness of any
1013 corporate action or defective corporate action;

1014 (2) determine the validity and effectiveness of any
1015 ratification under Section 10A-3A-1.22;

1016 (3) determine the validity of any putative membership
1017 interest; and

1018 (4) modify or waive any of the procedures specified in
1019 Section 10A-3A-1.22 or Section 10A-3A-1.23 to ratify a
1020 defective corporate action.

1021 (b) In connection with an action under this section,
1022 the court may make findings or orders, and take into account
1023 any factors or considerations, regarding any matters as it
1024 deems proper under the circumstances.

1025 (c) Service of process of the application under
1026 subsection (a) on the nonprofit corporation may be made in any
1027 manner provided by statute of this state or by rule of the
1028 applicable court for service on the nonprofit corporation, and
1029 no other party need be joined in order for the court to
1030 adjudicate the matter. In an action filed by the nonprofit
1031 corporation, the court may require notice of the action be
1032 provided to other persons specified by the court and permit
1033 those other persons to intervene in the action.

1034 (d) Notwithstanding any other provision of this section
1035 or otherwise under applicable law, any action asserting that
1036 the ratification of any defective corporate action and any



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1037 putative membership interest issued as a result of a defective
1038 corporate action should not be effective, or should be
1039 effective only on certain conditions, shall be brought within
1040 120 days of the validation effective time.

1041 DIVISION C. MISCELLANEOUS.

1042 §10A-3A-1.60. Qualified director.

1043 (a) A "qualified director" is a director who, at the
1044 time action is to be taken under:

1045 (1) Section 10A-3A-2.02(b)(6), is not a director (i) to
1046 whom the limitation or elimination of the duty of an officer
1047 to offer potential business opportunities to the nonprofit
1048 corporation would apply, or (ii) who has a material
1049 relationship with any other person to whom the limitation or
1050 elimination would apply;

1051 (2) Section 10A-3A-8.53 or Section 10A-3A-8.55 (i) is
1052 not a party to the proceeding, (ii) is not a director as to
1053 whom a transaction is a director's conflicting interest
1054 transaction or who sought a disclaimer of the nonprofit
1055 corporation's interest in a business opportunity under Section
1056 10A-2A-8.60, which transaction or disclaimer is challenged,
1057 and (iii) does not have a material relationship with a
1058 director described in either clause (i) or clause (ii) of this
1059 subsection (a)(2); or

1060 (3) Section 10A-2A-8.60, is not a director (i) as to
1061 whom the contract or transaction is a director's conflicting
1062 interest transaction, (ii) who has a material relationship
1063 with another director as to whom the transaction is a
1064 director's conflicting interest transaction, (iii) who pursues



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1065 or takes advantage of the business opportunity, directly, or
1066 indirectly through or on behalf of another person, or (iv) has
1067 a material relationship with a director or officer who pursues
1068 or takes advantage of the business opportunity, directly, or
1069 indirectly through or on behalf of another person.

1070 (b) For purposes of this section:

1071 (1) "MATERIAL RELATIONSHIP" means a familial,
1072 financial, professional, employment, or other relationship
1073 that would reasonably be expected to impair the objectivity of
1074 the director's judgment when participating in the action to be
1075 taken; and

1076 (2) "MATERIAL INTEREST" means an actual or potential
1077 benefit or detriment (other than one which would devolve on
1078 the nonprofit corporation or the members generally) that would
1079 reasonably be expected to impair the objectivity of the
1080 director's judgment when participating in the action to be
1081 taken.

1082 (c) The presence of one or more of the following
1083 circumstances shall not automatically prevent a director from
1084 being a qualified director:

1085 (1) nomination or election of the director to the
1086 current board of directors by any director who is not a
1087 qualified director with respect to the matter (or by any
1088 person that has a material relationship with that director),
1089 acting alone or participating with others; or

1090 (2) service as a director of another nonprofit
1091 corporation of which a director who is not a qualified
1092 director with respect to the matter (or any individual who has



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1093 a material relationship with that director), is or was also a
1094 director.

1095 §10A-3A-1.61. Householding.

1096 (a) A membership nonprofit corporation has delivered
1097 written notice or any other report or statement under this
1098 chapter, the certificate of incorporation, or the bylaws to
1099 all members who share a common address if:

1100 (1) the membership nonprofit corporation delivers one
1101 copy of the notice, report, or statement to the common
1102 address;

1103 (2) the membership nonprofit corporation addresses the
1104 notice, report, or statement to those members either as a
1105 group or to each of those members individually or to the
1106 members in a form to which each of those members has
1107 consented; and

1108 (3) each of those members consents to delivery of a
1109 single copy of the notice, report, or statement to the
1110 members' common address.

1111 (b) A consent described in subsection (a)(2) or (a)(3)
1112 shall be revocable by any members who deliver written notice
1113 of revocation to the membership nonprofit corporation. If a
1114 written notice of revocation is delivered, the membership
1115 nonprofit corporation shall begin providing individual
1116 notices, reports, or other statements to the revoking member
1117 no later than 30 days after delivery of the written notice of
1118 revocation.

1119 (c) Any member who fails to object by written notice to
1120 the membership nonprofit corporation, within 60 days of



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1121 written notice by the membership nonprofit corporation of its
1122 intention to deliver single copies of notices, reports, or
1123 statements to members who share a common address as permitted
1124 by subsection (a), shall be deemed to have consented to
1125 receiving a single copy at the common address; provided that
1126 the notice of intention explains that consent may be revoked
1127 and the method for revoking.

1128 §10A-3A-1.62. Governing law of foreign nonprofit
1129 corporations.

1130 (a) The law of the jurisdiction of formation of a
1131 foreign nonprofit corporation governs:

1132 (1) the incorporation and internal affairs of the
1133 foreign nonprofit corporation;

1134 (2) the liability of its members as members for the
1135 debts, obligations, or other liabilities of the foreign
1136 nonprofit corporation; and

1137 (3) the authority of the directors and officers of the
1138 foreign nonprofit corporation.

1139 (b) A foreign nonprofit corporation is not precluded
1140 from registering to do business in this state because of any
1141 difference between the law of the foreign nonprofit
1142 corporation's jurisdiction of formation and the law of this
1143 state.

1144 ARTICLE 2. INCORPORATION.

1145 §10A-3A-2.01. Incorporators.

1146 Section 10A-1-3.04 shall not apply to this chapter. In
1147 order to incorporate a nonprofit corporation, one or more
1148 incorporators must execute a certificate of incorporation and



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1149 deliver it for filing to the Secretary of State.

1150 §10A-3A-2.02. Certificate of incorporation.

1151 Section 10A-1-3.05 shall not apply to this chapter.

1152 Instead:

1153 (a) The certificate of incorporation must set forth:

1154 (1) a name for the nonprofit corporation that satisfies
1155 the requirements of Article 5 of Chapter 1;

1156 (2) the street and mailing address of the nonprofit
1157 corporation's initial registered office, the county within
1158 this state in which the street and mailing address is located,
1159 and the name of the nonprofit corporation's initial registered
1160 agent at that office as required by Article 5 of Chapter 1;

1161 (3) that the nonprofit corporation is incorporated
1162 under this chapter;

1163 (4) the name and address of each incorporator; and

1164 (5) (i) if the nonprofit corporation will have members,
1165 a statement to that effect; or

1166 (ii) if the nonprofit corporation will not have
1167 members, a statement to that effect.

1168 (b) The certificate of incorporation may set forth:

1169 (1) the names and addresses of the individuals who are
1170 to serve as the initial directors;

1171 (2) provisions not inconsistent with law regarding:

1172 (i) the purpose or purposes for which the nonprofit
1173 corporation is organized;

1174 (ii) managing the activities and regulating the affairs
1175 of the nonprofit corporation;

1176 (iii) defining, limiting, and regulating the powers of



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1177 the nonprofit corporation, its board of directors, and the
1178 members;

1179 (iv) the characteristics, qualifications, rights,
1180 limitations, and obligations attaching to each or any class of
1181 members;

1182 (v) subject to Section 10A-3A-4.20, limiting a member's
1183 right to inspect and copy the records of the nonprofit
1184 corporation under Section 10A-3A-4.02 (b);

1185 (vi) the distribution of assets on dissolution;

1186 (vii) provisions for the election, appointment, or
1187 designation of directors;

1188 (viii) provisions granting inspection rights to a
1189 person or group of persons under Section 10A-3A-4.07; and

1190 (ix) provisions specifying a person or group of persons
1191 whose approval is required under Sections 10A-3A-9.30,
1192 10A-3A-10.04, 10A-3A-11.04, 10A-3A-12.08, or 10A-3A-13.08;

1193 (3) any provision that under this chapter is permitted
1194 to be set forth in the certificate of incorporation or
1195 required or permitted to be set forth in the bylaws;

1196 (4) a provision eliminating or limiting the liability
1197 of a director to a nonprofit corporation or its members for
1198 money damages for any action taken, or any failure to take any
1199 action, as a director, except liability for (i) the amount of
1200 a financial benefit received by a director to which the
1201 director is not entitled (ii) an intentional infliction of
1202 harm on the nonprofit corporation or its members, (iii) a
1203 violation of Section 10A-3A-8.32, or (iv) an intentional
1204 violation of criminal law;



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1205 (5) a provision permitting or making obligatory
1206 indemnification of a director for liability as defined in
1207 Section 10A-3A-8.50 to any person for any action taken, or any
1208 failure to take any action, as a director, except liability
1209 for (i) receipt of a financial benefit to which the director
1210 is not entitled, (ii) an intentional infliction of harm on the
1211 nonprofit corporation or its members, (iii) a violation of
1212 Section 10A-3A-8.32, or (iv) an intentional violation of
1213 criminal law;

1214 (6) a provision limiting or eliminating any duty of a
1215 director or any other person to offer the nonprofit
1216 corporation the right to have or participate in any, or one or
1217 more classes or categories of, corporate opportunities, before
1218 the pursuit or taking of the opportunity by the director or
1219 other person; provided that the application of that provision
1220 to an officer or a related person of that officer (i) also
1221 requires approval of that application by the board of
1222 directors, subsequent to the effective date of the provision,
1223 by action of the disinterested or qualified directors taken in
1224 compliance with the same procedures as are set forth in
1225 Section 10A-3A-8.60, and (ii) may be limited by the
1226 authorizing action of the board of directors; and

1227 (7) provisions required if the nonprofit corporation is
1228 to be exempt from taxation under federal, state, or local law.

1229 (c) The certificate of incorporation need not set forth
1230 any of the corporate powers enumerated in Sections 10A-1-2.11,
1231 10A-1-2.12, and 10A-1-2.13.

1232 (d) Provisions of the certificate of incorporation may



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1233 be made dependent upon facts objectively ascertainable outside
1234 the certificate of incorporation in accordance with Section
1235 10A-3A-1.04.

1236 (e) As used in this section, "related person" means:
1237 (i) the individual's spouse; (ii) a child, stepchild,
1238 grandchild, parent, stepparent, grandparent, sibling,
1239 stepsibling, half sibling, aunt, uncle, niece, or nephew (or
1240 spouse of any such person) of the individual or of the
1241 individual's spouse; (iii) a natural person living in the same
1242 home as the individual; (iv) an entity (other than the
1243 nonprofit corporation or an entity controlled by the nonprofit
1244 corporation) controlled by the individual or any person
1245 specified above in this definition; (v) a domestic or foreign
1246 (A) business or nonprofit corporation (other than the
1247 nonprofit corporation or an entity controlled by the nonprofit
1248 corporation) of which the individual is a director, (B)
1249 unincorporated entity of which the individual is a general
1250 partner or a member of the governing authority, or (C)
1251 individual, trust or estate for whom or of which the
1252 individual is a trustee, guardian, personal representative, or
1253 like fiduciary; or (vi) a person that is, or an entity that
1254 is, controlled by, an employer of the individual.

1255 (f) The certificate of incorporation may not contain
1256 any provision that would impose liability on a member or a
1257 director for the attorney's fees or expenses of the nonprofit
1258 corporation or any other party in connection with an internal
1259 corporate claim, as defined in Section 10A-3A-2.07(d).

1260 (g) The certificate of incorporation is a part of a



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1261 binding contract between the nonprofit corporation and (i) the
1262 members in a membership nonprofit corporation and (ii) the
1263 directors in a nonmembership nonprofit corporation, subject to
1264 the provisions of this chapter.

1265 §10A-3A-2.03. Liability for preincorporation
1266 transactions.

1267 All persons purporting to act as or on behalf of a
1268 nonprofit corporation, knowing there was no incorporation
1269 under this chapter, are jointly and severally liable for all
1270 liabilities created while so acting.

1271 §10A-3A-2.04. Organization of nonprofit corporation.

1272 (a) After incorporation:

1273 (1) if initial directors are named in the certificate
1274 of incorporation, the initial directors shall hold an
1275 organizational meeting, at the call of a majority of the
1276 directors, to complete the organization of the nonprofit
1277 corporation by appointing officers, adopting bylaws, and
1278 carrying on any other business brought before the meeting; or

1279 (2) if initial directors are not named in the
1280 certificate of incorporation, the incorporator or
1281 incorporators shall hold an organizational meeting at the call
1282 of a majority of the incorporators:

1283 (i) to elect initial directors and complete the
1284 organization of the nonprofit corporation; or

1285 (ii) to elect a board of directors who shall complete
1286 the organization of the nonprofit corporation.

1287 (b) Action required or permitted by this chapter to be
1288 taken by incorporators at an organizational meeting may be



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1289 taken without a meeting if the action taken is evidenced by
1290 one or more written consents describing the action taken and
1291 signed by each incorporator.

1292 §10A-3A-2.05. Bylaws.

1293 (a) The incorporators or board of directors of a
1294 nonprofit corporation shall adopt initial bylaws for the
1295 nonprofit corporation.

1296 (b) The bylaws of a nonprofit corporation may contain
1297 any provision that is not inconsistent with law or the
1298 certificate of incorporation.

1299 (c) The bylaws are a part of a binding contract between
1300 the nonprofit corporation and (i) the members in a membership
1301 nonprofit corporation and (ii) the directors in a
1302 nonmembership nonprofit corporation, subject to the provisions
1303 of this chapter.

1304 §10A-3A-2.06. Emergency bylaws.

1305 (a) Unless the certificate of incorporation provides
1306 otherwise, bylaws may be adopted to be effective only in an
1307 emergency defined in subsection (d). The emergency bylaws,
1308 which are subject to amendment or repeal in accordance with
1309 Section 10A-3A-9.20, may make all provisions necessary for
1310 managing the nonprofit corporation during the emergency,
1311 including:

1312 (1) procedures for calling a meeting of the board of
1313 directors;

1314 (2) quorum requirements for the meeting; and

1315 (3) designation of additional or substitute directors.

1316 (b) All provisions of the regular bylaws not



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1317 inconsistent with the emergency bylaws remain effective during
1318 the emergency. The emergency bylaws are not effective after
1319 the emergency ends.

1320 (c) Corporate action taken in good faith in accordance
1321 with the emergency bylaws:

1322 (1) binds the nonprofit corporation; and

1323 (2) may not be used to impose liability on a member,
1324 director, officer, employee, or agent of the nonprofit
1325 corporation.

1326 (d) An emergency exists for purposes of this section if
1327 a quorum of the board of directors cannot readily be assembled
1328 because of some catastrophic event.

1329 §10A-3A-2.07. Forum selection provisions.

1330 (a) The certificate of incorporation or the bylaws may
1331 require that any or all internal corporate claims shall be
1332 brought exclusively in any specified court or courts of this
1333 state and, if so specified, in any additional courts in this
1334 state or in any other jurisdictions with which the nonprofit
1335 corporation has a reasonable relationship.

1336 (b) A provision of the certificate of incorporation or
1337 bylaws adopted under subsection (a) shall not have the effect
1338 of conferring jurisdiction on any court or over any person or
1339 claim, and shall not apply if none of the courts specified by
1340 that provision has the requisite personal and subject matter
1341 jurisdiction. If the court or courts of this state specified
1342 in a provision adopted under subsection (a) do not have the
1343 requisite personal and subject matter jurisdiction and another
1344 court of this state does have jurisdiction, then the internal



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1345 corporate claim may be brought in the other court of this
1346 state, notwithstanding that the other court of this state is
1347 not specified in that provision, and in any other court
1348 specified in that provision that has the requisite
1349 jurisdiction.

1350 (c) No provision of the certificate of incorporation or
1351 the bylaws may prohibit bringing an internal corporate claim
1352 in the courts of this state or require those claims to be
1353 determined by arbitration.

1354 (d) "Internal corporate claim" means, for the purposes
1355 of this section, (i) any claim that is based upon a violation
1356 of a duty under the laws of this state by a current or former
1357 director, officer, or member in their capacities as such, (ii)
1358 any action asserting a claim arising pursuant to any provision
1359 of this chapter or the certificate of incorporation or bylaws,
1360 or (iii) any action asserting a claim governed by the internal
1361 affairs doctrine that is not included in (i) through (ii)
1362 above.

1363 ARTICLE 3. PURPOSES AND POWERS.

1364 §10A-3A-3.01. Purposes.

1365 (a) Every nonprofit corporation has the purpose of
1366 engaging in any lawful activity unless a more limited purpose
1367 is set forth in the certificate of incorporation.

1368 (b) If a nonprofit corporation will engage in an
1369 activity that is subject to regulation under another statute
1370 of the state, the nonprofit corporation may incorporate under
1371 this chapter only if not prohibited by, and subject to all
1372 limitations of, the other statute.



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1373 (c) Labor unions, cooperative organizations, and
1374 organizations subject to any of the provisions of the
1375 insurance laws of Alabama may not be organized under this
1376 chapter.

1377 (d) Whenever 10 or more retail merchants wish to form a
1378 nonprofit association, cooperative society, or corporation in
1379 the sense of paying interest or dividends on stock, but for
1380 mutual benefit through the application of cooperation or other
1381 economic principles, they may become a body corporate in the
1382 manner provided in this chapter.

1383 (e) Whenever 10 or more wholesale merchants wish to
1384 form a nonprofit association, cooperative society, or
1385 corporation in the sense of paying interest or dividends on
1386 stock, but for mutual benefit through the application of
1387 cooperation or other economic principles, they may become a
1388 body corporate in the manner provided in this chapter.

1389 §10A-3A-3.02. General powers.

1390 Unless its certificate of incorporation provides
1391 otherwise, every nonprofit corporation has perpetual duration
1392 and succession in its corporate name and has the same powers
1393 as an individual to do all things necessary or convenient to
1394 carry out its activities and affairs, including all entity
1395 powers provided in Section 10A-1-2.11, Section 10A-1-2.12, and
1396 Section 10A-1-2.13.

1397 §10A-3A-3.03. Emergency powers.

1398 (a) In anticipation of or during an emergency defined
1399 in subsection (d), the board of directors of a nonprofit
1400 corporation may:



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1401 (1) modify lines of succession to accommodate the
1402 incapacity of any director, officer, employee, or agent; and

1403 (2) relocate the principal office, designate
1404 alternative principal offices or regional offices, or
1405 authorize the officers to do so.

1406 (b) During an emergency defined in subsection (d),
1407 unless emergency bylaws provide otherwise:

1408 (1) notice of a meeting of the board of directors need
1409 be given only to those directors whom it is practicable to
1410 reach and may be given in any practicable manner; and

1411 (2) one or more officers of the nonprofit corporation
1412 present at a meeting of the board of directors may be deemed
1413 to be directors for the meeting, in order of rank and within
1414 the same rank in order of seniority, as necessary to achieve a
1415 quorum.

1416 (c) Corporate action taken in good faith during an
1417 emergency under this section to further the ordinary business
1418 affairs of the nonprofit corporation:

1419 (1) binds the nonprofit corporation; and

1420 (2) may not be used to impose liability on a member,
1421 director, officer, employee, or agent.

1422 (d) An emergency exists for purposes of this section if
1423 a quorum of the board of directors cannot readily be assembled
1424 because of some catastrophic event.

1425 §10A-3A-3.04. Lack of power.

1426 (a) Except as provided in subsection (b), the validity
1427 of corporate action may not be challenged on the ground that
1428 the nonprofit corporation lacks or lacked power to act.



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1429 (b) The power of a nonprofit corporation to act may be
1430 challenged:

1431 (1) in a proceeding by a member or director against the
1432 nonprofit corporation to enjoin the act;

1433 (2) in a proceeding by the nonprofit corporation,
1434 directly, or through a receiver, trustee, or other legal
1435 representative, against an incumbent or former director,
1436 officer, employee, or agent of the nonprofit corporation; or

1437 (3) in a proceeding by the Attorney General.

1438 (c) In a proceeding by a member or a director under
1439 subsection (b) (1) to enjoin an unauthorized corporate act, the
1440 court may enjoin or set aside the act, if equitable and if all
1441 affected persons are parties to the proceeding, and may award
1442 damages for loss (other than anticipated profits) suffered by
1443 the nonprofit corporation or another party because of
1444 enjoining the unauthorized corporate act.

1445 ARTICLE 4. RECORDS AND REPORTS.

1446 DIVISION A. RECORDS.

1447 §10A-3A-4.01. Corporate records.

1448 (a) A nonprofit corporation must maintain the following
1449 records:

1450 (1) its certificate of incorporation as currently in
1451 effect;

1452 (2) any notices to members referred to in Section
1453 10A-3A-1.04(c) (5) specifying facts on which a filed document
1454 is dependent if those facts are not included in the
1455 certificate of incorporation or otherwise available as
1456 specified in Section 10A-3A-1.04(c) (5);



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1457 (3) its bylaws as currently in effect;

1458 (4) all written communications within the past three
1459 years to members generally;

1460 (5) minutes of all meetings of, and records of all
1461 actions taken without a meeting by, its members, its board of
1462 directors, and board committees established under Section
1463 10A-3A-8.25; and

1464 (6) a list of the names and business addresses of its
1465 current directors and officers.

1466 (b) A nonprofit corporation shall maintain all annual
1467 financial statements prepared for the nonprofit corporation
1468 for its last three fiscal years (or such shorter period of
1469 existence) and any audit or other reports with respect to
1470 those financial statements.

1471 (c) A nonprofit corporation shall maintain accounting
1472 records in a form that permits preparation of the financial
1473 statements.

1474 (d) A membership nonprofit corporation must maintain a
1475 record of its current members in alphabetical order by class
1476 of membership showing the address for each member to which
1477 notices and other communications from the membership nonprofit
1478 corporation are to be sent. In addition if a member has
1479 provided an electronic mail address to the membership
1480 nonprofit corporation or has consented to receive notices or
1481 other communications by electronic mail or other electronic
1482 transmission, the record of members shall include the
1483 electronic mail or other electronic transmission address of
1484 the member if notices or other communications are being



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1485 delivered by the membership nonprofit corporation to the
1486 member at that electronic mail or other electronic
1487 transmission address pursuant to Section 10A-3A-1.03(d). An
1488 electronic mail address of a member shall be deemed to be
1489 provided by a member if it is contained in a communication to
1490 the membership nonprofit corporation by or on behalf of the
1491 member, unless the communication expressly indicates that the
1492 electronic mail address may not be used to deliver notices or
1493 other communications.

1494 (e) A nonprofit corporation must maintain the records
1495 specified in this section in a manner so that they may be made
1496 available for inspection within a reasonable time.

1497 §10A-3A-4.02. Inspection rights of members.

1498 (a) A member of a membership nonprofit corporation is
1499 entitled to inspect and copy, during regular business hours at
1500 the membership nonprofit corporation's principal office, any
1501 of the records of the membership nonprofit corporation
1502 described in Section 10A-3A-4.01(a), excluding minutes of
1503 meetings of, and records of actions taken without a meeting
1504 by, the membership nonprofit corporation's board of directors
1505 and board committees established under Section 10A-3A-8.25, if
1506 the member gives the membership nonprofit corporation a signed
1507 written notice of the member's demand at least five business
1508 days before the date on which the member wishes to inspect and
1509 copy.

1510 (b) A member of a membership nonprofit corporation is
1511 entitled to inspect and copy, during regular business hours at
1512 a reasonable location specified by the membership nonprofit



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1513 corporation, any of the following records of the membership
1514 nonprofit corporation if the member meets the requirements of
1515 subsection (c) and gives the membership nonprofit corporation
1516 a signed written notice of the member's demand at least five
1517 business days before the date on which the member wishes to
1518 inspect and copy:

1519 (1) the financial statements of the membership
1520 nonprofit corporation maintained in accordance with Section
1521 10A-3A-4.01(b);

1522 (2) accounting records of the membership nonprofit
1523 corporation; and

1524 (3) excerpts from minutes of any meeting of, or records
1525 of any actions taken without a meeting by, the board of
1526 directors and board committees maintained in accordance with
1527 Section 10A-3A-4.01(a); and

1528 (4) subject to Section 10A-3A-4.06, the record of
1529 members maintained in accordance with Section 10A-3A-4.01(d).

1530 (c) A member may inspect and copy the records described
1531 in subsection (b) only if:

1532 (1) the member's demand is made in good faith and for a
1533 proper purpose;

1534 (2) the member's demand describes with reasonable
1535 particularity the member's purpose and the records the member
1536 desires to inspect; and

1537 (3) the records are directly connected with the
1538 member's purpose.

1539 (d) The membership nonprofit corporation may impose
1540 reasonable restrictions and conditions on access to and use of



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1541 the records to be inspected and copied under subsections (a)
1542 and (b), including designating information confidential and
1543 imposing nondisclosure and safeguarding, and may further keep
1544 confidential from its members and other persons, for a period
1545 of time as the membership nonprofit corporation deems
1546 reasonable any information that the membership nonprofit
1547 corporation reasonably believes to be in the nature of a trade
1548 secret or other information the disclosure of which the
1549 membership nonprofit corporation in good faith believes is not
1550 in the best interest of the membership nonprofit corporation
1551 or could damage the membership nonprofit corporation or its
1552 activities or affairs, or that the membership nonprofit
1553 corporation is required by law or by agreement with a third
1554 party to keep confidential. In any dispute concerning the
1555 reasonableness of a restriction under this subsection, the
1556 membership nonprofit corporation has the burden of proving
1557 reasonableness.

1558 (e) For any meeting of members for which the record
1559 date for determining members entitled to vote at the meeting
1560 is different than the record date for notice of the meeting,
1561 any person who becomes a member subsequent to the record date
1562 for notice of the meeting and is entitled to vote at the
1563 meeting is entitled to obtain from the membership nonprofit
1564 corporation upon request the notice and any other information
1565 provided by the membership nonprofit corporation to members in
1566 connection with the meeting, unless the membership nonprofit
1567 corporation has made that information generally available to
1568 members by posting it on its website or by other generally



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1569 recognized means. Failure of a membership nonprofit
1570 corporation to provide that information does not affect the
1571 validity of action taken at the meeting.

1572 (f) Subject to Section 10A-3A-4.20, the right of
1573 inspection granted by Section 10A-3A-4.02(b) may be limited by
1574 a membership nonprofit corporation's certificate of
1575 incorporation.

1576 (g) This section does not affect:

1577 (1) the right of a member to inspect records under
1578 Section 10A-3A-7.20 or, if the member is in litigation with
1579 the membership nonprofit corporation, to the same extent as
1580 any other litigant; or

1581 (2) the power of a court, independently of this
1582 chapter, to compel the production of corporate records for
1583 examination and to impose reasonable restrictions as provided
1584 in Section 10A-3A-4.04(c), provided that, in the case of
1585 production of records described in subsection (b) of this
1586 section at the request of the member, the member has met the
1587 requirements of subsection (c) of this section.

1588 §10A-3A-4.03. Scope of inspection right of members.

1589 (a) A member may appoint an agent or attorney to
1590 exercise the member's inspection and copying rights under
1591 Section 10A-3A-4.02.

1592 (b) The membership nonprofit corporation may, if
1593 reasonable, satisfy the right of a member to copy records
1594 under Section 10A-3A-4.02 by furnishing to the member copies
1595 by photocopy or other means as are chosen by the membership
1596 nonprofit corporation, including furnishing copies through



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1597 electronic transmission.

1598 (c) The membership nonprofit corporation may comply at
1599 its expense with a member's demand to inspect the record of
1600 members under Section 10A-3A-4.02(b)(4) by providing the
1601 member with a list of members that was compiled no earlier
1602 than the date of the member's demand.

1603 (d) The membership nonprofit corporation may impose a
1604 reasonable charge to cover the costs of providing copies of
1605 documents to the member, which may be based on an estimate of
1606 those costs.

1607 §10A-3A-4.04. Court-ordered inspection of membership
1608 nonprofit corporation.

1609 (a) If a membership nonprofit corporation does not
1610 allow a member who complies with Section 10A-3A-4.02(a) to
1611 inspect and copy any records required by that section to be
1612 available for inspection, the designated court, and if none,
1613 the circuit court for the county in which the membership
1614 nonprofit corporation's principal office is located in this
1615 state, and if none in this state, the circuit court for the
1616 county in which the membership nonprofit corporation's most
1617 recent registered office is located may summarily order
1618 inspection and copying of the records demanded at the
1619 membership nonprofit corporation's expense upon application of
1620 the member.

1621 (b) If a membership nonprofit corporation does not
1622 within a reasonable time allow a member who complies with
1623 Section 10A-3A-4.02(b) to inspect and copy the records as
1624 required by that section, the member who complies with Section



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1625 10A-3A-4.02(c) may apply to the designated court, and if none,
1626 the circuit court for the county in which the membership
1627 nonprofit corporation's principal office is located in this
1628 state, and if none in this state, the circuit court for the
1629 county in which the membership nonprofit corporation's most
1630 recent registered office is located for an order to permit
1631 inspection and copying of the records demanded. The court
1632 shall dispose of an application under this subsection on an
1633 expedited basis.

1634 (c) If the court orders inspection and copying of the
1635 records demanded under Section 10A-3A-4.02(b), it may impose
1636 reasonable restrictions on their confidentiality, use or
1637 distribution by the demanding member and it shall also order
1638 the membership nonprofit corporation to pay the member's
1639 expenses incurred to obtain the order unless the membership
1640 nonprofit corporation establishes that it refused inspection
1641 in good faith because the membership nonprofit corporation
1642 had:

1643 (1) a reasonable basis for doubt about the right of the
1644 member to inspect the records demanded; or

1645 (2) required reasonable restrictions on the
1646 confidentiality, use, or distribution of the records demanded
1647 to which the demanding member had been unwilling to agree.

1648 §10A-3A-4.05. Inspection rights of directors.

1649 (a) A director of a nonprofit corporation is entitled
1650 to inspect and copy the books, records, and documents of the
1651 nonprofit corporation at any reasonable time to the extent
1652 reasonably related to the performance of the director's duties



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1653 as a director, including duties as a member of a board
1654 committee, but not for any other purpose or in any manner that
1655 would violate any duty to the nonprofit corporation.

1656 (b) The designated court, and if none, the circuit
1657 court for the county in which the nonprofit corporation's
1658 principal office is located in this state, and if none in this
1659 state, the circuit court for the county in which the nonprofit
1660 corporation's most recent registered office is located may
1661 order inspection and copying of the books, records, and
1662 documents at the nonprofit corporation's expense, upon
1663 application of a director who has been refused inspection
1664 rights, unless the nonprofit corporation establishes that the
1665 director is not entitled to inspection rights. The court shall
1666 dispose of an application under this subsection on an
1667 expedited basis.

1668 (c) If an order is issued, the court may include
1669 provisions protecting the nonprofit corporation from undue
1670 burden or expense, and prohibiting the director from using
1671 information obtained upon exercise of the inspection rights in
1672 a manner that would violate a duty to the nonprofit
1673 corporation, and may also order the nonprofit corporation to
1674 reimburse the director for the director's expenses incurred in
1675 connection with the application.

1676 §10A-3A-4.06. Limitations on use of membership list.

1677 (a) Unless otherwise permitted by the certificate of
1678 incorporation or bylaws of a membership nonprofit corporation,
1679 a membership list or any part thereof may not be obtained or
1680 used by any person for any purpose unrelated to a member's



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1681 interest as a member without the consent of the board of
1682 directors, including without limitation:

1683 (1) to solicit money or property unless the money or
1684 property will be used solely to solicit the votes of the
1685 members in an election to be held by the membership nonprofit
1686 corporation;

1687 (2) for any commercial purpose; or

1688 (3) to be sold or purchased by any person.

1689 (b) Instead of making a membership list available for
1690 inspection and copying under this Division, a membership
1691 nonprofit corporation may elect to proceed under the
1692 procedures set forth in Section 10A-3A-7.20(e).

1693 §10A-3A-4.07. Grant of inspection rights to designated
1694 persons.

1695 If the certificate of incorporation provides approval
1696 rights to a person or group of persons as authorized in
1697 Section 10A-3A-2.02(b)(ix), then the certificate of
1698 incorporation may grant inspection rights to that person or
1699 group of persons. Any grant of inspection rights under this
1700 section may set forth the scope, rights, limits, restrictions,
1701 conditions, confidentiality, and any other matter related to
1702 that grant of the inspection rights.

1703 DIVISION B. FINANCIAL STATEMENTS FOR MEMBERS.

1704 §10A-3A-4.20. Financial statements for members.

1705 (a) Upon the written request of a member, a membership
1706 nonprofit corporation shall deliver or make available to the
1707 requesting member by posting on its website or by other
1708 generally recognized means annual financial statements for the



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1709 most recent fiscal year of the membership nonprofit
1710 corporation for which annual financial statements have been
1711 prepared for the membership nonprofit corporation. If
1712 financial statements have been prepared for the membership
1713 nonprofit corporation on the basis of generally accepted
1714 accounting principles for that specified period, the
1715 membership nonprofit corporation shall deliver or make
1716 available those financial statements to the requesting member.
1717 If the annual financial statements to be delivered or made
1718 available to the requesting member are audited or otherwise
1719 reported upon by a public accountant, the report shall also be
1720 delivered or made available to the requesting member.

1721 (b) A membership nonprofit corporation shall deliver,
1722 or make available and provide written notice of availability
1723 of, the financial statements required under subsection (a) to
1724 the requesting member within five business days of delivery of
1725 the written request to the membership nonprofit corporation.

1726 (c) Notwithstanding the provisions of subsections (a)
1727 and (b) of this section:

1728 (1) as a condition to delivering or making available
1729 financial statements to a requesting member, the membership
1730 nonprofit corporation may require the requesting member to
1731 agree to reasonable restrictions on the confidentiality, use,
1732 and distribution of the financial statements; and

1733 (2) the membership nonprofit corporation may, if it
1734 reasonably determines that the member's request is not made in
1735 good faith or for a proper purpose, decline to deliver or make
1736 available the financial statements to that member.



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1737 (d) If a membership nonprofit corporation does not
1738 respond to a member's request for annual financial statements
1739 pursuant to this section in accordance with subsection (b)
1740 within five business days of delivery of the request to the
1741 membership nonprofit corporation:

1742 (1) The requesting member may apply to the designated
1743 court, and if none, the circuit court for the county in which
1744 the membership nonprofit corporation's principal office is
1745 located in this state, and if none in this state, the circuit
1746 court for the county in which the membership nonprofit
1747 corporation's most recent registered office is located for an
1748 order requiring delivery of or access to the requested
1749 financial statements. The court shall dispose of an
1750 application under this subsection on an expedited basis.

1751 (2) If the court orders delivery or access to the
1752 requested financial statements, it may impose reasonable
1753 restrictions on their confidentiality, use, or distribution.

1754 (3) In the proceeding, if the membership nonprofit
1755 corporation has declined to deliver or make available the
1756 financial statements because the member had been unwilling to
1757 agree to restrictions proposed by the membership nonprofit
1758 corporation on the confidentiality, use, and distribution of
1759 the financial statements, the membership nonprofit corporation
1760 shall have the burden of demonstrating that the restrictions
1761 proposed by the membership nonprofit corporation were
1762 reasonable.

1763 (4) In the proceeding, if the membership nonprofit
1764 corporation has declined to deliver or make available the



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1765 financial statements pursuant to Section 10A-3A-4.20(c)(2),
1766 the membership nonprofit corporation shall have the burden of
1767 demonstrating that it had reasonably determined that the
1768 member's request was not made in good faith or for a proper
1769 purpose.

1770 (5) If the court orders delivery or access to the
1771 requested financial statements, it shall order the membership
1772 nonprofit corporation to pay the member's expenses incurred to
1773 obtain the order unless the membership nonprofit corporation
1774 establishes that it had refused delivery or access to the
1775 requested financial statements because the member had refused
1776 to agree to reasonable restrictions on the confidentiality,
1777 use, or distribution of the financial statements or that the
1778 membership nonprofit corporation had reasonably determined
1779 that the member's request was not made in good faith or for a
1780 proper purpose.

1781 ARTICLE 6. MEMBERSHIPS AND FINANCIAL PROVISIONS.

1782 DIVISION A. ADMISSION OF MEMBERS.

1783 §10A-3A-6.01. Members.

1784 (a) A nonprofit corporation may have one or more
1785 classes of members or may have no members. If the nonprofit
1786 corporation has one or more classes of members, the
1787 designation of the class or classes, the manner of admission
1788 and the qualifications and rights of the members of each class
1789 shall be set forth in the certificate of incorporation or
1790 bylaws. Subject to Section 10A-3A-14.01(c), if the nonprofit
1791 corporation will have members, that fact shall be set forth in
1792 the certificate of incorporation. If the nonprofit corporation



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1793 will not have members, that fact shall be set forth in the
1794 certificate of incorporation.

1795 (b) Except as otherwise provided in this chapter or in
1796 the certificate of incorporation, if the certificate of
1797 incorporation of a nonprofit corporation states that the
1798 nonprofit corporation will have members, but that nonprofit
1799 corporation has in fact no members entitled to vote on a
1800 matter, then any provision of this chapter or any other
1801 provision of law requiring notice to, the presence of, or the
1802 vote, consent, or other action by members of that nonprofit
1803 corporation in connection with the matter shall be satisfied
1804 by notice to, the presence of, or the vote, consent, or other
1805 action by the board of directors of the nonprofit corporation.

1806 (c) Except as otherwise provided in the certificate of
1807 incorporation, if the certificate of incorporation of a
1808 nonprofit corporation states that the nonprofit corporation
1809 will not have members, then notice to, the presence of, or the
1810 vote, consent, or other action by board of directors of the
1811 nonprofit corporation in connection with the matter shall be
1812 satisfied by notice to, the presence of, or the vote, consent,
1813 or other action by the board of directors of the nonprofit
1814 corporation.

1815 §10A-3A-6.02. Membership status.

1816 (a) A person may not be admitted as a member of a
1817 nonprofit corporation without that person's consent.

1818 (b) If a membership nonprofit corporation provides
1819 certificates of membership to the members, the certificates
1820 shall not be registered or transferable except as provided in



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1821 the certificate of incorporation or bylaws. Each certificate
1822 of membership shall comply with Sections 10A-1-3.42,
1823 10A-1-3.43(b), and 10A-1-3.44. No membership certificate shall
1824 be issued in bearer form.

1825 (c) A person is not a member of a nonprofit corporation
1826 unless (i) the nonprofit corporation is a membership nonprofit
1827 corporation and (ii) the person meets the definition of a
1828 "member" in Section 10A-3A-1.02, regardless of whether the
1829 nonprofit corporation designates or refers to the person as a
1830 member.

1831 (d) A person is not a member of a nonmembership
1832 nonprofit corporation, regardless of whether the nonmembership
1833 nonprofit corporation designates or refers to the person as a
1834 member.

1835 §10A-3A-6.03. Admission of members.

1836 Unless otherwise provided by law or in the certificate
1837 of incorporation or bylaws of a membership nonprofit
1838 corporation, the board of directors shall establish conditions
1839 for admission of members (for such contribution, if any, as
1840 the board of directors may determine), admit members, and
1841 issue memberships.

1842 DIVISION B. RIGHTS AND OBLIGATIONS OF MEMBERS.

1843 §10A-3A-6.10. Differences in rights and obligations of
1844 members.

1845 Except as otherwise provided in the certificate of
1846 incorporation or bylaws, each member of a membership nonprofit
1847 corporation has the same rights and obligations as every other
1848 member with respect to voting, dissolution, membership



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1849 transfer, and other matters.

1850 §10A-3A-6.11. Transfers.

1851 (a) Except as provided in the certificate of
1852 incorporation or bylaws, a member of a membership nonprofit
1853 corporation may not transfer a membership or any right arising
1854 therefrom.

1855 (b) Where the right to transfer a membership has been
1856 provided, a restriction on that right shall not be binding
1857 with respect to a member holding a membership issued prior to
1858 the adoption of the restriction unless the restriction is
1859 approved by the affected member.

1860 §10A-3A-6.12. Member's liability to third parties.

1861 A member of a nonprofit corporation is not personally
1862 liable for any liabilities of the nonprofit corporation
1863 (including liabilities arising from acts of the nonprofit
1864 corporation).

1865 §10A-3A-6.13. Member's liability for dues, assessments,
1866 and fees.

1867 (a) A membership nonprofit corporation may levy dues,
1868 assessments, fees, fines, late charges, interest, penalties,
1869 and other such sums on its members to the extent authorized in
1870 the certificate of incorporation or bylaws. Dues, assessments,
1871 fees, fines, late charges, interest, penalties, and other such
1872 sums may be imposed on members of the same class either alike
1873 or in different amounts or proportions, and may be imposed on
1874 a different basis on different classes of members. Members of
1875 a class may be made exempt from dues, assessments, fees,
1876 fines, late charges, interest, penalties, and other such sums



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1877 to the extent provided in the certificate of incorporation or
1878 bylaws.

1879 (b) The amount and method of collection of dues,
1880 assessments, fees, fines, late charges, interest, penalties,
1881 and other such sums may be fixed in the certificate of
1882 incorporation or bylaws, or the certificate of incorporation
1883 or bylaws may authorize the board of directors or members to
1884 fix the amount and method of collection.

1885 (c) The certificate of incorporation or bylaws may
1886 provide reasonable means to enforce the collection of dues,
1887 assessments, fees, fines, late charges, interest, penalties,
1888 and other such sums, including, but not limited to,
1889 termination, suspension, or reinstatement of membership.

1890 DIVISION C. RESIGNATION AND TERMINATION.

1891 §10A-3A-6.20. Resignation.

1892 (a) A member of a membership nonprofit corporation may
1893 resign at any time.

1894 (b) The resignation of a member does not relieve the
1895 member from any obligations incurred or commitments made prior
1896 to resignation.

1897 §10A-3A-6.21. Termination and suspension.

1898 (a) A membership in a membership nonprofit corporation
1899 may be terminated or suspended for the reasons and in the
1900 manner provided in the certificate of incorporation or bylaws.

1901 (b) A proceeding challenging a termination or
1902 suspension for any reason must be commenced within one year
1903 after the effective date of the termination or suspension.

1904 (c) The termination or suspension of a member does not



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1905 relieve the member from any obligations incurred or
1906 commitments made prior to the termination or suspension.

1907 DIVISION D. FINANCIAL PROVISIONS.

1908 §10A-3A-6.40. Distributions.

1909 (a) Except as permitted or required by law other than
1910 this chapter, or contractual obligations, a nonprofit
1911 corporation shall not make distributions to its members,
1912 directors, or officers. Any permitted or required distribution
1913 is subject to the limitations set forth in subsection (c).

1914 (b) The board of directors of a membership nonprofit
1915 corporation may fix the record date for determining members
1916 entitled to a distribution, which date may not be retroactive.
1917 If the board of directors does not fix a record date for
1918 determining members entitled to a distribution, the record
1919 date is the date the board of directors authorizes the
1920 distribution.

1921 (c) No distribution may be made if, after giving it
1922 effect:

1923 (1) the nonprofit corporation would not be able to pay
1924 its debts as they become due in the usual course of its
1925 activities and affairs; or

1926 (2) the nonprofit corporation's unrestricted total
1927 assets would be less than the sum of its total liabilities
1928 other than those liabilities which are solely secured by the
1929 nonprofit corporation's restricted assets.

1930 (d) The board of directors may base a determination
1931 that a distribution is not prohibited under subsection (c)
1932 either on financial statements prepared on the basis of



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1933 accounting practices and principles that are reasonable in the
1934 circumstances or on a fair valuation or other method that is
1935 reasonable in the circumstances.

1936 (e) The effect of a distribution under subsection (c)
1937 is measured as of (i) the date the distribution is authorized
1938 if the payment occurs within 120 days after the date of
1939 authorization or (ii) the date the payment is made if it
1940 occurs more than 120 days after the date of authorization.

1941 (f) This section shall not apply to distributions in
1942 liquidation under Article 11.

1943 (g) This section shall not apply to a contract or
1944 transaction with a member, director, or officer, which
1945 contract or transaction is authorized pursuant to Section
1946 10A-3A-8.60.

1947 §10A-3A-6.41. Compensation and benefits.

1948 A nonprofit corporation may pay reasonable
1949 compensation, reasonable payments made in the ordinary course
1950 of the nonprofit corporation's activities and affairs, or
1951 reimburse reasonable expenses to its members, directors, or
1952 officers for services rendered and may confer reasonable
1953 benefits upon its members or nonmembers in conformity with its
1954 purposes.

1955 §10A-3A-6.42. Capital contributions of members.

1956 (a) A membership nonprofit corporation may provide in
1957 its certificate of incorporation or bylaws that members, upon
1958 or subsequent to admission, must make capital contributions.
1959 Except as provided in the certificate of incorporation or
1960 bylaws, the amount shall be fixed by the board of directors.



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1961 The requirement of a capital contribution may apply to all
1962 members, or to the members of a single class, or to members of
1963 different classes in different amounts or proportions.

1964 (b) The adoption or amendment of a capital contribution
1965 requirement, whether or not approved by the members, shall not
1966 apply to a member who did not vote in favor of the adoption or
1967 amendment until 30 days after notice of the adoption or
1968 amendment has been delivered to the member.

1969 §10A-3A-6.43. Shares of stock prohibited.

1970 A nonprofit corporation shall not have or issue shares
1971 of stock.

1972 ARTICLE 7. MEMBER MEETINGS.

1973 DIVISION A. PROCEDURES.

1974 §10A-3A-7.01. Annual and regular meetings of the
1975 members.

1976 (a) Unless otherwise provided in the certificate of
1977 incorporation, a membership nonprofit corporation shall hold a
1978 meeting of members annually at a time stated in or fixed in
1979 accordance with the certificate of incorporation or bylaws.

1980 (b) A membership nonprofit corporation may hold regular
1981 meetings of the members at times stated in or fixed in
1982 accordance with the certificate of incorporation or bylaws.

1983 (c) Unless the board of directors determines to hold
1984 the meeting solely by means of remote communication in
1985 accordance with Section 10A-3A-7.09(c), annual and regular
1986 meetings of the members may be held (i) in or out of this
1987 state at the place stated in or fixed in accordance with the
1988 certificate of incorporation or bylaws or (ii) if no place is



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1989 stated in or fixed in accordance with the certificate of
1990 incorporation or bylaws, at the membership nonprofit
1991 corporation's principal office.

1992 (d) The failure to hold an annual or regular meeting of
1993 the members at the time stated in or fixed in accordance with
1994 a membership nonprofit corporation's certificate of
1995 incorporation or bylaws does not affect the validity of any
1996 corporate action.

1997 §10A-3A-7.02. Special meetings.

1998 (a) Special meetings of the members in a membership
1999 nonprofit corporation may be called by the board of directors
2000 or by the person or persons as may be authorized by the
2001 certificate of incorporation or by the bylaws.

2002 (b) In the event that the certificate of incorporation
2003 or bylaws of a membership nonprofit corporation allow members
2004 to demand a special meeting of the members, then if not
2005 otherwise fixed under Section 10A-3A-7.03 or Section
2006 10A-3A-7.07, the record date for determining members entitled
2007 to demand a special meeting shall be the first date on which a
2008 signed member's demand is delivered to the membership
2009 nonprofit corporation. No written demand for a special meeting
2010 shall be effective unless, within 60 days of the earliest date
2011 on which the demand delivered to the membership nonprofit
2012 corporation as allowed by the certificate of incorporation or
2013 bylaws was signed, written demands signed by members holding
2014 at least the percentage of votes specified in or fixed in
2015 accordance with the certificate of incorporation or bylaws
2016 have been delivered to the membership nonprofit corporation.



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2017 (c) Unless the board of directors determines to hold
2018 the meeting solely by means of remote participation in
2019 accordance with Section 10A-3A-7.09(c), special meetings of
2020 members may be held (i) in or out of this state at the place
2021 stated in or fixed in accordance with the certificate of
2022 incorporation or bylaws or (ii) if no place is stated in or
2023 fixed in accordance with the certificate of incorporation or
2024 bylaws, at the membership nonprofit corporation's principal
2025 office.

2026 (d) Only business within the purpose or purposes
2027 described in the meeting notice required by Section
2028 10A-3A-7.05(c) may be conducted at a special meeting of
2029 members.

2030 §10A-3A-7.03. Court-ordered meetings.

2031 (a) The designated court, and if none, the circuit
2032 court for the county in which the membership nonprofit
2033 corporation's principal office is located in this state, and,
2034 if none in this state, the circuit court for the county in
2035 which the membership nonprofit corporation's most recent
2036 registered office is located may summarily order a meeting to
2037 be held:

2038 (1) on application of any member of the membership
2039 nonprofit corporation entitled to participate in an annual
2040 meeting if an annual meeting was not held or action by written
2041 consent in lieu of an annual meeting did not become effective
2042 within the earlier of 12 months after the end of the
2043 membership nonprofit corporation's fiscal year or 15 months
2044 after its last annual meeting; or



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2045 (2) on application of one or more members who signed a
2046 demand for a special meeting valid under Section 10A-3A-7.02,
2047 if:

2048 (i) notice of the special meeting was not given within
2049 30 days after the first day on which the requisite number of
2050 demands have been delivered to the membership nonprofit
2051 corporation; or

2052 (ii) the special meeting was not held in accordance
2053 with the notice.

2054 (b) The court may fix the time and place of the
2055 meeting, determine the members entitled to participate in the
2056 meeting, specify a record date or dates for determining
2057 members entitled to notice of and to vote at the meeting,
2058 prescribe the form and content of the meeting notice, fix the
2059 quorum required for specific matters to be considered at the
2060 meeting (or direct that the members represented at the meeting
2061 constitute a quorum for action on those matters), and enter
2062 other orders necessary to accomplish the purpose or purposes
2063 of the meeting.

2064 §10A-3A-7.04. Action without meeting.

2065 (a) Unless otherwise provided in the certificate of
2066 incorporation, any action required or permitted by this
2067 chapter to be taken at any meeting of the members may be taken
2068 without a meeting, and without prior notice, if one or more
2069 consents in writing setting forth the action so taken are
2070 signed by the members having not less than the minimum number
2071 of votes that would be required to authorize or take the
2072 action at a meeting at which all members entitled to vote on



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2073 the action were present and voted. The action must be
2074 evidenced by one or more written consents describing the
2075 action taken, signed by the members approving the action and
2076 delivered to the membership nonprofit corporation for filing
2077 by the membership nonprofit corporation with the minutes or
2078 corporate records.

2079 (b) If not otherwise fixed under Section 10A-3A-7.07
2080 and if prior action by the board of directors is not required
2081 respecting the action to be taken without a meeting, the
2082 record date for determining the members entitled to take
2083 action without a meeting shall be the first date on which a
2084 signed written consent is delivered to the membership
2085 nonprofit corporation. If not otherwise fixed under Section
2086 10A-3A-7.07 and if prior action by the board of directors is
2087 required respecting the action to be taken without a meeting,
2088 the record date shall be the close of business on the day the
2089 resolution of the board of directors taking the prior action
2090 is adopted. No written consent shall be effective to take the
2091 corporate action referred to therein unless, within 60 days of
2092 the earliest date on which a consent is delivered to the
2093 membership nonprofit corporation as required by this section,
2094 written consents signed by sufficient members to take the
2095 action have been delivered to the membership nonprofit
2096 corporation. Any person executing a consent may provide,
2097 whether through instruction to an agent or otherwise, that the
2098 consent will be effective at a future time, including a time
2099 determined upon the happening of an event, occurring not later
2100 than 60 days after the instruction is given or the provision



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2101 is made, if evidence of the instruction or provision is
2102 provided to the membership nonprofit corporation. A written
2103 consent may be revoked by a writing to that effect delivered
2104 to the membership nonprofit corporation before unrevoked
2105 written consents sufficient in number to take the corporate
2106 action have been delivered to the membership nonprofit
2107 corporation.

2108 (c) A consent signed pursuant to the provisions of this
2109 section has the effect of a vote taken at a meeting and may be
2110 described as such in any document. Unless the certificate of
2111 incorporation, bylaws, or a resolution of the board of
2112 directors provides for a reasonable delay to permit tabulation
2113 of written consents, the action taken by written consent shall
2114 be effective when written consents signed by sufficient
2115 members to take the action have been delivered to the
2116 membership nonprofit corporation.

2117 (d) If action is taken by less than unanimous written
2118 consent of the voting members, the membership nonprofit
2119 corporation shall give its nonconsenting voting members
2120 written notice of the action not more than 10 days after (i)
2121 written consents sufficient to take the action have been
2122 delivered to the membership nonprofit corporation, or (ii) any
2123 later date that tabulation of consents is completed pursuant
2124 to an authorization under subsection (c). The notice must
2125 reasonably describe the action taken.

2126 (e) The notice requirements in subsection (d) shall not
2127 delay the effectiveness of actions taken by written consent,
2128 and a failure to comply with those notice requirements shall



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2129 not invalidate actions taken by written consent, provided that
2130 this subsection shall not be deemed to limit judicial power to
2131 fashion any appropriate remedy in favor of a member adversely
2132 affected by a failure to give the notice within the required
2133 time period.

2134 §10A-3A-7.05. Notice of meetings.

2135 (a) A membership nonprofit corporation shall notify
2136 members of the place, if any, date, and time of each annual,
2137 regular, or special meeting of the members no fewer than 10
2138 nor more than 60 days before the meeting date. If the board of
2139 directors has authorized participation by means of remote
2140 communication pursuant to Section 10A-3A-7.09 for any class of
2141 members or voting group, the notice to that class of members
2142 or voting group must describe the means of remote
2143 communication to be used. The notice must include the record
2144 date for determining the members entitled to vote at the
2145 meeting, if that date is different from the record date for
2146 determining members entitled to notice of the meeting. Unless
2147 the certificate of incorporation requires otherwise, the
2148 membership nonprofit corporation is required to give notice
2149 only to members entitled to vote at the meeting as of the
2150 record date for determining the members entitled to notice of
2151 the meeting.

2152 (b) Unless this chapter, the certificate of
2153 incorporation, or the bylaws require otherwise, notice of an
2154 annual or regular meeting of the members need not include a
2155 description of the purpose or purposes for which the meeting
2156 is called.



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2157 (c) Notice of a special meeting of members must include
2158 a description of the purpose or purposes for which the meeting
2159 is called.

2160 (d) If not otherwise fixed under Section 10A-3A-7.03 or
2161 Section 10A-3A-7.07, the record date for determining members
2162 entitled to notice of and to vote at an annual, regular, or
2163 special meeting of the members is the day before the first
2164 notice is delivered to members.

2165 (e) Unless the certificate of incorporation or bylaws
2166 require otherwise, if an annual, regular, or special meeting
2167 of the members is adjourned to a different place, if any,
2168 date, or time, notice need not be given of the new place, if
2169 any, date, or time if the new place, if any, date, or time is
2170 announced at the meeting before adjournment. If a new record
2171 date for the adjourned meeting is or must be fixed under
2172 Section 10A-3A-7.07, however, notice of the adjourned meeting
2173 shall be given under this section to members entitled to vote
2174 at the adjourned meeting as of the record date fixed for
2175 notice of the adjourned meeting.

2176 §10A-3A-7.06. Waiver of notice.

2177 (a) A member may waive any notice required by this
2178 chapter or the certificate of incorporation or bylaws, before
2179 or after the date and time stated in the notice. The waiver
2180 must be in writing, be signed by the member entitled to the
2181 notice, and be delivered to the membership nonprofit
2182 corporation for filing by the membership nonprofit corporation
2183 with the minutes or corporate records.

2184 (b) A member's attendance at a meeting:



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2185 (1) waives objection to lack of notice or defective
2186 notice of the meeting, unless the member at the beginning of
2187 the meeting objects to holding the meeting or transacting
2188 business at the meeting; and

2189 (2) waives objection to consideration of a particular
2190 matter at the meeting that is not within the purpose or
2191 purposes described in the meeting notice, unless the member
2192 objects to considering the matter when it is presented.

2193 §10A-3A-7.07. Record date.

2194 (a) The certificate of incorporation or bylaws may fix
2195 or provide the manner of fixing the record date or dates for
2196 one or more voting groups of members to determine the members
2197 entitled to notice of a members' meeting, to demand a special
2198 meeting, to vote, or to take any other action. If the
2199 certificate of incorporation or bylaws do not fix or provide
2200 for fixing a record date, the board of directors may fix the
2201 record date.

2202 (b) A record date fixed under this section may not be
2203 more than 70 days before the meeting or action requiring a
2204 determination of members and may not be retroactive.

2205 (c) A determination of members entitled to notice of or
2206 to vote at a members' meeting is effective for any adjournment
2207 of the meeting unless the board of directors fixes a new
2208 record date or dates, which it shall do if the meeting is
2209 adjourned to a date more than 120 days after the date fixed
2210 for the original meeting.

2211 (d) If a court orders a meeting adjourned to a date
2212 more than 120 days after the date fixed for the original



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2213 meeting, it may provide that the original record date or dates
2214 continues in effect or it may fix a new record date or dates.

2215 §10A-3A-7.08. Conduct of member meetings.

2216 (a) At each meeting of members, an individual appointed
2217 in one of the following ways must preside as chair:

2218 (1) as provided in the certificate of incorporation or
2219 bylaws;

2220 (2) in the absence of a provision in the certificate of
2221 incorporation or bylaws, by the board of directors; or

2222 (3) in the absence of both a provision in the
2223 certificate of incorporation or bylaws and an appointment by
2224 the board of directors, by the members at the meeting.

2225 (b) At each meeting of members, the order of business
2226 and the rules for the conduct of the meeting must be:

2227 (1) as provided in the certificate of incorporation or
2228 bylaws;

2229 (2) in the absence of a provision in the certificate of
2230 incorporation or bylaws, established by the board of
2231 directors; or

2232 (3) in the absence of both a provision in the
2233 certificate of incorporation or bylaws and the establishment
2234 by the board of directors, established by the members at the
2235 meeting.

2236 (c) Any rules established for, and the conduct of, the
2237 meeting must be fair to the members.

2238 (d) At the meeting the chair may announce when the
2239 polls close for each matter voted upon. If no announcement is
2240 made, the polls close upon the final adjournment of the



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2241 meeting. After the polls close, no ballots, proxies, or votes,
2242 nor any revocations or changes to ballots, proxies, or votes
2243 may be accepted.

2244 §10A-3A-7.09. Remote participation in member meetings.

2245 (a) Members of any class or voting group may
2246 participate in any meeting of members by means of remote
2247 communication to the extent the board of directors authorizes
2248 that participation for that class or voting group.

2249 Participation as a member by means of remote communication is
2250 subject to any guidelines and procedures the board of
2251 directors adopts and shall be in conformity with subsection
2252 (b).

2253 (b) Members participating in a members' meeting by
2254 means of remote communication shall be deemed present and may
2255 vote at that meeting if the membership nonprofit corporation
2256 has implemented reasonable measures:

2257 (1) to verify that each person participating remotely
2258 as a member is a member; and

2259 (2) to provide the members participating remotely a
2260 reasonable opportunity to participate in the meeting and to
2261 vote on matters submitted to the members, including an
2262 opportunity to communicate, and to read or hear the
2263 proceedings of the meeting, substantially concurrently with
2264 the proceedings.

2265 (c) Unless the certificate of incorporation or bylaws
2266 require the meeting of members to be held at a place, the
2267 board of directors may determine that any meeting of members
2268 shall not be held at any place and shall instead be held



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2269 solely by means of remote communication, but only if the
2270 membership nonprofit corporation implements the measures
2271 specified in subsection (b).

2272 §10A-3A-7.10. Action by ballot.

2273 (a) Except as otherwise provided in the certificate of
2274 incorporation or bylaws, any action that may be taken at any
2275 meeting of members may be taken without a meeting if the
2276 membership nonprofit corporation delivers notice that includes
2277 a ballot to every member entitled to vote on the matter.

2278 (b) A ballot must:

2279 (1) be in writing;

2280 (2) set forth each proposed action;

2281 (3) provide an opportunity to vote for, or withhold a
2282 vote for, each candidate for election as a director, if any;
2283 and

2284 (4) provide an opportunity to vote for or against each
2285 other proposed action.

2286 (c) Approval by ballot pursuant to this section of
2287 action other than election of directors is valid only when the
2288 number of votes cast by ballot equals or exceeds the quorum
2289 required to be present at a meeting authorizing the action,
2290 and the number of approvals equals or exceeds the number of
2291 votes that would be required to approve the matter at a
2292 meeting at which the total number of votes cast was the same
2293 as the number of votes cast by ballot.

2294 (d) All solicitations for votes by ballot must:

2295 (1) indicate the number of responses needed to meet the
2296 quorum requirements;



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2297 (2) state the percentage of approvals necessary to
2298 approve each matter other than election of directors; and

2299 (3) specify the time by which a ballot must be received
2300 by the membership nonprofit corporation in order to be
2301 counted.

2302 (e) Except as otherwise provided in the certificate of
2303 incorporation or bylaws, a ballot may not be revoked.

2304 DIVISION B. VOTING.

2305 §10A-3A-7.20. Members list for meeting.

2306 (a) After fixing a record date for a meeting, a
2307 membership nonprofit corporation shall prepare an alphabetical
2308 list of the names of all its members who are entitled to
2309 notice of and to vote at the members' meeting. Each list must
2310 be arranged by voting group (and within each voting group by
2311 class) and contain the address of, and number and class of
2312 members and votes held by, each member, and if the notice or
2313 other communications regarding the meeting have been or will
2314 be sent by the membership nonprofit corporation to a member by
2315 electronic mail or other electronic transmission, the
2316 electronic mail or other electronic transmission address of
2317 that member.

2318 (b) The list of members entitled to notice shall be
2319 available for inspection by any member no later than the tenth
2320 day before each meeting of members; provided, however, if the
2321 record date for determining the members entitled to vote is
2322 less than 10 days before the meeting date, the list shall
2323 reflect the members entitled to vote as of the tenth day
2324 before the meeting date. The list shall be available (i) at



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2325 the membership nonprofit corporation's principal office or at
2326 a place identified in the meeting notice in the city where the
2327 meeting will be held or (ii) on a reasonably accessible
2328 electronic network, provided that the information required to
2329 gain access to the list is provided with the notice of the
2330 meeting. In the event that the membership nonprofit
2331 corporation determines to make a list of members available on
2332 an electronic network, the membership nonprofit corporation
2333 may take reasonable steps to ensure that such information is
2334 available only to members of the membership nonprofit
2335 corporation. A member, or the member's agent or attorney, is
2336 entitled on written demand to inspect and, subject to the
2337 requirements of Section 10A-3A-4.02(c), to copy a list of
2338 members, during regular business hours and at the member's
2339 expense, during the period it is available for inspection. A
2340 membership nonprofit corporation may satisfy the member's
2341 right to copy a list of members by furnishing a copy in the
2342 manner described in Section 10A-3A-4.03(b). A member and the
2343 member's agent or attorney who inspects or is furnished a copy
2344 of a list of members under this subsection (b) or who copies
2345 the list under this subsection (b) may use the information on
2346 that list only for purposes related to the meeting and its
2347 subject matter and must keep the information on that list
2348 confidential.

2349 (c) If the membership nonprofit corporation refuses to
2350 allow a member, or the member's agent or attorney, to inspect
2351 a list of members before the meeting or any adjournment (or
2352 copy a list as permitted by subsection (b)), the designated



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2353 court, and if none, the circuit court for the county in which
2354 the membership nonprofit corporation's principal office is
2355 located in this state, and if none in this state, the circuit
2356 court for the county in which the membership nonprofit
2357 corporation's most recent registered office is located, on
2358 application of the member, may summarily order the inspection
2359 or copying at the membership nonprofit corporation's expense
2360 and may postpone the meeting for which the list was prepared
2361 until the inspection or copying is complete.

2362 (d) Refusal or failure to prepare or make available a
2363 list of members does not affect the validity of action taken
2364 at the meeting.

2365 (e) Instead of making the list of members available as
2366 provided in subsection (b), a membership nonprofit corporation
2367 may state in a notice of meeting that the membership nonprofit
2368 corporation has elected to proceed under this subsection (e).
2369 If a membership nonprofit corporation has elected to proceed
2370 under this subsection (e), a member of that membership
2371 nonprofit corporation must state in that member's demand for
2372 inspection a proper purpose for which inspection is demanded.
2373 Within three business days after receiving a demand under this
2374 subsection (e), the membership nonprofit corporation must
2375 deliver to the member making the demand an offer of a
2376 reasonable alternative method of achieving the purpose
2377 identified in the demand without providing access to or a copy
2378 of the list of members. An alternative method that reasonably
2379 and in a timely manner accomplishes the proper purpose set
2380 forth in the demand relieves the membership nonprofit



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2381 corporation from making the list of members available under
2382 subsection (b), unless within a reasonable time after
2383 acceptance of the offer the membership nonprofit corporation
2384 fails to do the things it offered to do. Any rejection of the
2385 membership nonprofit corporation's offer must be in writing
2386 and must indicate the reasons the alternative proposed by the
2387 membership nonprofit corporation does not meet the proper
2388 purpose of the demand.

2389 (f) The record of members of the membership nonprofit
2390 corporation shall be prima facie evidence as to who are the
2391 members entitled to examine the members' list or record of
2392 members to vote at any meeting of members.

2393 §10A-3A-7.21. Voting entitlement of members.

2394 The right of the members, or any class or classes of
2395 members, to vote may be limited, enlarged, or denied as
2396 provided in the membership nonprofit corporation's certificate
2397 of incorporation or bylaws. Unless so limited, enlarged, or
2398 denied, each member, regardless of class, shall be entitled to
2399 one vote on each matter submitted to a vote of members.

2400 §10A-3A-7.22. Proxies.

2401 (a) Except as otherwise provided in the certificate of
2402 incorporation or bylaws, a member may vote in person or by
2403 proxy.

2404 (b) A member or the member's agent or attorney-in-fact
2405 may appoint a proxy to vote or otherwise act for the member by
2406 signing an appointment form, or by an electronic transmission.
2407 An electronic transmission must contain or be accompanied by
2408 information from which the recipient can determine the date of



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2409 the transmission and that the transmission was authorized by
2410 the sender or the sender's agent or attorney-in-fact.

2411 (c) An appointment of a proxy is effective when a
2412 signed appointment form or an electronic transmission of the
2413 appointment is received by the inspector of election or the
2414 officer or agent of the membership nonprofit corporation
2415 authorized to count votes. An appointment is valid for the
2416 term provided in the appointment form, and, if no term is
2417 provided, is valid for 11 months unless the appointment is
2418 irrevocable under subsection (d).

2419 (d) An appointment of a proxy is revocable unless the
2420 appointment form or electronic transmission states that it is
2421 irrevocable and the appointment is coupled with an interest.

2422 (e) The death or incapacity of the member appointing a
2423 proxy does not affect the right of the membership nonprofit
2424 corporation to accept the proxy's authority unless notice of
2425 the death or incapacity is received by the secretary or other
2426 officer or agent authorized to tabulate votes before the proxy
2427 exercises authority under the appointment.

2428 (f) An appointment made irrevocable under subsection
2429 (d) is revoked when the interest with which it is coupled is
2430 extinguished.

2431 (g) Subject to Section 10A-3A-7.23 and to any express
2432 limitation on the proxy's authority stated in the appointment
2433 form or electronic transmission, a membership nonprofit
2434 corporation is entitled to accept the proxy's vote or other
2435 action as that of the member making the appointment.

2436 (h) Nothing in this section shall be construed as



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2437 limiting, or extending, authority granted under a durable
2438 power of attorney under Section 26-1-2 or Chapter 1A of Title
2439 26, and any successor statute or statutes thereto.

2440 §10A-3A-7.23. Acceptance of votes and other
2441 instruments.

2442 (a) If the name signed on a vote, ballot, consent,
2443 waiver, member demand, or proxy appointment corresponds to the
2444 name of a member, the membership nonprofit corporation, if
2445 acting in good faith, is entitled to accept the vote, ballot,
2446 consent, waiver, member demand, or proxy appointment and give
2447 it effect as the act of the member.

2448 (b) If the name signed on a vote, ballot, consent,
2449 waiver, member demand, or proxy appointment does not
2450 correspond to the name of its member, the membership nonprofit
2451 corporation, if acting in good faith, is nevertheless entitled
2452 to accept the vote, ballot, consent, waiver, member demand, or
2453 proxy appointment and give it effect as the act of the member
2454 if:

2455 (1) the member is an entity and the name signed
2456 purports to be that of an officer or agent of the entity;

2457 (2) the name signed purports to be that of an
2458 administrator, executor, guardian, or conservator representing
2459 the member and, if the membership nonprofit corporation
2460 requests, evidence of fiduciary status acceptable to the
2461 membership nonprofit corporation has been presented with
2462 respect to the vote, ballot, consent, waiver, member demand,
2463 or proxy appointment;

2464 (3) the name signed purports to be that of a receiver



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2465 or trustee in bankruptcy of the member and, if the membership
2466 nonprofit corporation requests, evidence of this status
2467 acceptable to the membership nonprofit corporation has been
2468 presented with respect to the vote, ballot, consent, waiver,
2469 member demand, or proxy appointment;

2470 (4) the name signed purports to be that of a pledgee,
2471 beneficial owner, or attorney-in-fact of the member and, if
2472 the membership nonprofit corporation requests, evidence
2473 acceptable to the membership nonprofit corporation of the
2474 signatory's authority to sign for the member has been
2475 presented with respect to the vote, ballot, consent, waiver,
2476 member demand, or proxy appointment; or

2477 (5) two or more persons are the members as co-tenants
2478 or fiduciaries and the name signed purports to be the name of
2479 at least one of the co-owners and the person signing appears
2480 to be acting on behalf of all the co-owners.

2481 (c) The membership nonprofit corporation is entitled to
2482 reject a vote, ballot, consent, waiver, member demand, or
2483 proxy appointment if the person authorized to accept or reject
2484 that instrument, acting in good faith, has reasonable basis
2485 for doubt about the validity of the signature on it or about
2486 the signatory's authority to sign for the member.

2487 (d) Neither the membership nonprofit corporation or any
2488 person authorized by it, nor an inspector of election
2489 appointed under Section 10A-3A-7.28, that accepts or rejects a
2490 vote, ballot, consent, waiver, member demand, or proxy
2491 appointment in good faith and in accordance with the standards
2492 of this Section 10A-3A-7.23 or Section 10A-3A-7.22 (b) is



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2493 liable in damages to the member for the consequences of the
2494 acceptance or rejection.

2495 (e) Corporate action based on the acceptance or
2496 rejection of a vote, ballot, consent, waiver, member demand,
2497 or proxy appointment under this section is valid unless the
2498 designated court, and if none, the circuit court for the
2499 county in which the membership nonprofit corporation's
2500 principal office is located in this state, and if none in this
2501 state, the circuit court for the county in which the
2502 membership nonprofit corporation's most recent registered
2503 office is located, determines otherwise.

2504 (f) If an inspector of election has been appointed
2505 under Section 10A-2A-7.28, the inspector of election also has
2506 the authority to request information and make determinations
2507 under subsections (a), (b), and (c). Unless otherwise provided
2508 in the certificate of incorporation or bylaws, any
2509 determination made by the inspector of election under those
2510 subsections is controlling.

2511 §10A-3A-7.24. Quorum and voting requirements for voting
2512 groups.

2513 (a) Members entitled to vote as a separate voting group
2514 may take action on a matter at a meeting only if a quorum of
2515 those votes exists with respect to that matter. Except as
2516 provided in the certificate of incorporation or bylaws,
2517 members representing a majority of the votes entitled to be
2518 cast on the matter by the voting group constitutes a quorum of
2519 that voting group for action on that matter.

2520 (b) Except as otherwise provided in the certificate of



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2521 incorporation or bylaws, once a member is present or
2522 represented for any purpose at a meeting, the member is deemed
2523 present for quorum purposes for the remainder of the meeting
2524 and for any adjournment of that meeting unless a new record
2525 date is or must be fixed for that adjourned meeting.

2526 (c) If a quorum exists, action on a matter (other than
2527 the election of directors) by a voting group is approved if
2528 the votes cast within the voting group favoring the action
2529 exceed the votes cast opposing the action, unless the
2530 certificate of incorporation or bylaws require a greater
2531 number of affirmative votes.

2532 (d) An amendment of the certificate of incorporation or
2533 bylaws adding, changing, or deleting a quorum or voting
2534 requirement for a voting group greater than specified in
2535 subsection (a) or subsection (c) is governed by Section
2536 10A-3A-7.26.

2537 (e) If a meeting cannot be organized because a quorum
2538 is not present, those members present may adjourn the meeting
2539 to a time and place as they may determine. The certificate of
2540 incorporation or bylaws may provide that when a meeting that
2541 has been adjourned for lack of a quorum is reconvened, those
2542 members present, although less than a quorum as fixed in this
2543 section, the certificate of incorporation, or the bylaws,
2544 nonetheless constitute a quorum if the original notice of the
2545 meeting, or a notice of the adjourned meeting, states that
2546 those members who attend a meeting that has been adjourned for
2547 lack of a quorum will constitute a quorum even though they are
2548 less than a quorum.



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2549 §10A-3A-7.25. Action by single and multiple voting
2550 groups.

2551 (a) If this chapter, the certificate of incorporation,
2552 or the bylaws provide for voting by a single voting group on a
2553 matter, action on that matter is taken when voted upon by that
2554 voting group as provided in Section 10A-3A-7.24.

2555 (b) If this chapter, the certificate of incorporation,
2556 or the bylaws provide for voting by two or more voting groups
2557 on a matter, action on that matter is taken only when voted
2558 upon by each of those voting groups counted separately as
2559 provided in Section 10A-3A-7.24. Action may be taken by
2560 different voting groups on a matter at different times.

2561 §10A-3A-7.26. Modification of quorum or voting
2562 requirements.

2563 (a) The certificate of incorporation or bylaws may
2564 provide for a higher or lower quorum or voting requirement for
2565 members (or voting groups of members) than is provided for by
2566 this chapter.

2567 (b) An amendment to the certificate of incorporation or
2568 bylaws that adds, changes, or deletes a quorum or voting
2569 requirement must meet the same quorum requirement and be
2570 adopted by the same vote and voting groups required to take
2571 action under the quorum and voting requirements then in effect
2572 or proposed to be adopted, whichever is greater.

2573 §10A-3A-7.27. Voting for directors.

2574 (a) Except as otherwise provided in the certificate of
2575 incorporation or bylaws, directors of a membership nonprofit
2576 corporation are elected by a plurality of the votes cast by



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2577 the members entitled to vote in the election at a meeting at
2578 which a quorum is present.

2579 (b) Members do not have a right to cumulate their votes
2580 for directors.

2581 §10A-3A-7.28. Inspectors of election.

2582 (a) A membership nonprofit corporation may appoint one
2583 or more inspectors to act at a meeting of members and make a
2584 written report thereof. The membership nonprofit corporation
2585 may designate one or more persons as alternate inspectors to
2586 replace any inspector who fails to act. If no inspector or
2587 alternate is able to act at a meeting of members, the person
2588 presiding at the meeting may appoint one or more inspectors to
2589 act at the meeting. Each inspector, before entering upon the
2590 discharge of the duties of inspector, shall take and sign an
2591 oath faithfully to execute the duties of inspector with strict
2592 impartiality and according to the best of the inspector's
2593 ability. The inspectors may appoint or retain other persons to
2594 assist the inspectors in the performance of the duties of
2595 inspector under subsection (b), and may rely on information
2596 provided by those persons and other persons, including those
2597 appointed to count votes, unless the inspectors believe
2598 reliance is unwarranted.

2599 (b) The inspectors must:

2600 (1) ascertain the number of members and their voting
2601 power;

2602 (2) determine the number of votes represented at the
2603 meeting and the validity of proxies and ballots;

2604 (3) count all votes;



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2605 (4) determine and retain for a reasonable period a
2606 record of the disposition of any challenges made to any
2607 determination by the inspectors; and

2608 (5) certify their determination of the number of votes
2609 represented at the meeting, and their count of all votes.

2610 (c) No ballot, proxies, or votes, nor any revocations
2611 thereof or changes thereto, shall be accepted by the
2612 inspectors after the closing of the polls unless the
2613 designated court, and if none, the circuit court for the
2614 county in which the membership nonprofits corporation's
2615 principal office is located in this state, and if none in this
2616 state, in the circuit court for the county in which the
2617 membership nonprofit corporation's most recent registered
2618 office is located, upon application by a member, shall
2619 determine otherwise.

2620 (d) In performing their duties, the inspectors may
2621 examine:

2622 (1) the proxy appointment forms and any other
2623 information provided in accordance with Section 10A-3A-7.22;

2624 (2) any envelope or related writing submitted with
2625 those appointment forms;

2626 (3) any ballots;

2627 (4) any evidence or other information specified in
2628 Section 10A-3A-7.23; and

2629 (5) the relevant books and records of the membership
2630 nonprofit corporation relating to its members and their
2631 entitlement to vote.

2632 (e) The inspectors also may consider other information



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2633 that they believe is relevant and reliable for the purpose of
2634 performing any of the duties assigned to them pursuant to
2635 subsection (b).

2636 (f) An inspector and any person appointed by an
2637 inspector to assist with the inspector's duties may, but need
2638 not, be a director, member, officer, or employee of the
2639 membership nonprofit corporation. A person who is a candidate
2640 for office to be filled at the meeting may not be an inspector
2641 or a person so appointed.

2642 DIVISION C. VOTING AGREEMENTS.

2643 §10A-3A-7.30. Voting agreements.

2644 (a) Except as provided in the certificate of
2645 incorporation or bylaws, two or more members may provide for
2646 the manner in which they will vote by signing a written
2647 agreement for that purpose. A voting agreement is valid for
2648 the period provided in the agreement.

2649 (b) A voting agreement created under this section is
2650 specifically enforceable, except that a voting agreement is
2651 not enforceable to the extent that enforcement of the
2652 agreement would violate the purposes of the membership
2653 nonprofit corporation.

2654 ARTICLE 8. DIRECTORS AND OFFICERS.

2655 DIVISION A. BOARD OF DIRECTORS.

2656 §10A-3A-8.01. Requirement for and functions of board of
2657 directors.

2658 All corporate powers shall be exercised by or under
2659 authority of, and the activities and affairs of a nonprofit
2660 corporation shall be managed by or under the direction and



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2661 subject to the oversight of, the board of directors except as
2662 may be otherwise provided in this chapter or the certificate
2663 of incorporation. If the certificate of incorporation provides
2664 that some of the corporate powers are to be exercised by or
2665 under the authority of, or some of the activities and affairs
2666 of the nonprofit corporation are to be managed by or under the
2667 authority of, a person or group of persons other than the
2668 board of directors, then the powers and duties conferred or
2669 imposed upon the board of directors by this chapter with
2670 respect to those corporate powers, activities and affairs
2671 shall be exercised and performed by that person or group of
2672 persons as provided in the certificate of incorporation.

2673 §10A-3A-8.02. Qualifications of directors.

2674 (a) The certificate of incorporation or bylaws may
2675 prescribe qualifications for directors or for nominees for
2676 directors. Qualifications must be reasonable as applied to the
2677 nonprofit corporation and be lawful. Qualifications may
2678 include not being or having been subject to specified
2679 criminal, civil, or regulatory sanctions or not having been
2680 removed as a director by judicial action or for cause.

2681 (b) A director shall be a natural person of the age of
2682 at least 19 years but need not be a resident of this state or
2683 a member unless the certificate of incorporation or bylaws so
2684 prescribe.

2685 (c) A qualification for nomination, election, or
2686 appointment for director prescribed before the earlier of a
2687 person's nomination, election, or appointment shall apply to
2688 that person at the time of the earlier of that person's



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2689 nomination, election, or appointment and shall apply to that
2690 director during that director's term. A qualification for
2691 nomination, election, or appointment for director prescribed
2692 after the earlier of a person's nomination, election, or
2693 appointment shall not apply to that person with respect to
2694 that person's nomination, election, or appointment and shall
2695 not apply to that director during that director's term.

2696 (d) A person who did not meet a qualification for
2697 nomination, election, or appointment, but who is elected or
2698 appointed as a director, may serve as a director until removed
2699 in accordance with Section 10A-3A-8.08 or 10A-3A-8.09.

2700 §10A-3A-8.03. Number of directors.

2701 (a) A board of directors shall consist of one or more
2702 individuals, with the number specified in or fixed in
2703 accordance with the certificate of incorporation or bylaws.

2704 (b) The number of directors may be increased or
2705 decreased from time to time by amendment to, or in the manner
2706 provided in, the certificate of incorporation or bylaws.

2707 §10A-3A-8.04. Selection of directors.

2708 (a) Except as set forth in Section 10A-3A-2.04, the
2709 directors of a membership nonprofit corporation are elected,
2710 appointed, or designated as provided in the certificate of
2711 incorporation or bylaws. If no method of election,
2712 appointment, or designation is set forth in the certificate of
2713 incorporation or bylaws, the directors of a membership
2714 nonprofit corporation are elected by the members entitled to
2715 vote at the time at the first annual meeting of members, and
2716 at each annual meeting thereafter.



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2717 (b) Except as set forth in Section 10A-3A-2.04, the
2718 directors of a nonmembership nonprofit corporation are
2719 elected, appointed, or designated as provided in the
2720 certificate of incorporation or bylaws. If no method of
2721 election, appointment, or designation is set forth in the
2722 certificate of incorporation or bylaws, the directors are
2723 elected by the board.

2724 (c) If the certificate of incorporation or bylaws
2725 divide, or authorize dividing, the members into classes, the
2726 certificate of incorporation or bylaws may also authorize the
2727 election of all or a specified number of directors by one or
2728 more authorized classes of members. A class or multiple
2729 classes of members entitled to elect one or more directors is
2730 a separate voting group for purposes of the election of
2731 directors.

2732 §10A-3A-8.05. Terms of directors generally.

2733 (a) The certificate of incorporation or bylaws may
2734 specify the terms of directors. If a term is not specified in
2735 the certificate of incorporation or bylaws, the term of a
2736 director is one year.

2737 (b) A decrease in the number of directors or term of
2738 office does not shorten an incumbent director's term.

2739 (c) Except as provided in the certificate of
2740 incorporation or bylaws, the term of a director elected to
2741 fill a vacancy expires at the end of the unexpired term that
2742 the director is filling.

2743 (d) Despite the expiration of a director's term, the
2744 director continues to serve until the director's successor is



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2745 elected, appointed, or designated and until the director's
2746 successor takes office unless otherwise provided in the
2747 certificate of incorporation or bylaws or there is a decrease
2748 in the number of directors.

2749 §10A-3A-8.06. Staggered terms for directors.

2750 The certificate of incorporation or bylaws may provide
2751 for staggering the terms of directors by dividing the total
2752 number of directors into groups of one or more directors. The
2753 terms of office and number of directors in each group do not
2754 need to be uniform.

2755 §10A-3A-8.07. Resignation of directors.

2756 (a) A director may resign at any time by delivering a
2757 written notice of resignation to the board of directors or its
2758 chair, to the secretary, or to the nonprofit corporation.

2759 (b) A resignation is effective as provided in Section
2760 10A-3A-1.03(i) unless the resignation provides for a delayed
2761 effectiveness, including effectiveness determined upon a
2762 future event or events.

2763 §10A-3A-8.08. Removal of directors by members or other
2764 persons.

2765 (a) Except as provided in the certificate of
2766 incorporation or bylaws, a director of a membership nonprofit
2767 corporation may be removed with or without cause by the
2768 members who are eligible under Section 10A-3A-8.10 to vote to
2769 fill the vacancy created by the removal of that director.

2770 (b) The notice of a meeting of members of a membership
2771 nonprofit corporation at which removal of a director is to be
2772 considered must state that the purpose, or one of the



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2773 purposes, of the meeting is removal of the director.

2774 (c) Except as provided in the certificate of
2775 incorporation or bylaws, the board of directors of a
2776 membership nonprofit corporation may not remove a director.

2777 (d) Except as provided in the certificate of
2778 incorporation or bylaws, the board of directors may remove a
2779 director of a nonmembership nonprofit corporation with or
2780 without cause.

2781 (e) In addition to the removal provisions of
2782 subsections (a) and (d), the board of directors of a
2783 membership nonprofit corporation or nonmembership nonprofit
2784 corporation may remove a director who:

2785 (1) did not satisfy the qualifications for directors as
2786 set forth in the certificate of incorporation or bylaws at the
2787 time that director was nominated, elected, appointed, or
2788 designated to that director's current term, if the decision
2789 that the director failed to satisfy a qualification is made by
2790 the vote of a majority of the directors who meet all of the
2791 required qualifications; or

2792 (2) no longer satisfies the qualifications for
2793 directors as set forth in the certificate of incorporation or
2794 bylaws at the time that director was nominated, elected,
2795 appointed, or designated to that director's current term, if
2796 the decision that the director failed to satisfy a
2797 qualification is made by the vote of a majority of the
2798 directors who meet all of the required qualifications.

2799 §10A-3A-8.09. Removal of directors by judicial
2800 proceeding.



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2801 The designated court, and if none, the circuit court
2802 for the county in which the nonprofit corporation's principal
2803 office is located in this state, and if none in this state,
2804 the circuit court for the county in which the nonprofit
2805 corporation's most recent registered office is located may
2806 remove a director from office or may order other relief,
2807 including barring the director from reelection, redesignation,
2808 or reappointment for a period prescribed by the court, in a
2809 proceeding commenced by or in the right of the nonprofit
2810 corporation if the court finds that: (i) the director engaged
2811 in fraudulent conduct with respect to the nonprofit
2812 corporation or its members, grossly abused the position of
2813 director, or intentionally inflicted harm on the nonprofit
2814 corporation; and (ii) considering the director's course of
2815 conduct and the inadequacy of other available remedies,
2816 removal or such other relief would be in the best interest of
2817 the nonprofit corporation.

2818 §10A-3A-8.10. Vacancy on board.

2819 (a) Except as otherwise provided in subsection (b), the
2820 certificate of incorporation, or the bylaws, if a vacancy
2821 occurs on the board of directors, including a vacancy
2822 resulting from an increase in the number of directors:

2823 (1) the members may fill the vacancy;

2824 (2) the board of directors may fill the vacancy; or

2825 (3) if the directors remaining in office are less than
2826 a quorum, they may fill the vacancy by the affirmative vote of
2827 a majority of all the directors remaining in office.

2828 (b) Unless the certificate of incorporation or bylaws



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2829 provides otherwise, if the vacant office was held by a
2830 director who is:

2831 (1) elected by a voting group of members, only the
2832 members of that voting group are entitled to vote to fill the
2833 vacancy if it is filled by the members, and only the remaining
2834 directors elected by that voting group, even if less than a
2835 quorum, are entitled to fill the vacancy if it is filled by
2836 the directors;

2837 (2) appointed by a person or group of persons specified
2838 in the certificate of incorporation, may be filled only by
2839 that person or that group of persons; or

2840 (3) designated in the certificate of incorporation or
2841 bylaws, may only be filled as specified in the certificate of
2842 incorporation or bylaws.

2843 (c) A vacancy that will occur at a specific later time
2844 (by reason of a resignation effective at a later time under
2845 Section 10A-3A-8.07(b) or otherwise) may be filled before the
2846 vacancy occurs but the new director may not take office until
2847 the vacancy occurs.

2848 §10A-3A-8.11. Compensation of directors.

2849 Unless the certificate of incorporation or bylaws
2850 provide otherwise, the board of directors may fix the
2851 compensation of directors.

2852 DIVISION B. MEETINGS AND ACTIONS OF THE BOARD.

2853 §10A-3A-8.20. Meetings.

2854 (a) The board of directors may hold regular or special
2855 meetings in or out of the state.

2856 (b) Unless restricted by the certificate of



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2857 incorporation or bylaws, any or all directors may participate
2858 in a meeting of the board through the use of any means of
2859 communication by which all directors participating may
2860 simultaneously hear each other during the meeting. A director
2861 participating in a meeting by this means is deemed to be
2862 present in person at the meeting.

2863 §10A-3A-8.21. Action without meeting.

2864 (a) Except to the extent that the certificate of
2865 incorporation or bylaws require that action by the board of
2866 directors be taken at a meeting, action required or permitted
2867 by this chapter to be taken by the board of directors may be
2868 taken without a meeting if each director signs a consent in a
2869 record describing the action to be taken and delivers it to
2870 the nonprofit corporation.

2871 (b) Action taken under this section is the act of the
2872 board of directors when one or more consents signed by all the
2873 directors are delivered to the nonprofit corporation. Any
2874 director executing a consent may provide, whether through
2875 instruction to an agent or otherwise, that the consent will be
2876 effective at a future time, including a time determined upon
2877 the happening of an event, occurring not later than 60 days
2878 after the instruction is given or the provision is made, if
2879 evidence of the instruction or provision is provided to the
2880 nonprofit corporation. A director's consent may be withdrawn
2881 by a revocation signed by the director and delivered to the
2882 nonprofit corporation before delivery to the nonprofit
2883 corporation of unrevoked consents signed by all the directors.

2884 (c) A consent signed under this section has the effect



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2885 of action taken at a meeting of the board of directors and may
2886 be described as such in any document.

2887 §10A-3A-8.22. Notice of meeting.

2888 (a) Unless the certificate of incorporation or bylaws
2889 provide otherwise, regular meetings of the board of directors
2890 may be held without notice of the place, if any, date, time,
2891 or purpose of the meeting.

2892 (b) Unless the certificate of incorporation or bylaws
2893 provide for a longer or shorter period, special meetings of
2894 the board of directors must be preceded by at least two days'
2895 notice of the place, if any, date, time, of the meeting. The
2896 notice need not describe the purpose of the special meeting
2897 unless required by the certificate of incorporation or bylaws.

2898 §10A-3A-8.23. Waiver of notice.

2899 (a) A director may waive any notice required by this
2900 chapter, the certificate of incorporation, or the bylaws
2901 before or after the date and time stated in the notice. Except
2902 as provided by subsection (b), the waiver must be in writing,
2903 signed by the director entitled to the notice, and delivered
2904 to the nonprofit corporation for filing by the nonprofit
2905 corporation with the minutes or corporate records.

2906 (b) A director's attendance at or participation in a
2907 meeting waives any required notice to the director of the
2908 meeting, unless the director at the beginning of the meeting
2909 (or promptly upon arrival) objects to holding the meeting or
2910 transacting business at the meeting and does not, after
2911 objecting, vote for or assent to action taken at the meeting.

2912 §10A-3A-8.24. Quorum and voting.



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2913 (a) Unless the certificate of incorporation or bylaws
2914 provide for a greater or lesser number or unless otherwise
2915 expressly provided in this chapter, a quorum of a board of
2916 directors consists of a majority of the number of directors
2917 specified in or fixed in accordance with the certificate of
2918 incorporation or bylaws.

2919 (b) The quorum of the board of directors specified in
2920 or fixed in accordance with the certificate of incorporation
2921 or bylaws may not consist of less than one-third of the
2922 specified or fixed number of directors.

2923 (c) If a quorum is present when a vote is taken, the
2924 affirmative vote of a majority of directors present is the act
2925 of the board of directors unless the certificate of
2926 incorporation or bylaws require the vote of a greater number
2927 of directors or unless otherwise expressly provided in this
2928 chapter.

2929 (d) A director who is present at a meeting of the board
2930 of directors or a committee when corporate action is taken is
2931 deemed to have assented to the action taken unless: (i) the
2932 director objects at the beginning of the meeting (or promptly
2933 upon arrival) to holding it or transacting business at the
2934 meeting; (ii) the dissent or abstention from the action taken
2935 is entered in the minutes of the meeting; or (iii) the
2936 director delivers written notice of the director's dissent or
2937 abstention to the presiding officer of the meeting before its
2938 adjournment or to the nonprofit corporation immediately after
2939 adjournment of the meeting. The right of dissent or abstention
2940 is not available to a director who votes in favor of the



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2941 action taken.

2942 (e) A director, in that person's capacity as a
2943 director, may not appoint an agent or proxy to vote, consent,
2944 approve, attend, act, or otherwise carry out the duties of
2945 that director for any purpose.

2946 §10A-3A-8.25. Board and advisory committees.

2947 (a) A committee of the board of directors composed
2948 exclusively of one or more directors may be established to
2949 perform functions of the board:

2950 (1) by the certificate of incorporation or bylaws; or

2951 (2) except as restricted by the certificate of
2952 incorporation or bylaws, by the board of directors.

2953 (b) Unless this chapter, the certificate of
2954 incorporation, or the bylaws provide otherwise, the
2955 establishment of a committee and appointment of directors to
2956 it must be approved by the greater of:

2957 (1) a majority of all the directors in office when the
2958 action is taken; or

2959 (2) the number of directors required by the certificate
2960 of incorporation or bylaws to take action under Section
2961 10A-3A-8.24.

2962 (c) Sections 10A-3A-8.20 through 10A-3A-8.24 apply to
2963 board committees and their members.

2964 (d) A board committee may exercise the powers of the
2965 board of directors under Section 10A-3A-8.01, to the extent
2966 specified by the board of directors or in the certificate of
2967 incorporation or bylaws, except that a board committee may
2968 not:



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2969 (1) in the case of a membership nonprofit corporation,
2970 approve or propose to members action that this chapter
2971 requires be approved by members;

2972 (2) remove a director from office;

2973 (3) fill a vacancy on the board of directors; or,
2974 subject to subsection (e), on any committee of the board; or

2975 (4) adopt, amend, or repeal a provision of the
2976 certificate of incorporation or bylaws.

2977 (e) The board of directors may appoint one or more
2978 directors as alternate members of any board committee to
2979 replace any absent or disqualified member during the member's
2980 absence or disqualification. If the certificate of
2981 incorporation, bylaws, or the action creating a board
2982 committee so provides, the member or members present at any
2983 board committee meeting and not disqualified from voting may,
2984 by unanimous action, appoint another director to act in place
2985 of an absent or disqualified member during that member's
2986 absence or disqualification.

2987 (f) The certificate of incorporation, bylaws, or board
2988 of directors may create or authorize the creation of one or
2989 more advisory committees whose members need not be directors.
2990 An advisory committee:

2991 (1) is not a committee of the board; and

2992 (2) may not exercise any of the powers of the board.

2993 DIVISION C. DIRECTORS.

2994 §10A-3A-8.30. Standards of conduct for directors.

2995 Division C of Article 3 of Chapter 1 shall not apply to
2996 this chapter. Instead:



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2997 (a) Each member of the board of directors, when
2998 discharging the duties of a director, shall act: (i) in good
2999 faith, and (ii) in a manner the director reasonably believes
3000 to be in the best interests of the nonprofit corporation.

3001 (b) The members of the board of directors or a board
3002 committee, when becoming informed in connection with their
3003 decision-making function or devoting attention to their
3004 oversight function, shall discharge their duties with the care
3005 that a person in a like position would reasonably believe
3006 appropriate under similar circumstances.

3007 (c) In discharging board of directors or board
3008 committee duties, a director shall disclose, or cause to be
3009 disclosed, to the other board of directors or board committee
3010 members information not already known by them but known by the
3011 director to be material to the discharge of their
3012 decision-making or oversight functions, except that disclosure
3013 is not required to the extent that the director reasonably
3014 believes that doing so would violate a duty imposed under law,
3015 a legally enforceable obligation of confidentiality, or a
3016 professional ethics rule.

3017 (d) In discharging board of directors or board
3018 committee duties, a director who does not have knowledge that
3019 makes reliance unwarranted is entitled to rely on the
3020 performance by any of the persons specified in subsection
3021 (f) (1) or subsection (f) (3) to whom the board of directors may
3022 have delegated, formally or informally by course of conduct,
3023 the authority or duty to perform one or more of the board of
3024 directors' functions that are delegable under applicable law.



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3025 (e) In discharging board of directors or board
3026 committee duties, a director who does not have knowledge that
3027 makes reliance unwarranted is entitled to rely on information,
3028 opinions, reports, or statements, including financial
3029 statements and other financial data, prepared or presented by
3030 any of the persons specified in subsection (f).

3031 (f) A director is entitled to rely, in accordance with
3032 subsection (d) or (e), on:

3033 (1) one or more officers, employees, or volunteers of
3034 the nonprofit corporation or one or more persons associated
3035 with the nonprofit corporation, whom the director reasonably
3036 believes to be reliable and competent in the functions
3037 performed or the information, opinions, reports, or statements
3038 provided;

3039 (2) legal counsel, public accountants, or other persons
3040 retained by the nonprofit corporation as to matters involving
3041 skills or expertise the director reasonably believes are
3042 matters (i) within the particular person's professional or
3043 expert competence, or (ii) as to which the particular person
3044 merits confidence; or

3045 (3) a board committee of which the director is not a
3046 member if the director reasonably believes the committee
3047 merits confidence.

3048 (g) Except as set forth in subsections (a) and (b), a
3049 director, when discharging the duties of a director, has no
3050 duty to any person other than the nonprofit corporation.

3051 §10A-3A-8.31. Standards of liability for directors.

3052 Division C of Article 3 of Chapter 1 shall not apply to



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3053 this chapter. Instead:

3054 (a) A director shall not be liable to the nonprofit
3055 corporation or its members for any decision to take or not to
3056 take action, or any failure to take any action, as a director,
3057 unless the party asserting liability in a proceeding
3058 establishes that:

3059 (1) no defense interposed by the director based on: (i)
3060 any provision in the certificate of incorporation authorized
3061 by Section 10A-3A-2.02(b)(4) or by Section 10A-3A-2.02(b)(6),
3062 or (ii) the protection afforded by Section 10A-3A-8.60,
3063 precludes liability; and

3064 (2) the challenged conduct consisted or was the result
3065 of:

3066 (i) action not in good faith; or

3067 (ii) a decision:

3068 (A) which the director did not reasonably believe to be
3069 in the best interests of the nonprofit corporation, or

3070 (B) as to which the director was not informed to an
3071 extent the director reasonably believed appropriate in the
3072 circumstances; or

3073 (iii) a lack of objectivity due to the director's
3074 familial, financial or business relationship with, or a lack
3075 of independence due to the director's domination or control
3076 by, another person having a material interest in the
3077 challenged conduct:

3078 (A) which relationship or which domination or control
3079 could reasonably be expected to have affected the director's
3080 judgment respecting the challenged conduct in a manner adverse



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3081 to the nonprofit corporation, and

3082 (B) after a reasonable expectation to that effect has
3083 been established, the director shall not have established that
3084 the challenged conduct was reasonably believed by the director
3085 to be in the best interests of the nonprofit corporation; or

3086 (iv) a sustained failure of the director to devote
3087 attention to ongoing oversight of the activities and affairs
3088 of the nonprofit corporation, or a failure to devote timely
3089 attention, by making (or causing to be made) appropriate
3090 inquiry, when particular facts and circumstances of
3091 significant concern materialize that would alert a reasonably
3092 attentive director to the need for that inquiry; or

3093 (v) receipt of a financial benefit to which the
3094 director was not entitled or any other breach of the
3095 director's duties to deal fairly with the nonprofit
3096 corporation and its members that is actionable under
3097 applicable law.

3098 (b) The party seeking to hold the director liable:

3099 (1) for money damages, shall also have the burden of
3100 establishing that:

3101 (i) harm to the nonprofit corporation or its members
3102 has been suffered, and

3103 (ii) the harm suffered was proximately caused by the
3104 director's challenged conduct; or

3105 (2) for other money payment under a legal remedy, such
3106 as compensation for the unauthorized use of corporate assets,
3107 shall also have whatever persuasion burden may be called for
3108 to establish that the payment sought is appropriate in the



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3109 circumstances; or

3110 (3) for other money payment under an equitable remedy,
3111 such as profit recovery by or disgorgement to the nonprofit
3112 corporation, shall also have whatever persuasion burden may be
3113 called for to establish that the equitable remedy sought is
3114 appropriate in the circumstances.

3115 (c) Nothing contained in this section shall:

3116 (1) in any instance where fairness is at issue alter
3117 the burden of proving the fact or lack of fairness otherwise
3118 applicable;

3119 (2) alter the fact or lack of liability of a director
3120 under another section of this chapter, such as the provisions
3121 governing the consequences of an unlawful distribution under
3122 Section 10A-3A-8.32 or a transactional interest under Section
3123 10A-3A-8.60;

3124 (3) affect any rights to which a director may be
3125 entitled under another statute of this state or the United
3126 States; or

3127 (4) affect any rights to which the nonprofit
3128 corporation or a member may be entitled under another statute
3129 of this state or the United States.

3130 §10A-3A-8.32. Directors' liability for unlawful
3131 distributions.

3132 (a) A director who votes for or assents to a
3133 distribution in excess of what may be authorized and made
3134 pursuant to Section 10A-3A-6.40 or Section 10A-3A-11.07 is
3135 personally liable to the nonprofit corporation for the amount
3136 of the distribution that exceeds what could have been



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3137 distributed without violating Section 10A-3A-6.40 or Section
3138 10A-3A-11.07 if the party asserting liability establishes that
3139 when taking the action the director did not comply with
3140 Section 10A-3A-8.30.

3141 (b) A director held liable under subsection (a) for an
3142 unlawful distribution is entitled to:

3143 (1) contribution from every other director who could be
3144 held liable under subsection (a) for the unlawful
3145 distribution; and

3146 (2) recoupment from each person of the pro-rata portion
3147 of the amount of the unlawful distribution the person
3148 received, whether or not the person knew the distribution was
3149 made in violation of Section 10A-3A-6.40 or Section
3150 10A-3A-11.07.

3151 (c) A proceeding to enforce:

3152 (1) the liability of a director under subsection (a) is
3153 barred unless it is commenced within two years after the date
3154 on which the distribution was made; or

3155 (2) contribution or recoupment under subsection (b) is
3156 barred unless it is commenced within one year after the
3157 liability of the claimant has been finally adjudicated under
3158 subsection (a).

3159 §10A-3A-8.33. Loans to or guarantees for directors and
3160 officers.

3161 (a) A nonprofit corporation may not lend money to or
3162 guarantee the obligation of a director or officer of the
3163 nonprofit corporation.

3164 (b) The fact that a loan or guarantee is made in



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3165 violation of this section does not affect the borrower's
3166 liability on the loan.

3167 DIVISION D. OFFICERS.

3168 §10A-3A-8.40. Officers.

3169 (a) A nonprofit corporation has the officers described
3170 in its certificate of incorporation or bylaws or appointed by
3171 the board of directors in accordance with the certificate of
3172 incorporation or bylaws.

3173 (b) The board of directors may elect individuals to
3174 fill one or more offices of the nonprofit corporation.

3175 (c) The certificate of incorporation, bylaws, or the
3176 board of directors shall assign to an officer responsibility
3177 for maintaining and authenticating the records of the
3178 nonprofit corporation required to be kept under Section
3179 10A-3A-4.01.

3180 (d) Unless the certificate of incorporation or bylaws
3181 provide otherwise, the same individual may simultaneously hold
3182 more than one office in a nonprofit corporation.

3183 §10A-3A-8.41. Functions of officers.

3184 Each officer has the authority and shall perform the
3185 functions set forth in the certificate of incorporation or
3186 bylaws or, to the extent consistent with the certificate of
3187 incorporation or bylaws, the functions prescribed by the board
3188 of directors or by direction of an officer authorized by the
3189 board of directors to prescribe the functions of other
3190 officers.

3191 §10A-3A-8.42. Standards of conduct for officers.

3192 Division C of Article 3 of Chapter 1 shall not apply to



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3193 this chapter. Instead:

3194 (a) An officer, when performing in that capacity, has
3195 the duty to act:

3196 (1) in good faith;

3197 (2) with the care that a person in a like position
3198 would reasonably exercise under similar circumstances; and

3199 (3) in a manner the officer reasonably believes to be
3200 in the best interests of the nonprofit corporation.

3201 (b) The duty of an officer includes the obligation:

3202 (1) to inform the superior officer to whom, or the
3203 board of directors or the board committee to which, the
3204 officer reports of information about the affairs of the
3205 nonprofit corporation known to the officer, within the scope
3206 of the officer's functions, and known to the officer to be
3207 material to the superior officer, board of directors, or board
3208 committee; and

3209 (2) to inform the officer's superior officer, or
3210 another appropriate person within the nonprofit corporation,
3211 or the board of directors, or a board committee, of any actual
3212 or probable material violation of law involving the nonprofit
3213 corporation or material breach of duty to the nonprofit
3214 corporation by an officer, employee, or agent of the nonprofit
3215 corporation, that the officer believes has occurred or is
3216 likely to occur.

3217 (c) In discharging the officer's duties, an officer who
3218 does not have knowledge that makes reliance unwarranted is
3219 entitled to rely on:

3220 (1) the performance of properly delegated



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3221 responsibilities by one or more employees, one or more
3222 volunteers of the nonprofit corporation, or one or more other
3223 persons associated with the nonprofit corporation, to whom
3224 that officer has delegated responsibilities and whom the
3225 officer reasonably believes to be reliable and competent in
3226 performing the responsibilities delegated;

3227 (2) information, opinions, reports, or statements,
3228 including financial statements and other financial data,
3229 prepared or presented by one or more officers or employees,
3230 one or more volunteers of the nonprofit corporation, or one or
3231 more other persons associated with the nonprofit corporation,
3232 whom the officer reasonably believes to be reliable and
3233 competent in the matters presented, or legal counsel, public
3234 accountants, or other persons retained by the nonprofit
3235 corporation as to matters involving skills or expertise the
3236 officer reasonably believes are matters: (i) within the
3237 particular person's professional or expert competence, or (ii)
3238 as to which the particular person merits confidence; or

3239 (3) volunteers of the nonprofit corporation or one or
3240 more persons associated with the nonprofit corporation.

3241 (d) An officer is not liable to the nonprofit
3242 corporation or its members for any decision to take or not to
3243 take action, or any failure to take any action, as an officer,
3244 if the duties of the office are performed in compliance with
3245 this section. Whether an officer who does not comply with this
3246 section shall have liability will depend in such instance on
3247 applicable law, including those principles of Section
3248 10A-3A-8.31 that have relevance.



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3249 §10A-3A-8.43. Resignation and removal of officers.

3250 Division C of Article 3 of Chapter 1 shall not apply to
3251 this chapter. Instead:

3252 (a) An officer may resign at any time by delivering a
3253 written notice to the board of directors, its chair, the
3254 appointing officer, the secretary, or the nonprofit
3255 corporation. A resignation is effective as provided in Section
3256 10A-3A-1.03 unless the notice provides for a delayed
3257 effectiveness, including effectiveness determined upon a
3258 future event or events. If effectiveness of a resignation is
3259 stated to be delayed and the board of directors or the
3260 appointing officer accepts the delay, the board of directors
3261 or the appointing officer may fill the pending vacancy before
3262 the delayed effectiveness, but the new officer may not take
3263 office until the vacancy occurs.

3264 (b) An officer may be removed at any time with or
3265 without cause by (i) the board of directors; (ii) the
3266 appointing officer, unless the certificate of incorporation,
3267 bylaws, or the board of directors provide otherwise; or (iii)
3268 any other officer if authorized by the certificate of
3269 incorporation, bylaws, or the board of directors.

3270 (c) In this section, "appointing officer" means the
3271 officer (including any successor to that officer) who
3272 appointed the officer resigning or being removed.

3273 §10A-3A-8.44. Contract rights of officers.

3274 (a) The election or appointment of an officer does not
3275 itself create contract rights.

3276 (b) An officer's removal does not affect the officer's



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3277 contract rights, if any, with the nonprofit corporation. An
3278 officer's resignation does not affect the nonprofit
3279 corporation's contract rights, if any, with the officer.

3280 DIVISION E. INDEMNIFICATION AND ADVANCEMENT OF
3281 EXPENSES.

3282 §10A-3A-8.50. Division definitions.

3283 In this division:

3284 (1) "DIRECTOR" or "OFFICER" means an individual who is
3285 or was a director or officer, respectively, of a nonprofit
3286 corporation or who, while a director or officer of the
3287 nonprofit corporation, is or was serving at the nonprofit
3288 corporation's request as a director, officer, manager, member,
3289 partner, trustee, employee, or agent of another entity or
3290 employee benefit plan. A director or officer is considered to
3291 be serving an employee benefit plan at the nonprofit
3292 corporation's request if the individual's duties to the
3293 nonprofit corporation also impose duties on, or otherwise
3294 involve services by, the individual to the plan or to
3295 participants in or beneficiaries of the plan. "Director" or
3296 "officer" includes, unless the context requires otherwise (i)
3297 the estate or personal representative of a director or officer
3298 and (ii) with respect to a director, an individual designated,
3299 elected, or appointed by that or any other name or title.

3300 (2) "LIABILITY" means the obligation to pay a judgment,
3301 settlement, penalty, fine (including an excise tax assessed
3302 with respect to an employee benefit plan), or expenses
3303 incurred with respect to a proceeding.

3304 (3) "NONPROFIT CORPORATION" includes any domestic or



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3305 foreign predecessor entity of a nonprofit corporation.

3306 (4) "OFFICIAL CAPACITY" means: (i) when used with
3307 respect to a director, the office of director in a nonprofit
3308 corporation; and (ii) when used with respect to an officer, as
3309 contemplated in Section 10A-3A-8.56, the office in a nonprofit
3310 corporation held by the officer. "Official capacity" does not
3311 include service for any other corporation or foreign
3312 corporation or any joint venture, trust, employee benefit
3313 plan, or other entity.

3314 (5) "PARTY" means an individual who was, is, or is
3315 threatened to be made, a defendant or respondent in a
3316 proceeding.

3317 (6) "PROCEEDING" means any threatened, pending, or
3318 completed action, suit, or proceeding, whether civil,
3319 criminal, administrative, arbitrative, or investigative and
3320 whether formal or informal.

3321 §10A-3A-8.51. Permissible indemnification.

3322 (a) Except as otherwise provided in this section, a
3323 nonprofit corporation may indemnify an individual who is a
3324 party to a proceeding because the individual is a director
3325 against liability incurred in the proceeding if:

3326 (1)(i) the director conducted himself or herself in
3327 good faith; and

3328 (ii) the director reasonably believed:

3329 (A) in the case of conduct in an official capacity,
3330 that his or her conduct was in the best interests of the
3331 nonprofit corporation; and

3332 (B) in all other cases, that the director's conduct was



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3333 at least not opposed to the best interests of the nonprofit
3334 corporation; and

3335 (iii) in the case of any criminal proceeding, the
3336 director had no reasonable cause to believe his or her conduct
3337 was unlawful; or

3338 (2) the director engaged in conduct for which broader
3339 indemnification has been made permissible or obligatory under
3340 a provision of the certificate of incorporation (as authorized
3341 by Section 10A-3A-2.02).

3342 (b) A director's conduct with respect to an employee
3343 benefit plan for a purpose the director reasonably believed to
3344 be in the interests of the participants in, and the
3345 beneficiaries of, the plan is conduct that satisfies the
3346 requirement of subsection (a) (1) (ii) (B).

3347 (c) The termination of a proceeding by judgment, order,
3348 settlement, or conviction, or upon a plea of nolo contendere
3349 or its equivalent, is not, of itself, determinative that the
3350 director did not meet the relevant standard of conduct
3351 described in this section.

3352 (d) Unless ordered by a court under Section
3353 10A-3A-8.54(a) (3), a nonprofit corporation may not indemnify a
3354 director:

3355 (1) in connection with a proceeding by the nonprofit
3356 corporation, except for expenses incurred in connection with
3357 the proceeding if it is determined that the director has met
3358 the relevant standard of conduct under subsection (a); or

3359 (2) in connection with any proceeding with respect to
3360 conduct for which the director was adjudged liable on the



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3361 basis of receiving a financial benefit to which the director
3362 was not entitled, regardless of whether it involved action in
3363 the director's official capacity.

3364 §10A-3A-8.52. Permitted mandatory indemnification.

3365 A nonprofit corporation may provide in its certificate
3366 of incorporation or bylaws that the nonprofit corporation
3367 shall indemnify a director who was wholly successful, on the
3368 merits or otherwise, in the defense of any proceeding to which
3369 the director was a party because the director was a director
3370 of the nonprofit corporation against expenses incurred by the
3371 director in connection with the proceeding.

3372 §10A-3A-8.53. Advance for expenses.

3373 (a) A nonprofit corporation may, before final
3374 disposition of a proceeding, advance funds to pay for or
3375 reimburse expenses incurred in connection with the proceeding
3376 by an individual who is a party to the proceeding because that
3377 individual is a director if the director delivers to the
3378 nonprofit corporation a signed written undertaking of the
3379 director to repay any funds advanced if (i) the director is
3380 not entitled to mandatory indemnification under Section
3381 10A-3A-8.52 and (ii) it is ultimately determined under Section
3382 10A-3A-8.54 or Section 10A-3A-8.55 that the director is not
3383 entitled to indemnification.

3384 (b) The undertaking required by subsection (a) must be
3385 an unlimited general obligation of the director but need not
3386 be secured and may be accepted without reference to the
3387 financial ability of the director to make repayment.

3388 (c) Authorizations under this section shall be made:



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3389 (1) by the board of directors:

3390 (i) if there are two or more qualified directors, by a
3391 majority vote of all the qualified directors (a majority of
3392 whom shall for that purpose constitute a quorum) or by a
3393 majority of the members of a committee consisting solely of
3394 two or more qualified directors appointed by a majority vote
3395 of qualified directors; or

3396 (ii) if there are fewer than two qualified directors,
3397 by the vote necessary for action by the board of directors in
3398 accordance with Section 10A-3A-8.24(c), in which authorization
3399 directors who are not qualified directors may participate; or

3400 (2) by the members, but membership interests owned by
3401 or voted under the control of a director who at the time is
3402 not a qualified director may not be voted on the
3403 authorization.

3404 §10A-3A-8.54. Court-ordered indemnification and advance
3405 for expenses.

3406 (a) A director who is a party to a proceeding because
3407 he or she is a director may apply for indemnification or an
3408 advance for expenses to the court conducting the proceeding or
3409 to another court of competent jurisdiction. After receipt of
3410 an application and after giving any notice it considers
3411 necessary, the court shall:

3412 (1) order indemnification if the court determines that
3413 the director is entitled to indemnification pursuant to a
3414 provision authorized by Section 10A-3A-8.52;

3415 (2) order indemnification or advance for expenses if
3416 the court determines that the director is entitled to



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3417 indemnification or advance for expenses pursuant to a
3418 provision authorized by Section 10A-3A-8.58(a); or

3419 (3) order indemnification or advance for expenses if
3420 the court determines, in view of all the relevant
3421 circumstances, that it is fair and reasonable: (i) to
3422 indemnify the director, or (ii) to advance expenses to the
3423 director, even if, in the case of (i) or (ii), the director
3424 has not met the relevant standard of conduct set forth in
3425 Section 10A-3A-8.51(a), failed to comply with Section
3426 10A-3A-8.53, or was adjudged liable in a proceeding referred
3427 to in Section 10A-3A-8.51(d) (1) or Section 10A-3A-8.51(d) (2),
3428 but if the director was adjudged so liable indemnification
3429 shall be limited to expenses incurred in connection with the
3430 proceeding.

3431 (b) If the court determines that the director is
3432 entitled to indemnification under subsection (a) (1) or to
3433 indemnification or advance for expenses under subsection
3434 (a) (2), it shall also order the nonprofit corporation to pay
3435 the director's expenses incurred in connection with obtaining
3436 court-ordered indemnification or advance for expenses. If the
3437 court determines that the director is entitled to
3438 indemnification or advance for expenses under subsection
3439 (a) (3), it may also order the nonprofit corporation to pay the
3440 director's expenses to obtain court-ordered indemnification or
3441 advance for expenses.

3442 §10A-3A-8.55. Determination and authorization of
3443 indemnification.

3444 (a) A nonprofit corporation may not indemnify a



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3445 director under Section 10A-3A-8.51 unless authorized for a
3446 specific proceeding after a determination has been made that
3447 indemnification is permissible because the director has met
3448 the relevant standard of conduct set forth in Section
3449 10A-3A-8.51.

3450 (b) The determination shall be made:

3451 (1) if there are two or more qualified directors, by
3452 the board of directors by a majority vote of all the qualified
3453 directors (a majority of whom shall for that purpose
3454 constitute a quorum), or by a majority of the members of a
3455 committee of two or more qualified directors appointed by a
3456 majority vote of qualified directors;

3457 (2) by special legal counsel:

3458 (i) selected in the manner prescribed in subsection
3459 (b) (1); or

3460 (ii) if there are fewer than two qualified directors,
3461 selected by the board of directors (in which selection
3462 directors who are not qualified directors may participate); or

3463 (3) by the members, but membership interests owned by
3464 or voted under the control of a director who at the time is
3465 not a qualified director may not be voted on the
3466 determination.

3467 (c) Authorization of indemnification shall be made in
3468 the same manner as the determination that indemnification is
3469 permissible except that if there are fewer than two qualified
3470 directors, or if the determination is made by special legal
3471 counsel, authorization of indemnification shall be made by
3472 those entitled to select special legal counsel under



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3473 subsection (b) (2) (ii).

3474 §10A-3A-8.56. Indemnification of officers.

3475 (a) A nonprofit corporation may indemnify and advance
3476 expenses under this Division E of this Article 8 to an officer
3477 who is a party to a proceeding because he or she is an
3478 officer:

3479 (1) to the same extent as a director; and

3480 (2) if he or she is an officer but not a director, to
3481 such further extent as may be provided by the certificate of
3482 incorporation or the bylaws, or by a resolution adopted or a
3483 contract approved by the board of directors or members except
3484 for

3485 (i) liability in connection with a proceeding by the
3486 nonprofit corporation other than for expenses incurred in
3487 connection with the proceeding, or

3488 (ii) liability arising out of conduct that constitutes

3489 (A) receipt by the officer of a financial benefit to
3490 which the officer is not entitled,

3491 (B) an intentional infliction of harm on the nonprofit
3492 corporation or the members, or

3493 (C) an intentional violation of criminal law.

3494 (b) Subsection (a) (2) shall apply to an officer who is
3495 also a director if the person is made a party to the
3496 proceeding based on an act or omission solely as an officer.

3497 (c) An officer who is not a director is entitled to
3498 indemnification under Section 10A-3A-8.52 if the certificate
3499 of incorporation or bylaws of the nonprofit corporation allows
3500 for such indemnification, and may apply to a court under



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3501 Section 10A-3A-8.54 for indemnification or an advance for
3502 expenses, in each case to the same extent to which a director
3503 may be entitled to indemnification or advance for expenses
3504 under those sections, unless otherwise provided in the
3505 certificate of incorporation or bylaws.

3506 §10A-3A-8.57. Insurance.

3507 A nonprofit corporation may purchase and maintain
3508 insurance on behalf of an individual who is a director or
3509 officer of the nonprofit corporation, or who, while a director
3510 or officer of the nonprofit corporation, serves at the
3511 nonprofit corporation's request as a director, officer,
3512 partner, trustee, employee, or agent of another corporation or
3513 foreign corporation or a joint venture, trust, employee
3514 benefit plan, or other entity, against liability asserted
3515 against or incurred by the individual in that capacity or
3516 arising from the individual's status as a director or officer,
3517 regardless of whether the nonprofit corporation would have
3518 power to indemnify or advance expenses to the individual
3519 against the same liability under this Division E of this
3520 Article 8.

3521 §10A-3A-8.58. Variation by corporate action;
3522 application of division.

3523 (a) A nonprofit corporation may, by a provision in its
3524 certificate of incorporation, bylaws, or in a resolution
3525 adopted or a contract approved by the board of directors or
3526 members, obligate itself in advance of the act or omission
3527 giving rise to a proceeding to provide indemnification in
3528 accordance with Section 10A-3A-8.51 or advance funds to pay



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3529 for or reimburse expenses in accordance with Section
3530 10A-3A-8.53. Any obligatory provision shall be deemed to
3531 satisfy the requirements for authorization referred to in
3532 Section 10A-3A-8.53(c) and in Section 10A-3A-8.55(c). Any
3533 provision that obligates the nonprofit corporation to provide
3534 indemnification to the fullest extent permitted by law shall
3535 be deemed to obligate the nonprofit corporation to advance
3536 funds to pay for or reimburse expenses in accordance with
3537 Section 10A-3A-8.53 to the fullest extent permitted by law,
3538 unless the provision expressly provides otherwise.

3539 (b) A right of indemnification or to advances for
3540 expenses created by this Division E of this Article 8 or under
3541 subsection (a) and in effect at the time of an act or omission
3542 shall not be eliminated or impaired with respect to the act or
3543 omission by an amendment of the certificate of incorporation,
3544 bylaws, or a resolution of the board of directors or members,
3545 adopted after the occurrence of the act or omission, unless,
3546 in the case of a right created under subsection (a), the
3547 provision creating the right and in effect at the time of the
3548 act or omission explicitly authorizes elimination or
3549 impairment after the act or omission has occurred.

3550 (c) Any provision pursuant to subsection (a) shall not
3551 obligate the nonprofit corporation to indemnify or advance
3552 expenses to a director of a predecessor of the nonprofit
3553 corporation, pertaining to conduct with respect to the
3554 predecessor, unless otherwise expressly provided. Any
3555 provision for indemnification or advance for expenses in the
3556 certificate of incorporation, bylaws, or a resolution of the



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3557 board of directors or other similar governing authority of a
3558 predecessor of the nonprofit corporation in a merger or in a
3559 contract to which the predecessor is a party, existing at the
3560 time the merger takes effect, shall be governed by Section
3561 10A-3A-12.06(a)(4).

3562 (d) Subject to subsection (b), a nonprofit corporation
3563 may, by a provision in its certificate of incorporation, limit
3564 any of the rights to indemnification or advance for expenses
3565 created by or pursuant to this Division E of this Article 8.

3566 (e) This Division E of this Article 8 does not limit a
3567 nonprofit corporation's power to pay or reimburse expenses
3568 incurred by a director or an officer in connection with
3569 appearing as a witness in a proceeding at a time when the
3570 director or officer is not a party.

3571 (f) This Division E of this Article 8 does not limit a
3572 nonprofit corporation's power to indemnify, advance expenses
3573 to or provide or maintain insurance on behalf of an employee,
3574 agent, or volunteer.

3575 §10A-3A-8.59. Exclusivity of division.

3576 A nonprofit corporation may provide indemnification or
3577 advance expenses to a director or an officer only as permitted
3578 by this Division E of this Article 8.

3579 DIVISION F. CONFLICTING INTEREST TRANSACTIONS.

3580 §10A-3A-8.60. Interested directors; quorum.

3581 (a) No contract or transaction between a nonprofit
3582 corporation and one or more of its directors or officers, or
3583 between a nonprofit corporation and any other corporation,
3584 partnership, association, or other entity in which one or more



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3585 of its directors or officers, are directors or officers, or
3586 have a financial interest, shall be void or voidable solely
3587 for this reason, or solely because the director or officer is
3588 present at or participates in the meeting of the board of
3589 directors or committee which authorizes the contract or
3590 transaction, or solely because the director's or officer's
3591 votes are counted for that purpose, if:

3592 (1) The material facts as to the director's or
3593 officer's relationship or interest and as to the contract or
3594 transaction are disclosed or are known to the board of
3595 directors or the committee of a nonmembership nonprofit
3596 corporation, and the board or committee in good faith
3597 authorizes the contract or transaction by the affirmative
3598 votes of a majority of the qualified directors, even though
3599 the qualified directors be less than a quorum; or

3600 (2) The material facts as to the director's or
3601 officer's relationship or interest and as to the contract or
3602 transaction are disclosed or are known to (i) the members in a
3603 membership nonprofit corporation entitled to vote thereon or
3604 (ii) the qualified directors of the board of directors in a
3605 membership nonprofit corporation, and the contract or
3606 transaction is specifically approved in good faith by vote of
3607 the members in a membership nonprofit corporation or the
3608 qualified directors of the board of directors in a membership
3609 nonprofit corporation; or

3610 (3) The contract or transaction is fair as to the
3611 nonprofit corporation as of the time it is authorized,
3612 approved or ratified, by the board of directors, a committee,



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3613 or the members.

3614 (b) Common or interested directors may be counted in
3615 determining the presence of a quorum at a meeting of the board
3616 of directors or of a committee which authorizes the contract
3617 or transaction.

3618 ARTICLE 9. AMENDMENT OF CERTIFICATE OF INCORPORATION
3619 AND BYLAWS.

3620 DIVISION A. AMENDMENT OF CERTIFICATE OF INCORPORATION.

3621 §10A-3A-9.00. Applicability of Division B of Article 3
3622 of Chapter 1.

3623 Division B of Article 3 of Chapter 1 shall not apply to
3624 this chapter.

3625 §10A-3A-9.01. Authority to amend.

3626 (a) A nonprofit corporation may amend its certificate
3627 of incorporation at any time to add or change a provision that
3628 is required or permitted in the certificate of incorporation
3629 as of the effective date of the amendment or to delete a
3630 provision that is not required to be contained in the
3631 certificate of incorporation. Whether a provision is required
3632 or permitted in the certificate of incorporation is determined
3633 as of the effective date of the amendment.

3634 (b) Neither (i) a member of a membership nonprofit
3635 corporation nor (ii) a person having rights under the
3636 certificate of incorporation, has a vested property right
3637 resulting from any provision in the certificate of
3638 incorporation, including provisions relating to management,
3639 control, purpose, or duration of the nonprofit corporation.

3640 §10A-3A-9.02. Amendment of certificate of incorporation



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3641 of membership nonprofit corporation before admission of
3642 members.

3643 Subject to Section 10A-3A-9.30, if a membership
3644 nonprofit corporation has not yet admitted any members, the
3645 board of directors, or its incorporators if it has no board of
3646 directors, may adopt one or more amendments to the membership
3647 nonprofit corporation's certificate of incorporation.

3648 §10A-3A-9.03. Amendment of certificate of incorporation
3649 of membership nonprofit corporation after members have been
3650 admitted.

3651 If a membership nonprofit corporation has admitted any
3652 members, an amendment to the certificate of incorporation
3653 shall be adopted in the following manner:

3654 (a) The proposed amendment shall first be adopted by
3655 the board of directors.

3656 (b) Except as provided in subsection (g) and Sections
3657 10A-3A-9.07 and 10A-3A-9.08, the amendment shall then be
3658 approved by the members entitled to vote on the amendment. In
3659 submitting the proposed amendment to the members for approval,
3660 the board of directors shall recommend that the members
3661 approve the amendment, unless the board of directors makes a
3662 determination that because of conflicts of interest or other
3663 special circumstances it should not make such a
3664 recommendation, in which case the board of directors must
3665 inform the members of the basis for that determination.

3666 (c) The board of directors may set conditions for the
3667 approval of the amendment by the members or the effectiveness
3668 of the amendment.



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3669 (d) If the amendment is required to be approved by the
3670 members, and the approval is to be given at a meeting, the
3671 membership nonprofit corporation shall notify each member
3672 entitled to vote on the amendment of the meeting of members at
3673 which the amendment is to be submitted for approval. The
3674 notice must state that the purpose, or one of the purposes, of
3675 the meeting is to consider the amendment. The notice must
3676 contain or be accompanied by a copy of the amendment.

3677 (e) Unless the certificate of incorporation, or the
3678 board of directors acting pursuant to subsection (c), requires
3679 a greater vote or a greater quorum, approval of the amendment
3680 requires the approval of the members at a meeting at which a
3681 quorum consisting of a majority of the votes entitled to be
3682 cast on the amendment exists, and, if any class of members is
3683 entitled to vote as a separate group on the amendment, except
3684 as provided in Section 10A-3A-9.04(d), the approval of each
3685 separate voting group at a meeting at which a quorum of the
3686 voting group exists consisting of a majority of the votes
3687 entitled to be cast on the amendment by that voting group.

3688 (f) In addition to the adoption and approval of an
3689 amendment by the board of directors and members as required by
3690 this section, an amendment must also be approved by a person
3691 or group of persons, if any, whose approval is required by the
3692 certificate of incorporation in accordance with Section
3693 10A-3A-9.30.

3694 (g) Unless the certificate of incorporation provides
3695 otherwise, the board of directors of a membership nonprofit
3696 corporation may adopt amendments to the membership nonprofit



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3697 corporation's certificate of incorporation without approval of
3698 the members to:

3699 (1) extend the duration of the membership nonprofit
3700 corporation if it was incorporated at a time when limited
3701 duration was required by law;

3702 (2) delete the names and addresses of the incorporators
3703 or initial directors;

3704 (3) delete the name and address of the initial
3705 registered agent or registered office, if a statement of
3706 change is on file with the Secretary of State;

3707 (4) delete a class of members from the certificate of
3708 incorporation when there are no members in that class; or

3709 (5) change the membership nonprofit corporation name,
3710 provided that the name complies with Article 5 of Chapter 1.

3711 §10A-3A-9.04. Voting on amendments by voting groups.

3712 Except as provided in the certificate of incorporation
3713 or bylaws:

3714 (a) If a membership nonprofit corporation has more than
3715 one class of members, the members of each class are entitled
3716 to vote as a separate voting group (if member voting is
3717 otherwise required by this chapter) on a proposed amendment to
3718 the certificate of incorporation if the amendment would:

3719 (1) effect an exchange or reclassification of all or
3720 part of the memberships of the class into memberships of
3721 another class;

3722 (2) effect an exchange or reclassification, or create
3723 the right of exchange, of all or part of the memberships of
3724 another class into memberships of the class;



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3725 (3) change the rights, preferences, or limitations of
3726 all or part of the memberships of the class;

3727 (4) change the rights, preferences, or limitations of
3728 all or part of the memberships of the class by changing the
3729 rights, preferences, or limitations of another class;

3730 (5) create a new class of memberships having rights or
3731 preferences that are prior or superior to the other
3732 memberships;

3733 (6) increase or decrease the number of memberships
3734 authorized for the class;

3735 (7) increase or decrease the number of memberships
3736 authorized for another class; or

3737 (8) authorize a new class of memberships.

3738 (b) If a class of members will be divided into two or
3739 more classes by an amendment to the certificate of
3740 incorporation, the amendment must be approved by a majority of
3741 the members of each class that will be created.

3742 (c) If a proposed amendment would affect less than all
3743 of the members of a class in one or more of the ways described
3744 in subsection (a), the members so affected are entitled to
3745 vote as a separate voting group on the proposed amendment.

3746 (d) If a proposed amendment that entitles the holders
3747 of two or more classes of memberships to vote as separate
3748 voting groups under this section would affect those two or
3749 more classes in the same or a substantially similar way, the
3750 holders of the memberships of all the classes so affected
3751 shall vote together as a single voting group on the proposed
3752 amendment, unless added as a condition by the board of



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3753 directors pursuant to Section 10A-3A-9.03(c).

3754 §10A-3A-9.05. Amendment of certificate of incorporation
3755 of nonmembership nonprofit corporation.

3756 Except as otherwise provided in the certificate of
3757 incorporation:

3758 (1) the board of directors of a nonmembership nonprofit
3759 corporation may adopt amendments to the nonmembership
3760 nonprofit corporation's certificate of incorporation; and

3761 (2) an amendment adopted by the board of directors
3762 under this section must also be approved by that person or
3763 group of persons, if any, whose approval is required by the
3764 certificate of incorporation in accordance with Section
3765 10A-3A-9.30.

3766 §10A-3A-9.06. Certificate of amendment.

3767 (a) After an amendment to the certificate of
3768 incorporation has been adopted and approved in the manner
3769 required by this chapter, the certificate of incorporation,
3770 and bylaws, the nonprofit corporation must deliver to the
3771 Secretary of State, for filing, a certificate of amendment,
3772 which must set forth:

3773 (1) the name of the nonprofit corporation;

3774 (2) the text of each amendment adopted or the
3775 information required by Section 10A-3A-1.04(c)(5);

3776 (3) if an amendment provides for an exchange,
3777 reclassification, or cancellation of memberships, provisions
3778 for implementing the amendment if not contained in the
3779 amendment itself (which may be made dependent upon facts
3780 objectively ascertainable outside the articles of amendment in



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3781 accordance with Section 10A-3A-1.04(c)(5));

3782 (4) the date of each amendment's adoption;

3783 (5) a statement that the amendment was adopted:

3784 (i) in accordance with Sections 10A-3A-9.02, if the
3785 nonprofit corporation is a membership nonprofit corporation
3786 which has not yet admitted one or more members;

3787 (ii) in accordance with Sections 10A-3A-9.03 and
3788 10A-3A-9.04, if the nonprofit corporation is a membership
3789 nonprofit corporation which has admitted one of more members;

3790 (iii) in accordance with Section 10A-3A-9.05, if the
3791 nonprofit corporation is a nonmembership nonprofit
3792 corporation; or

3793 (iv) in accordance with Section 10A-3A-1.04(c)(5);

3794 (6) a statement that the amendment was adopted in
3795 accordance with Section 10A-9A-9.30, if applicable; and

3796 (7) the unique identifying number or other designation
3797 as assigned by the Secretary of State.

3798 (b) A certificate of amendment shall take effect at the
3799 effective date and time determined in accordance with Article
3800 4 of Chapter 1.

3801 §10A-3A-9.07. Restated certificate of incorporation.

3802 (a) A membership nonprofit corporation's board of
3803 directors may restate its certificate of incorporation at any
3804 time, without member approval, to consolidate all amendments
3805 into a single document. A nonmembership nonprofit
3806 corporation's board of directors may restate its certificate
3807 of incorporation at any time to consolidate all amendments
3808 into a single document.



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3809 (b) If the restated certificate of incorporation
3810 includes one or more new amendments, the amendments must be
3811 adopted and approved as provided in (i) Sections 10A-3A-9.03
3812 and 10A-3A-9.04 or (ii) Section 10A-3A-9.05.

3813 (c) A nonprofit corporation that restates its
3814 certificate of incorporation shall deliver to the Secretary of
3815 State for filing a certificate of restatement setting forth:

3816 (1) the name of the nonprofit corporation;

3817 (2) the text of the restated certificate of
3818 incorporation;

3819 (3) a statement that the restated certificate of
3820 incorporation consolidates all amendments into a single
3821 document;

3822 (4) if a new amendment is included in the restated
3823 certificate of incorporation, the statements required under
3824 Section 10A-3A-9.06 with respect to the new amendment; and

3825 (5) the unique identifying number or other designation
3826 as assigned by the Secretary of State.

3827 (d) The duly adopted restated certificate of
3828 incorporation supersedes the original certificate of
3829 incorporation and all amendments to the certificate of
3830 incorporation.

3831 §10A-3A-9.08. Amendment pursuant to reorganization.

3832 (a) A nonprofit corporation's certificate of
3833 incorporation may be amended without action by the board of
3834 directors, the members, if any, or a person or group of
3835 persons, if any, whose approval is required by the certificate
3836 of incorporation in accordance with Section 10A-3A-9.30, to



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3837 carry out a plan of reorganization ordered or decreed by a
3838 court of competent jurisdiction under the authority of a law
3839 of the United States if the certificate of incorporation after
3840 the amendment only contains provisions required or permitted
3841 by Section 10A-3A-2.02.

3842 (b) The individual or individuals designated by the
3843 court shall deliver to the Secretary of State for filing a
3844 certificate of amendment setting forth:

3845 (1) the name of the nonprofit corporation;

3846 (2) the text of each amendment approved by the court;

3847 (3) the date of the court's order or decree approving
3848 the certificate of amendment;

3849 (4) the title of the reorganization proceeding in which
3850 the order or decree was entered;

3851 (5) a statement that the court had jurisdiction of the
3852 proceeding under federal statute; and

3853 (6) the unique identifying number or other designation
3854 as assigned by the Secretary of State.

3855 (c) This section does not apply after entry of a final
3856 decree in the reorganization proceeding even though the court
3857 retains jurisdiction of the proceeding for limited purposes
3858 unrelated to consummation of the reorganization plan.

3859 §10A-3A-9.09. Effect of amendment to certificate of
3860 incorporation.

3861 (a) An amendment to the certificate of incorporation
3862 does not affect:

3863 (1) a cause of action existing against or in favor of
3864 the nonprofit corporation;



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3865 (2) a proceeding to which the nonprofit corporation is
3866 a party; or

3867 (3) the existing rights of persons other than (i)
3868 members of the nonprofit corporation, if any, or (ii) a person
3869 or group of persons, if any, specified in the certificate of
3870 incorporation as having approval rights under Section
3871 10A-3A-9.30.

3872 (b) An amendment changing a nonprofit corporation's
3873 name does not affect a proceeding brought by or against the
3874 nonprofit corporation in its former name.

3875 §10A-3A-9.10. Effect of restatement of certificate of
3876 incorporation.

3877 (a) A restated certificate of incorporation takes
3878 effect when the filing of the restated certificate of
3879 incorporation takes effect as provided by Article 4 of Chapter
3880 1.

3881 (b) On the date and time the restated certificate of
3882 incorporation takes effect, the original certificate of
3883 incorporation and each prior amendment or restatement of the
3884 certificate of incorporation is superseded and the restated
3885 certificate of incorporation is the effective certificate of
3886 incorporation.

3887 (c) Section 10A-3A-9.09 applies to an amendment
3888 effected by a restated certificate of incorporation.

3889 DIVISION B. AMENDMENT OF BYLAWS.

3890 §10A-3A-9.20. Authority to amend.

3891 (a) The members of a membership nonprofit corporation
3892 may amend or repeal the membership nonprofit corporation's



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3893 bylaws except as provided in the certificate of incorporation
3894 or bylaws.

3895 (b) The board of directors of a membership nonprofit
3896 corporation or nonmembership nonprofit corporation may amend
3897 or repeal the nonprofit corporation's bylaws, except as
3898 provided in the certificate of incorporation, bylaws, Section
3899 10A-3A-9.21, or Section 10A-3A-9.22.

3900 (c) Neither (i) a member of a membership nonprofit
3901 corporation nor (ii) a person or group of persons having
3902 rights under the certificate of incorporation, has a vested
3903 property right resulting from any provision in the bylaws,
3904 including provisions relating to management, control, or
3905 purpose of the nonprofit corporation.

3906 §10A-3A-9.21. Bylaw increasing quorum or voting
3907 requirement for directors or requiring a meeting place in a
3908 membership nonprofit corporation.

3909 In a membership nonprofit corporation:

3910 (a) A bylaw that increases a quorum or voting
3911 requirement for the board of directors or that requires a
3912 meeting of the members to be held at a place may be amended or
3913 repealed:

3914 (1) if originally adopted by the members, only by the
3915 members, unless the bylaw otherwise provides;

3916 (2) if adopted by the board of directors, either by the
3917 members or the board of directors.

3918 (b) A bylaw adopted or amended by the members that
3919 increases a quorum or voting requirement for the board of
3920 directors may provide that it can be amended or repealed only



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3921 by a specified vote of either the members or the board of
3922 directors.

3923 (c) Action by the board of directors under subsection
3924 (a) to amend or repeal a bylaw that changes a quorum or voting
3925 requirement for the board of directors shall meet the same
3926 quorum requirement and be adopted by the same vote required to
3927 take action under the quorum.

3928 §10A-3A-9.22. Bylaw amendments requiring member
3929 approval.

3930 In a membership nonprofit corporation, except as
3931 provided in the certificate of incorporation or bylaws:

3932 (a) The board of directors of a membership nonprofit
3933 corporation that has one or more members at the time may not
3934 adopt or amend a bylaw under:

3935 (1) Section 10A-3A-6.10 providing that some of the
3936 members shall have different rights or obligations than other
3937 members with respect to voting, dissolution, transfer of
3938 memberships, or other matters;

3939 (2) Section 10A-3A-6.13 levying dues, assessments, or
3940 fees on some or all of the members;

3941 (3) Section 10A-3A-6.21 relating to the termination or
3942 suspension of members;

3943 (4) Section 10A-3A-8.08(a):

3944 (i) requiring cause to remove a director; or

3945 (ii) specifying what constitutes cause to remove a
3946 director; or

3947 (5) Section 10A-3A-8.08(e) relating to the removal of a
3948 director who is designated in a manner other than election or



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3949 appointment.

3950 (b) The board of directors of a membership nonprofit
3951 corporation may not amend the certificate of incorporation or
3952 bylaws to vary the application of subsection (a) to the
3953 membership nonprofit corporation.

3954 (c) If a membership nonprofit corporation has more than
3955 one class of members, the members of a class are entitled to
3956 vote as a separate voting group on an amendment to the bylaws
3957 that:

3958 (1) is described in subsection (a) if the amendment
3959 would affect the members of that class differently than the
3960 members of another class; or

3961 (2) has any of the effects described in Section
3962 10A-3A-9.04.

3963 (d) If a class of members will be divided into two or
3964 more classes by an amendment to the bylaws, the amendment must
3965 be approved by a majority of the members of each class that
3966 will be created.

3967 DIVISION C. SPECIAL RIGHTS.

3968 §10A-3A-9.30. Approval by specified person or group of
3969 persons.

3970 (a) The certificate of incorporation of a membership
3971 nonprofit corporation may require that an amendment to the
3972 certificate of incorporation, including amendments under
3973 Section 10A-3A-9.03(g), be approved in writing by a specified
3974 person or group of persons in addition to the board of
3975 directors and members. The certificate of incorporation of a
3976 nonmembership nonprofit corporation may require that an



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3977 amendment to the certificate of incorporation be approved in
3978 writing by a specified person or group of persons in addition
3979 to the board of directors.

3980 (b) The certificate of incorporation or bylaws of a
3981 membership nonprofit corporation may require that an amendment
3982 to the bylaws be approved in writing by a specified person or
3983 group of persons in addition to the board of directors and
3984 members. The certificate of incorporation or bylaws of a
3985 nonmembership nonprofit corporation may require that an
3986 amendment to the bylaws be approved in writing by a specified
3987 person or group of persons in addition to the board of
3988 directors.

3989 (c) A requirement in the certificate of incorporation
3990 or bylaws described in Section 10A-3A-9.30(a) or (b) may only
3991 be amended with the approval in writing of the specified
3992 person or group of persons.

3993 ARTICLE 10. DISPOSITION OF ASSETS.

3994 §10A-3A-10.01. Disposition of assets not requiring
3995 member approval in membership nonprofit corporation.

3996 In a membership nonprofit corporation, no approval of
3997 the members is required, unless the certificate of
3998 incorporation otherwise provides:

3999 (a) to sell, lease, exchange, or otherwise dispose of
4000 any or all of the membership nonprofit corporation's assets in
4001 the usual and regular course of the membership nonprofit
4002 corporation's activities;

4003 (b) to mortgage, pledge, dedicate to the repayment of
4004 indebtedness (whether with or without recourse), or otherwise



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4005 encumber any or all of the membership nonprofit corporation's
4006 assets, regardless of whether in the usual and regular course
4007 of its activities; or

4008 (c) to transfer any or all of the membership nonprofit
4009 corporation's assets to one or more corporations or other
4010 entities all of the memberships or interests of which are
4011 owned by the membership nonprofit corporation.

4012 §10A-3A-10.02. Member approval of certain dispositions
4013 in membership nonprofit corporation.

4014 (a) A sale, lease, exchange, or other disposition of
4015 assets, other than a disposition described in Section
4016 10A-3A-10.01, requires approval of the membership nonprofit
4017 corporation's members if the disposition would leave the
4018 membership nonprofit corporation without a significant
4019 continuing activity. A membership nonprofit corporation will
4020 conclusively be deemed to have retained a significant
4021 continuing activity if it retains an activity that
4022 represented, for the membership nonprofit corporation and its
4023 subsidiaries on a consolidated basis, at least (i) 25 percent
4024 of total assets at the end of the most recently completed
4025 fiscal year, and (ii) either 25 percent of either income from
4026 continuing operations before taxes or 25 percent of revenues
4027 from continuing operations, in each case for the most recently
4028 completed fiscal year.

4029 (b) To obtain the approval of the members under
4030 subsection (a) the board of directors shall first adopt a
4031 resolution authorizing the disposition. The disposition shall
4032 then be approved by the members. In submitting the disposition



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4033 to the members for approval, the board of directors shall
4034 recommend that the members approve the disposition, unless the
4035 board of directors makes a determination that because of
4036 conflicts of interest or other special circumstances it should
4037 not make a recommendation, in which case the board of
4038 directors must inform the members of the basis for that
4039 determination.

4040 (c) The board of directors may set conditions for the
4041 approval by the members of a disposition or the effectiveness
4042 of the disposition.

4043 (d) If a disposition is required to be approved by the
4044 members under subsection (a), and if the approval is to be
4045 given at a meeting, the membership nonprofit corporation shall
4046 notify each member entitled to vote on the matter of the
4047 meeting of members at which the disposition is to be submitted
4048 for approval. The notice must state that the purpose, or one
4049 of the purposes, of the meeting is to consider the disposition
4050 and must contain a description of the disposition, including
4051 the terms and conditions of the disposition and the
4052 consideration to be received by the membership nonprofit
4053 corporation.

4054 (e) Unless the certificate of incorporation, bylaws, or
4055 the board of directors acting pursuant to subsection (c)
4056 requires a greater vote or a greater quorum, the approval of a
4057 disposition by the members shall require the approval of the
4058 members at a meeting at which a quorum exists consisting of a
4059 majority of the votes entitled to be cast on the disposition.

4060 (f) After a disposition has been approved by the



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4061 members under this Article 10, and at any time before the
4062 disposition has been consummated, it may be abandoned by the
4063 membership nonprofit corporation without action by the
4064 members, subject to any contractual rights of other parties to
4065 the disposition.

4066 (g) A disposition of assets in the course of
4067 dissolution under Article 11 is not governed by this section.

4068 (h) For purposes of this section only, the property and
4069 assets of the membership nonprofit corporation include the
4070 property and assets of any subsidiary of the membership
4071 nonprofit corporation. As used in this subsection,
4072 "subsidiary" means any entity wholly owned and controlled,
4073 directly or indirectly, by the membership nonprofit
4074 corporation and includes, without limitation, nonprofit
4075 corporations, business corporations, partnerships (including
4076 limited liability partnerships), limited partnerships
4077 (including limited liability limited partnerships), limited
4078 liability companies, and/or statutory trusts, whether domestic
4079 or foreign.

4080 (i) In addition to the approval of a disposition of
4081 assets by the board of directors and members as required by
4082 this section, the disposition must also be approved in writing
4083 by a person or group of persons whose approval is required
4084 under the certificate of incorporation in accordance with
4085 Section 10A-3A-10.04.

4086 §10A-3A-10.03. Disposition of assets in a nonmembership
4087 nonprofit corporation.

4088 Except as otherwise provided in the certificate of



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4089 incorporation:

4090 (1) a sale, lease, exchange, mortgage, pledge, or other
4091 disposition of all, or substantially all, the property and
4092 assets of the nonmembership nonprofit corporation may be
4093 approved by the board of directors; and

4094 (2) a sale, lease, exchange, mortgage, pledge, or other
4095 disposition of all, or substantially all, of the property and
4096 assets of the nonmembership nonprofit corporation approved by
4097 the board of directors under this section must also be
4098 approved by that person or group of persons whose approval is
4099 required by the certificate of incorporation in accordance
4100 with Section 10A-3A-10.04.

4101 §10A-3A-10.04. Approval by specified person or group of
4102 persons.

4103 (a) The certificate of incorporation of a membership
4104 nonprofit corporation may require that a disposition of assets
4105 under Section 10A-3A-10.02 be approved in writing by a
4106 specified person or group of persons in addition to the board
4107 of directors and members.

4108 (b) The certificate of incorporation of a nonmembership
4109 nonprofit corporation may require that a disposition of assets
4110 under Section 10A-3A-10.03 be approved in writing by a
4111 specified person or group of persons in addition to the board
4112 of directors.

4113 (c) A requirement in the certificate of incorporation
4114 described in subsection (a) or (b) of this section may only be
4115 approved by the written approval of the specified person or
4116 group of persons.



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4117 ARTICLE 11. DISSOLUTION.

4118 DIVISION A. VOLUNTARY DISSOLUTION.

4119 §10A-3A-11.01. Dissolution by incorporators or
4120 directors.

4121 A majority of the incorporators or initial directors of
4122 a nonprofit corporation that has not commenced activity may
4123 dissolve the nonprofit corporation by delivering to the
4124 Secretary of State for filing a certificate of dissolution
4125 that sets forth:

4126 (1) the name of the nonprofit corporation;

4127 (2) the date of its incorporation;

4128 (3) that the nonprofit corporation has not commenced
4129 activity;

4130 (4) that no debt of the nonprofit corporation remains
4131 unpaid;

4132 (5) that the net assets of the nonprofit corporation
4133 remaining after winding up have been distributed;

4134 (6) that a majority of the incorporators or directors
4135 authorized the dissolution; and

4136 (7) the unique identifying number or other designation
4137 as assigned by the Secretary of State.

4138 §10A-3A-11.02. Approval of dissolution of membership
4139 nonprofit corporations.

4140 (a) The board of directors of a membership nonprofit
4141 corporation may propose dissolution for submission to the
4142 members by first adopting a resolution authorizing the
4143 dissolution.

4144 (b) For a proposal to dissolve to be adopted, it shall



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4145 then be approved by the members entitled to vote thereon. In
4146 submitting the proposal to dissolve to the members for
4147 approval, the board of directors shall recommend that the
4148 members approve the dissolution, unless the board of directors
4149 determines that because of conflict of interest or other
4150 special circumstances it should make no recommendation in
4151 which case the board of directors must inform the members of
4152 the basis for that determination.

4153 (c) The board of directors may set conditions for the
4154 approval of the proposal for dissolution by the members or the
4155 effectiveness of the dissolution.

4156 (d) If the approval of the members is to be given at a
4157 meeting, the membership nonprofit corporation shall notify
4158 each member entitled to vote on the dissolution, of the
4159 meeting of members at which the dissolution is to be submitted
4160 for approval. The notice must state that the purpose, or one
4161 of the purposes, of the meeting is to consider dissolving the
4162 membership nonprofit corporation and how the assets of the
4163 membership nonprofit corporation will be distributed after all
4164 creditors have been paid, or how the distribution of assets
4165 will be determined.

4166 (e) Unless the certificate of incorporation, the
4167 bylaws, or the board of directors acting pursuant to
4168 subsection (c), requires a greater vote, a greater quorum, or
4169 a vote by voting groups, adoption of the proposal to dissolve
4170 shall require the approval of the members at a meeting at
4171 which a quorum exists consisting of a majority of the votes
4172 entitled to be cast on the proposal to dissolve.



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4173 (f) Dissolution of a membership nonprofit corporation
4174 may also be authorized without action of the directors if all
4175 the members entitled to vote thereon shall consent in writing
4176 and a certificate of dissolution shall be delivered to the
4177 Secretary of State for filing pursuant to Section
4178 10A-3A-11.05.

4179 (g) In addition to the approval of the dissolution of a
4180 membership nonprofit corporation as set forth in subsections
4181 (a) through (f), the dissolution must also be approved in
4182 writing by a person or group of persons whose approval is
4183 required under the certificate of incorporation in accordance
4184 with Section 10A-3A-11.04.

4185 §10A-3A-11.03. Approval of dissolution of nonmembership
4186 nonprofit corporations.

4187 Except as otherwise provided in the certificate of
4188 incorporation:

4189 (1) the dissolution of a nonmembership nonprofit
4190 corporation may be approved by the board of directors; and

4191 (2) the dissolution of the nonmembership nonprofit
4192 corporation approved by the board of directors under this
4193 section must also be approved by those persons whose approval
4194 is required by the certificate of incorporation in accordance
4195 with Section 10A-3A-11.04.

4196 §10A-3A-11.04. Approval by specified person or group of
4197 persons.

4198 (a) The certificate of incorporation of a membership
4199 nonprofit corporation may require that a dissolution of a
4200 membership nonprofit corporation under Section 10A-3A-11.02 be



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4201 approved in writing by a specified person or group of persons
4202 in addition to the board of directors and members.

4203 (b) The certificate of incorporation of a nonmembership
4204 nonprofit corporation may require that a dissolution of a
4205 nonmembership nonprofit corporation under Section 10A-3A-11.03
4206 be approved in writing by a specified person or group of
4207 persons in addition to the board of directors.

4208 (c) A requirement in the certificate of incorporation
4209 described in subsection (a) or (b) of this section may only be
4210 approved by the written approval of the specified person or
4211 group of persons.

4212 §10A-3A-11.05. Certificate of dissolution.

4213 (a) At any time after dissolution is authorized, the
4214 nonprofit corporation may dissolve by delivering to the
4215 Secretary of State for filing a certificate of dissolution
4216 setting forth:

4217 (1) the name of the nonprofit corporation;

4218 (2) the date that dissolution was authorized;

4219 (3) if dissolution of a membership nonprofit
4220 corporation was approved in accordance with Section
4221 10A-3A-11.02, a statement that the proposal to dissolve was
4222 duly approved in the manner required by this chapter and by
4223 the certificate of incorporation;

4224 (4) if dissolution of a nonmembership nonprofit
4225 corporation was approved in accordance with Section
4226 10A-3A-11.03, a statement that the proposal to dissolve was
4227 duly approved in the manner required by this chapter and by
4228 the certificate of incorporation;



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4229 (5) if dissolution of a nonprofit corporation was
4230 approved in accordance with Section 10A-3A-11.02 or Section
4231 10A-3A-11.03, and the certificate of incorporation required
4232 the dissolution to also be approved by a specified person or
4233 group of persons in accordance with Section 10A-3A-11.04, a
4234 statement that the proposal to dissolve was duly approved by
4235 the manner required by this chapter and by the certificate of
4236 incorporation; and

4237 (6) the unique identifying number or other designation
4238 as assigned by the Secretary of State.

4239 (b) The certificate of dissolution shall take effect at
4240 the effective date determined in accordance with Article 4 of
4241 Chapter 1. A nonprofit corporation is dissolved upon the
4242 effective date of its certificate of dissolution.

4243 (c) For purposes of this Division A of this Article 11,
4244 "dissolved nonprofit corporation" means a nonprofit
4245 corporation whose certificate of dissolution has become
4246 effective and includes a successor entity to which the
4247 remaining assets of the nonprofit corporation are transferred
4248 subject to its liabilities for purposes of liquidation.

4249 §10A-3A-11.06. Revocation of dissolution.

4250 (a) A nonprofit corporation may revoke its dissolution
4251 within 120 days after its effective date and be reinstated.

4252 (b) Revocation of dissolution and reinstatement shall
4253 be authorized in the same manner as the dissolution was
4254 authorized unless that authorization permitted revocation and
4255 reinstatement by action of the board of directors alone, in
4256 which event the board of directors may revoke the dissolution



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4257 and effect the reinstatement without member action and without
4258 the action of the specified person or group of persons set
4259 forth in the certificate of incorporation in accordance with
4260 Section 10A-3A-11.04.

4261 (c) After the revocation of dissolution and
4262 reinstatement is authorized, the nonprofit corporation may
4263 revoke the dissolution and effect the reinstatement by
4264 delivering to the Secretary of State for filing a certificate
4265 of revocation of dissolution and reinstatement, together with
4266 a copy of its certificate of dissolution, that sets forth:

4267 (1) the name of the nonprofit corporation;

4268 (2) the effective date of the dissolution that was
4269 revoked;

4270 (3) the date that the revocation of dissolution and
4271 reinstatement was authorized;

4272 (4) if the nonprofit corporation's board of directors
4273 (or incorporators) revoked the dissolution and effected the
4274 reinstatement, a statement to that effect;

4275 (5) if the nonprofit corporation's board of directors
4276 revoked a dissolution and effected the reinstatement as
4277 authorized by the members and any specified person or group of
4278 persons set forth in the certificate of incorporation in
4279 accordance with Section 10A-3A-11.04, a statement that
4280 revocation and reinstatement was permitted by action by the
4281 board of directors alone pursuant to that authorization;

4282 (6) if member action was required to revoke the
4283 dissolution and effect the reinstatement, a statement that the
4284 revocation and reinstatement was duly approved by the members



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4285 in the manner required by this chapter and by the certificate
4286 of incorporation;

4287 (7) if the action of a specified person or group of
4288 persons set forth in the certificate of incorporation in
4289 accordance with Section 10A-3A-11.04 was required to revoke
4290 the dissolution and effect the reinstatement, a statement that
4291 the revocation and reinstatement was duly approved by that
4292 specified person or group of persons in the manner required by
4293 this chapter and by the certificate of incorporation; and

4294 (8) the unique identifying number or other designation
4295 as assigned by the Secretary of State.

4296 (d) The certificate of revocation of dissolution and
4297 reinstatement shall take effect at the effective date
4298 determined in accordance with Article 4 of Chapter 1.
4299 Revocation of dissolution and reinstatement is effective upon
4300 the effective date of the certificate of revocation of
4301 dissolution and reinstatement.

4302 (e) (1) Subject to subsection (e) (2), upon revocation
4303 and reinstatement, the nonprofit corporation shall be deemed
4304 for all purposes to have continued its activities and affairs
4305 as if dissolution had never occurred; and each right inuring
4306 to, and each debt, obligation, and liability incurred by, the
4307 nonprofit corporation after the dissolution shall be
4308 determined as if the dissolution had never occurred.

4309 (2) The rights of persons acting in reliance on the
4310 dissolution before those persons had notice of the revocation
4311 and reinstatement shall not be adversely affected by the
4312 revocation and reinstatement.



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4313 (f) If the nonprofit corporation is listed in the
4314 Secretary of State's records as a nonprofit corporation that
4315 has been dissolved, then the name of the nonprofit corporation
4316 following revocation and reinstatement shall be that nonprofit
4317 corporation name at the time of revocation and reinstatement
4318 if that nonprofit corporation name complies with Article 5 of
4319 Chapter 1 at the time of revocation and reinstatement. If that
4320 nonprofit corporation name does not comply with Article 5 of
4321 Chapter 1, the name of the nonprofit corporation following
4322 revocation and reinstatement shall be that nonprofit
4323 corporation name followed by the word "reinstated."

4324 §10A-3A-11.07. Effect of dissolution.

4325 (a) A dissolved nonprofit corporation continues its
4326 existence as a nonprofit corporation but may not carry on any
4327 activity except as is appropriate to wind up and liquidate its
4328 activities and affairs, including:

4329 (1) collecting its assets;

4330 (2) disposing of its properties that will not be
4331 distributed in kind;

4332 (3) discharging or making provisions for discharging
4333 its liabilities;

4334 (4) distributing its remaining property among as
4335 required by law, its certificate of incorporation, bylaws, and
4336 as approved when the dissolution was authorized; and

4337 (5) doing every other act necessary to wind up and
4338 liquidate its activities and affairs.

4339 (b) In winding up its activities and affairs, a
4340 dissolved nonprofit corporation may:



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4341 (1) preserve the nonprofit corporation's activities and
4342 affairs and property as a going concern for a reasonable time;

4343 (2) prosecute, defend, or settle actions or proceedings
4344 whether civil, criminal, or administrative;

4345 (3) transfer the nonprofit corporation's assets;

4346 (4) resolve disputes by mediation or arbitration; and

4347 (5) merge or convert in accordance with Article 12 or
4348 13 of this chapter or Article 8 of Chapter 1.

4349 (c) Dissolution of a nonprofit corporation does not:

4350 (1) transfer title to the nonprofit corporation's
4351 property;

4352 (2) subject its directors or officers to standards of
4353 conduct different from those prescribed in Article 8;

4354 (3) change:

4355 (i) quorum or voting requirements for its board of
4356 directors or members;

4357 (ii) provisions for selection, resignation, or removal
4358 of its directors or officers or both; or

4359 (iii) provisions for amending its bylaws;

4360 (4) prevent commencement of a proceeding by or against
4361 the nonprofit corporation in its corporate name;

4362 (5) abate or suspend a proceeding pending by or against
4363 the nonprofit corporation on the effective date of
4364 dissolution; or

4365 (6) terminate the authority of the registered agent of
4366 the nonprofit corporation.

4367 (d) A distribution in liquidation under this section
4368 may only be made by a dissolved nonprofit corporation.



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4369 §10A-3A-11.08. Known claims against dissolved nonprofit
4370 corporation.

4371 (a) A dissolved nonprofit corporation may dispose of
4372 any known claims against it by following the procedures
4373 described in subsection (b) at any time after the effective
4374 date of the dissolution of the nonprofit corporation.

4375 (b) A dissolved nonprofit corporation may give written
4376 notice of the dissolution to the holder of any known claim.

4377 The notice must:

4378 (1) identify the dissolved nonprofit corporation;

4379 (2) describe the information required to be included in
4380 a claim;

4381 (3) provide a mailing address to which the claim is to
4382 be sent;

4383 (4) state the deadline, which may not be fewer than 120
4384 days from the effective date of the notice, by which the
4385 dissolved nonprofit corporation must receive the claim; and

4386 (5) state that if not sooner barred, the claim will be
4387 barred if not received by the deadline.

4388 (c) Unless sooner barred by any other statute limiting
4389 actions, a claim against a dissolved nonprofit corporation is
4390 barred:

4391 (1) if a claimant who was given notice under subsection
4392 (b) does not deliver the claim to the dissolved nonprofit
4393 corporation by the deadline; or

4394 (2) if a claimant whose claim was rejected by the
4395 dissolved nonprofit corporation does not commence a proceeding
4396 to enforce the claim within 90 days from the effective date of



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4397 the rejection notice.

4398 (d) For purposes of this section, "known claim" or
4399 "claim" includes unliquidated claims, but does not include a
4400 contingent liability that has not matured so that there is no
4401 immediate right to bring suit or a claim based on an event
4402 occurring after the effective date of dissolution.

4403 (e) Nothing in this section shall be deemed to extend
4404 any otherwise applicable statute of limitations.

4405 §10A-3A-11.09. Other claims against dissolved nonprofit
4406 corporation.

4407 (a) A dissolved nonprofit corporation may publish
4408 notice of its dissolution and request that persons with claims
4409 against the dissolved nonprofit corporation present them in
4410 accordance with the notice.

4411 (b) The notice authorized by subsection (a) must:

4412 (1) be published at least one time in a newspaper of
4413 general circulation in the county in which the dissolved
4414 nonprofit corporation's principal office is located or, if it
4415 has none in this state, in the county in which the nonprofit
4416 corporation's most recent registered office is located;

4417 (2) describe the information that must be included in a
4418 claim and provide a mailing address to which the claim is to
4419 be sent; and

4420 (3) state that if not sooner barred, a claim against
4421 the dissolved nonprofit corporation will be barred unless a
4422 proceeding to enforce the claim is commenced within two years
4423 after the publication of the notice.

4424 (c) If a dissolved nonprofit corporation publishes a



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4425 newspaper notice in accordance with subsection (b), unless
4426 sooner barred by any other statute limiting actions, the claim
4427 of each of the following claimants is barred unless the
4428 claimant commences a proceeding to enforce the claim against
4429 the dissolved nonprofit corporation within two years after the
4430 publication date of the newspaper notice:

4431 (1) a claimant who was not given notice under Section
4432 10A-3A-11.08;

4433 (2) a claimant whose claim was timely sent to the
4434 dissolved nonprofit corporation but not acted on by the
4435 dissolved nonprofit corporation; and

4436 (3) a claimant whose claim is contingent at the
4437 effective date of the dissolution of the nonprofit
4438 corporation, or is based on an event occurring after the
4439 effective date of the dissolution of the nonprofit
4440 corporation.

4441 (d) A claim that is not barred under this section, any
4442 other statute limiting actions, or Section 10A-3A-11.08 may be
4443 enforced:

4444 (1) against a dissolved nonprofit corporation, to the
4445 extent of its undistributed assets; and

4446 (2) except as provided in subsection (h), if the assets
4447 of a dissolved nonprofit corporation have been distributed
4448 after dissolution, against any person, other than a creditor
4449 of the dissolved nonprofit corporation, to whom the nonprofit
4450 corporation distributed its property to the extent of the
4451 distributee's pro rata share of the claim or the corporate
4452 assets distributed to the distributee in liquidation,



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4453 whichever is less, but a distributee's total liability for all
4454 claims under this section may not exceed the total amount of
4455 assets distributed to the distributee.

4456 (e) A dissolved nonprofit corporation that published a
4457 notice under this section may file an application with the
4458 circuit court for the county in which the dissolved nonprofit
4459 corporation's principal office is located in this state and if
4460 the dissolved nonprofit corporation does not have a principal
4461 office within this state, with the circuit court for the
4462 county in which the dissolved nonprofit corporation's most
4463 recent registered office is located, for a determination of
4464 the amount and form of security to be provided for payment of
4465 claims that are contingent or have not been made known to the
4466 dissolved nonprofit corporation or that are based on an event
4467 occurring after the effective date of the dissolution of the
4468 nonprofit corporation but that, based on the facts known to
4469 the dissolved nonprofit corporation, are reasonably estimated
4470 to arise after the effective date of the dissolution of the
4471 nonprofit corporation. Provision need not be made for any
4472 claim that is or is reasonably anticipated to be barred under
4473 subsection (c).

4474 (f) Within 10 days after the filing of the application
4475 provided for in subsection (e), notice of the proceeding shall
4476 be given by the dissolved nonprofit corporation to each
4477 potential claimant as described in subsection (e).

4478 (g) The circuit court under subsection (e) may appoint
4479 a guardian ad litem to represent all claimants whose
4480 identities are unknown in any proceeding brought under this



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4481 section. The reasonable fees and expenses of the guardian,
4482 including all reasonable expert witness fees, shall be paid by
4483 the dissolved nonprofit corporation.

4484 (h) Provision by the dissolved nonprofit corporation
4485 for security in the amount and the form ordered by the circuit
4486 court under subsection (e) shall satisfy the dissolved
4487 nonprofit corporation's obligation with respect to claims that
4488 are contingent, have not been made known to the dissolved
4489 nonprofit corporation, or are based on an event occurring
4490 after the effective date of the dissolution of the nonprofit
4491 corporation, and those claims may not be enforced against a
4492 distributee to whom assets have been distributed by the
4493 dissolved nonprofit corporation after the effective date of
4494 the dissolution of the nonprofit corporation.

4495 (i) Nothing in this section shall be deemed to extend
4496 any otherwise applicable statute of limitations.

4497 (j) If a claim has been satisfied, disposed of, or
4498 barred under Section 10A-3A-11.08, this section, or other law,
4499 the person or persons designated to wind up the affairs of a
4500 dissolved nonprofit corporation, and the distributees
4501 receiving assets from the dissolved nonprofit corporation,
4502 shall not be liable for that claim.

4503 §10A-3A-11.10. Director duties.

4504 (a) Directors shall cause the dissolved nonprofit
4505 corporation to discharge or make reasonable provision for the
4506 payment of claims and make distributions in liquidation of
4507 assets to the persons designated to receive the assets of the
4508 dissolved nonprofit corporation after payment or provision for



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4509 claims.

4510 (b) Directors of a dissolved nonprofit corporation
4511 which has disposed of claims under Section 10A-3A-11.08 or
4512 Section 10A-3A-11.09 shall not be liable for breach of Section
4513 10A-3A-11.10(a) with respect to claims against the dissolved
4514 nonprofit corporation that are barred or satisfied under
4515 Section 10A-3A-11.08 or Section 10A-3A-11.09.

4516 DIVISION B. JUDICIAL DISSOLUTION.

4517 §10A-3A-11.20. Grounds for judicial dissolution.

4518 The circuit court for the county in which the nonprofit
4519 corporation's principal office is located in this state, and
4520 if none in this state, the circuit court for the county in
4521 which the nonprofit corporation's most recent registered
4522 office is located may dissolve a nonprofit corporation:

4523 (1) in a proceeding by the Attorney General if it is
4524 established that:

4525 (i) the nonprofit corporation obtained its certificate
4526 of incorporation through fraud; or

4527 (ii) the nonprofit corporation has continued to exceed
4528 or abuse the authority conferred upon it by law;

4529 (2) in a proceeding by a director, or members holding
4530 at least 25 percent of the aggregate voting power of all of
4531 the members entitled to vote on dissolution, unless the
4532 certificate of incorporation reduces or eliminates that
4533 percentage requirement, if it is established that:

4534 (i) the directors are deadlocked in the management of
4535 the corporate affairs, the members, if any, are unable to
4536 break the deadlock, and irreparable injury to the nonprofit



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4537 corporation or its mission is threatened or being suffered,
4538 because of the deadlock;

4539 (ii) the directors or those in control of the nonprofit
4540 corporation have acted, are acting, or will act in a manner
4541 that is illegal, oppressive, or fraudulent;

4542 (iii) the members are deadlocked in voting power and
4543 have failed, for a period that includes at least two
4544 consecutive annual meeting dates, to elect successors to
4545 directors whose terms have expired;

4546 (iv) the corporate assets are being misapplied or
4547 wasted;

4548 (v) the nonprofit corporation has insufficient assets
4549 to continue its activities and affairs;

4550 (vi) the nonprofit corporation is not able to assemble
4551 a quorum of directors or members; or

4552 (vii) the nonprofit corporation has abandoned its
4553 activities and affairs and has failed within a reasonable time
4554 to liquidate and distribute its assets and dissolve; or

4555 (3) in a proceeding by a creditor if it is established
4556 that:

4557 (i) the creditor's claim has been reduced to judgment,
4558 the execution on the judgment returned unsatisfied, and the
4559 nonprofit corporation is insolvent; or

4560 (ii) the nonprofit corporation has admitted in writing
4561 that the creditor's claim is due and owing and the nonprofit
4562 corporation is insolvent;

4563 (4) in a proceeding by the nonprofit corporation to
4564 have its voluntary dissolution continued under court



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4565 supervision; or

4566 (5) in a proceeding by an interested person, as
4567 determined by the court, if it is established that:

4568 (i) there is not at least one member or director of the
4569 nonprofit corporation; and

4570 (ii) a member or director cannot be elected in
4571 accordance with the certificate of incorporation or bylaws of
4572 the nonprofit corporation.

4573 §10A-3A-11.21. Procedure for judicial dissolution.

4574 (a) Venue for a proceeding by the Attorney General to
4575 dissolve a nonprofit corporation lies in circuit court for the
4576 county in which the nonprofit corporation's principal office
4577 is located in this state, and if none in this state, in the
4578 circuit court for the county in which the nonprofit
4579 corporation's most recent registered office is located. Venue
4580 for a proceeding brought by any other party named in Section
4581 10A-3A-11.20 lies in circuit court for the county in which the
4582 nonprofit corporation's principal office is located in this
4583 state, and if none in this state, in the circuit court for the
4584 county in which the nonprofit corporation's most recent
4585 registered office is located.

4586 (b) It is not necessary to make members or directors
4587 parties to a proceeding to dissolve a nonprofit corporation
4588 unless relief is sought against them individually.

4589 (c) A court in a proceeding brought to dissolve a
4590 nonprofit corporation may issue injunctions, appoint a
4591 receiver or custodian during the proceeding with all powers
4592 and duties the court directs, take other action required to



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4593 preserve the corporate assets wherever located, and carry on
4594 the activities and affairs of the nonprofit corporation until
4595 a full hearing can be held.

4596 §10A-3A-11.22. Receivership; custodianship;
4597 continuation.

4598 (a) A court in a judicial proceeding brought to
4599 dissolve a nonprofit corporation may (i) appoint one or more
4600 receivers to wind up and liquidate, (ii) appoint one or more
4601 custodians to manage the activities and affairs of the
4602 nonprofit corporation, or (iii) appoint one or more custodians
4603 to determine whether the nonprofit corporation should be
4604 dissolved. The court shall hold a hearing, after notifying all
4605 parties to the proceeding and any interested persons
4606 designated by the court, before appointing a receiver or
4607 custodian. The court appointing a receiver or custodian has
4608 jurisdiction over the nonprofit corporation and all of its
4609 property wherever located.

4610 (b) The court may appoint an individual, nonprofit
4611 corporation, or other entity as a receiver or custodian,
4612 which, if a foreign entity, must be registered to do business
4613 in this state. The court may require the receiver or custodian
4614 to post bond, with or without sureties, in an amount the court
4615 directs.

4616 (c) The court shall describe the powers and duties of
4617 the receiver or custodian in its appointing order, which may
4618 be amended from time to time. Among other powers:

4619 (1) the receiver: (i) may dispose of all or any part of
4620 the assets of the nonprofit corporation wherever located, at a



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4621 public or private sale; and (ii) may sue and defend in the
4622 receiver's own name as receiver of the nonprofit corporation
4623 in all courts of this state.

4624 (2) the custodian may exercise all of the powers of the
4625 nonprofit corporation, through or in place of its board of
4626 directors, to the extent necessary to manage the affairs of
4627 the nonprofit corporation in the best interests of the mission
4628 of the nonprofit corporation and in the best interests of the
4629 nonprofit corporation, its members, if any, and creditors.

4630 (3) in lieu of dissolution, the court may authorize a
4631 custodian in a proceeding brought under Section 10A-3A-11.20,
4632 to determine whether the nonprofit corporation should be
4633 dissolved. If the custodian determines that the nonprofit
4634 corporation should not be dissolved, the custodian shall
4635 prepare and present to the court a plan of operation which
4636 shall set forth:

4637 (i) the reasons that it is in the best interest of the
4638 nonprofit corporation to continue its activities and affairs
4639 and not be dissolved;

4640 (ii) that the continuation of the activities and
4641 affairs of the nonprofit corporation will not be in
4642 contravention of the certificate of incorporation or bylaws of
4643 the nonprofit corporation;

4644 (iii) any amendments to the certificate of
4645 incorporation or bylaws necessary for the nonprofit
4646 corporation to continue its activities and affairs in
4647 accordance with the plan of operation;

4648 (iv) for a membership nonprofit corporation that does



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4649 not have any members, the name of at least one person proposed
4650 to be a member; and

4651 (v) for a nonmembership nonprofit corporation that does
4652 not have any directors, the name of at least one person
4653 proposed to be a director.

4654 (4) the receiver or custodian shall have any other
4655 powers and duties as the court may provide in the appointing
4656 order, which may be amended from time to time.

4657 (d) The court during a receivership may redesignate the
4658 receiver a custodian and during a custodianship may
4659 redesignate the custodian a receiver.

4660 (e) The court from time to time during the receivership
4661 or custodianship may order compensation paid and expenses paid
4662 or reimbursed to the receiver or custodian from the assets of
4663 the nonprofit corporation or proceeds from the sale of the
4664 assets.

4665 §10A-3A-11.23. Decree of dissolution or continuation.

4666 (a) If after a hearing the court determines that one or
4667 more grounds for judicial dissolution described in Section
4668 10A-3A-11.20 exist, the court may enter a decree dissolving
4669 the nonprofit corporation and specifying the effective date of
4670 the dissolution. If the court enters a decree dissolving the
4671 nonprofit corporation, then the clerk of the court shall
4672 deliver a certified copy of the decree to the Secretary of
4673 State for filing.

4674 (b) After entering the decree of dissolution, the court
4675 shall direct the winding up and liquidation of the nonprofit
4676 corporation's activities and affairs in accordance with



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4677 Section 10A-3A-11.07 and the notification of claimants in
4678 accordance with Sections 10A-3A-11.08 and 10A-3A-11.09.

4679 (c) If after a hearing the court determines pursuant to
4680 Section 10A-3A-11.22(c)(3) that a nonprofit corporation should
4681 not be dissolved, but should continue its activities and
4682 affairs, the court shall issue a decree naming at least one
4683 person as a member of the nonprofit corporation if it is a
4684 membership nonprofit corporation, naming at least one director
4685 if the nonprofit corporation is a nonmembership nonprofit
4686 corporation, and such other matters as the court may
4687 determine. If the court approves an amendment to the
4688 certificate of incorporation in accordance with Section
4689 10A-3A-11.22(c)(3), then the court's decree shall also set
4690 forth that amendment, specifying the effective date of that
4691 amendment, and the clerk of the court shall deliver a
4692 certified copy of the decree to the Secretary of State for
4693 filing.

4694 §10A-3A-11.24. Deposit with State Treasurer.

4695 Assets of a dissolved nonprofit corporation that should
4696 be transferred to a creditor, claimant, or a person designated
4697 to receive the assets of the nonprofit corporation who cannot
4698 be found or who is not competent to receive them shall be
4699 reduced to cash and deposited with the State Treasurer or
4700 other appropriate state official for safekeeping. When the
4701 creditor, claimant, or person designated to receive the assets
4702 of the nonprofit corporation furnishes satisfactory proof of
4703 entitlement to the amount deposited, the State Treasurer or
4704 other appropriate state official shall pay that person or that



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4705 person's representative that amount.

4706 ARTICLE 12. MERGERS.

4707 §10A-3A-12.01. Definitions.

4708 As used in this article, unless the context otherwise
4709 requires, the following terms mean:

4710 (1) CONSTITUENT CORPORATION means a constituent
4711 organization that is a nonprofit corporation.

4712 (2) CONSTITUENT ORGANIZATION means an organization that
4713 is party to a merger under this article.

4714 (3) GOVERNING STATUTE of an organization means the
4715 statute that governs the organization's internal affairs.

4716 (4) ORGANIZATION means a general partnership, including
4717 a limited liability partnership; limited partnership,
4718 including a limited liability limited partnership; limited
4719 liability company; business trust; business corporation;
4720 nonprofit corporation; professional corporation; or any other
4721 person having a governing statute. The term includes domestic
4722 and foreign organizations whether or not organized for profit.

4723 (5) ORGANIZATIONAL DOCUMENTS means:

4724 (A) for a general partnership or foreign general
4725 partnership, its partnership agreement and if applicable, its
4726 registration as a limited liability partnership or a foreign
4727 limited liability partnership;

4728 (B) for a limited partnership or foreign limited
4729 partnership, its certificate of formation and partnership
4730 agreement, or comparable writings as provided in its governing
4731 statute;

4732 (C) for a limited liability company or foreign limited



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4733 liability company, its certificate of formation and limited
4734 liability company agreement, or comparable writings as
4735 provided in its governing statute;

4736 (D) for a business or statutory trust or foreign
4737 business or statutory trust its agreement of trust and
4738 declaration of trust, or comparable writings as provided in
4739 its governing statute;

4740 (E) for a business corporation or foreign business
4741 corporation, its certificate of incorporation, bylaws, and
4742 other agreements among its stockholders that are authorized by
4743 its governing statute, or comparable writings as provided in
4744 its governing statute;

4745 (F) for a nonprofit corporation or foreign nonprofit
4746 corporation, its certificate of incorporation, bylaws, and
4747 other agreements that are authorized by its governing statute,
4748 or comparable writings as provided in its governing statute;

4749 (G) for a professional corporation or foreign
4750 professional corporation, its certificate of incorporation,
4751 bylaws, and other agreements among its stockholders that are
4752 authorized by its governing statute, or comparable writings as
4753 provided in its governing statute; and

4754 (H) for any other organization, the basic writings that
4755 create the organization and determine its internal governance
4756 and the relations among the persons that own it, have an
4757 interest in it, or are members of it.

4758 (6) SURVIVING ORGANIZATION means an organization into
4759 which one or more other organizations are merged under this
4760 article, whether the organization pre-existed the merger or



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4761 was created pursuant to the merger.

4762 §10A-3A-12.02. Merger.

4763 (a) A nonprofit corporation may merge with one or more
4764 other constituent organizations pursuant to this article, and
4765 a plan of merger, if:

4766 (1) the governing statute of each of the other
4767 organizations authorizes the merger;

4768 (2) the merger is not prohibited by the law of a
4769 jurisdiction that enacted any of those governing statutes; and

4770 (3) each of the other organizations complies with its
4771 governing statute in effecting the merger.

4772 (b) A plan of merger must be in writing and must
4773 include:

4774 (1) the name, type of organization, and mailing address
4775 of the principal office of each constituent organization, the
4776 jurisdiction of the governing statute of each constituent
4777 organization, and the respective unique identifying number or
4778 other designation as assigned by the Secretary of State, if
4779 any, of each constituent organization;

4780 (2) the name, type of organization, and mailing address
4781 of the principal office of the surviving organization, the
4782 unique identifying number or other designation as assigned by
4783 the Secretary of State, if any, of the surviving organization,
4784 the jurisdiction of the governing statute of the surviving
4785 organization, and, if the surviving organization is created
4786 pursuant to the merger, a statement to that effect;

4787 (3) the terms and conditions of the merger, including
4788 the manner and basis for converting the interests in each



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4789 constituent organization into any combination of money,
4790 securities, interests in the surviving organization, and other
4791 consideration as allowed by subsection (c);

4792 (4) if the surviving organization is to be created
4793 pursuant to the merger, the surviving organization's
4794 organizational documents; and

4795 (5) if the surviving organization is not to be created
4796 pursuant to the merger, any amendments to be made by the
4797 merger to the surviving organization's organizational
4798 documents.

4799 (c) In connection with a merger, rights, securities, or
4800 interests, if any, in a constituent organization may be
4801 exchanged for or converted into cash, property, rights,
4802 securities, or interests, if any, in the surviving
4803 organization, or, in addition to or in lieu thereof, may be
4804 exchanged for or converted into cash, property, rights,
4805 securities, or interests, if any, in another organization, or
4806 may be cancelled.

4807 (d) In addition to the requirements of subsection (b),
4808 a plan of merger may contain any other provision not
4809 prohibited by law.

4810 (e) Terms of a plan of merger may be made dependent on
4811 facts objectively ascertainable outside the plan in accordance
4812 with Section 10A-3A-1.04(c) (5).

4813 (f) A plan of merger may be amended only with the
4814 consent of each constituent organization, except as provided
4815 in the plan. A domestic constituent organization may approve
4816 an amendment to a plan:



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4817 (1) in the same manner as the plan was approved, if the
4818 plan does not provide for the manner in which it may be
4819 amended; or

4820 (2) in the manner provided in the plan, except that if
4821 the plan has been approved by the interest holders that were
4822 entitled to vote on, consent to, or approve of, the plan, then
4823 those interest holders are entitled to vote on, consent to, or
4824 approve of any amendment of the plan that will change:

4825 (i) the amount or kind of securities, interests,
4826 obligations, rights to acquire other interests or securities,
4827 cash, or other property to be received under the plan by the
4828 interest holders of a constituent organization;

4829 (ii) the certificate of incorporation of any nonprofit
4830 corporation, foreign nonprofit corporation, business
4831 corporation, foreign business corporation or the
4832 organizational documents of any other organization, that will
4833 be the surviving organization, except for changes permitted by
4834 Section 10A-3A-9.03(g) or by comparable provisions of the
4835 governing statute of the foreign nonprofit corporation,
4836 business corporation, foreign business corporation, or other
4837 organization; or

4838 (iii) any of the other terms or conditions of the plan
4839 if the change would adversely affect the interest holders in
4840 any material respect.

4841 §10A-3A-12.03. Action on a plan of merger in a
4842 membership nonprofit corporation.

4843 In the case of a membership nonprofit corporation that
4844 is a constituent organization, the plan of merger shall be



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4845 adopted in the following manner:

4846 (a) The plan of merger shall first be adopted by the
4847 board of directors.

4848 (b) Except as provided in subsection (h), the plan of
4849 merger shall then be approved by the members entitled to vote
4850 thereon. In submitting the plan of merger to the members for
4851 approval, the board of directors shall recommend that the
4852 members approve the plan of merger, unless the board of
4853 directors makes a determination that because of conflicts of
4854 interest or other special circumstances it should not make a
4855 recommendation, in which case the board of directors shall
4856 inform the members of the basis for its so proceeding.

4857 (c) The board of directors may set conditions for the
4858 approval of the plan of merger by the members or the
4859 effectiveness of the plan of merger.

4860 (d) If the plan of merger is required to be approved by
4861 the members, and if the approval is to be given at a meeting,
4862 the membership nonprofit corporation shall notify each member
4863 who is entitled to vote, of the meeting of the members at
4864 which the plan of merger is to be submitted for approval. The
4865 notice must state that the purpose, or one of the purposes, of
4866 the meeting is to consider the plan of merger and must contain
4867 or be accompanied by a copy or summary of the plan of merger.
4868 If the membership nonprofit corporation is to be merged into
4869 an existing nonprofit corporation, foreign nonprofit
4870 corporation, or other organization, the notice must also
4871 include or be accompanied by a copy or summary of the
4872 certificate of incorporation and bylaws or the organizational



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4873 documents of that nonprofit corporation, foreign nonprofit
4874 corporation, or other organization. If the membership
4875 nonprofit corporation is to be merged with a nonprofit
4876 corporation, foreign nonprofit corporation, or other
4877 organization and a new nonprofit corporation, foreign
4878 nonprofit corporation, or organization is to be created
4879 pursuant to the merger, the notice must include or be
4880 accompanied by a copy or a summary of the certificate of
4881 incorporation and bylaws or the organizational documents of
4882 the new nonprofit corporation, foreign nonprofit corporation,
4883 or other organization.

4884 (e) Unless the certificate of incorporation, or the
4885 board of directors acting pursuant to subsection (c), requires
4886 a greater vote or a greater quorum, approval of the plan of
4887 merger requires the approval of the members entitled to vote
4888 at a meeting at which a quorum exists consisting of a majority
4889 of the votes entitled to be cast on the plan of merger, and,
4890 if any class of membership interests entitled to vote as a
4891 separate group on the plan of merger, the approval of each
4892 separate voting group at a meeting at which a quorum of the
4893 voting group is present consisting of a majority of the votes
4894 entitled to be cast on the merger by that voting group.

4895 (f) Subject to subsection (g), separate voting by
4896 voting groups is required:

4897 (1) on a plan of merger, by each class of membership
4898 interests that:

4899 (i) are to be converted under the plan of merger into
4900 securities, interests, obligations, rights to acquire other



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4901 securities or interests, cash, other property, or any
4902 combination of the foregoing; or

4903 (ii) are entitled to vote as a separate group on a
4904 provision in the plan of merger that constitutes a proposed
4905 amendment to the certificate of incorporation of a surviving
4906 nonprofit corporation that requires action by separate voting
4907 groups under Section 10A-3A-9.04; and

4908 (2) on a plan of merger, if the voting group is
4909 entitled under the certificate of incorporation or bylaws to
4910 vote as a voting group to approve a plan of merger,
4911 respectively.

4912 (g) The certificate of incorporation may expressly
4913 limit or eliminate the separate voting rights provided in
4914 subsection (f)(1)(i) and subsection (f)(2) as to any class of
4915 membership, except when the plan of merger includes what is or
4916 would be in effect an amendment subject to subsection
4917 (f)(1)(ii).

4918 (h) Unless the certificate of incorporation otherwise
4919 provides, approval by the membership nonprofit corporation's
4920 members of a plan of merger is not required if:

4921 (1) the membership nonprofit corporation will survive
4922 the merger;

4923 (2) except for amendments that do not require member
4924 approval under Section 10A-3A-9.03(g) or the approval of a
4925 person or group of persons under Section 10A-3A-9.30, its
4926 certificate of incorporation will not be changed;

4927 (3) except for amendments that do not require member
4928 approval under Section 10A-3A-9.22 or the approval of a person



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4929 or group of persons under Section 10A-3A-9.30, its bylaws will
4930 not be changed; and

4931 (4) each member of the membership nonprofit corporation
4932 whose membership interest was outstanding immediately before
4933 the effective date of the merger will hold the same number of
4934 membership interests, with identical preferences, rights, and
4935 limitations, immediately after the effective date of the
4936 merger.

4937 (i) In addition to the adoption and approval of the
4938 plan of merger as required by this section, the plan must also
4939 be approved in writing by a person or group of persons, if
4940 any, whose approval is required under Section 10A-3A-12.08.

4941 §10A-3A-12.04. Action on a plan of merger in a
4942 nonmembership nonprofit corporation.

4943 In the case of a merger of a nonmembership nonprofit
4944 corporation the plan of merger shall be adopted in the
4945 following manner:

4946 (a) The plan of merger shall be adopted by the board of
4947 directors; and

4948 (b) A plan of merger adopted by the board of directors
4949 under this section must also be approved in writing by a
4950 person or group of persons, if any, whose approval is required
4951 under Section 10A-3A-12.08.

4952 §10A-3A-12.05. Statement of merger.

4953 (a) After a plan of merger has been adopted and
4954 approved as required by this article, then a statement of
4955 merger shall be signed by each party to the merger. The
4956 statement of merger must set forth:



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4957 (1) the name, type of organization, and mailing address
4958 of the principal office of each constituent organization, the
4959 jurisdiction of the governing statute of each constituent
4960 organization, and the respective unique identifying number or
4961 other designation as assigned by the Secretary of State, if
4962 any, of each constituent organization;

4963 (2) the name, type of organization, and mailing address
4964 of the principal office of the surviving organization, the
4965 unique identifying number or other designation as assigned by
4966 the Secretary of State, if any, of the surviving organization,
4967 the jurisdiction of the governing statute of the surviving
4968 organization, and, if the surviving organization is created
4969 pursuant to the merger, a statement to that effect;

4970 (3) the date the merger is effective under the
4971 governing statute of the surviving organization;

4972 (4) if the surviving organization is to be created
4973 pursuant to the merger:

4974 (A) if it will be a nonprofit corporation, the
4975 nonprofit corporation's certificate of incorporation; or

4976 (B) if it will be an organization other than a
4977 nonprofit corporation, any organizational document that
4978 creates the organization that is required to be in a public
4979 writing or in the case of a limited liability partnership, its
4980 statement of limited liability partnership;

4981 (5) if the surviving organization exists before the
4982 merger, any amendments provided for in the plan of merger for
4983 the organizational document that created the organization that
4984 are in a public writing;



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4985 (6) a statement as to each constituent organization
4986 that the merger was approved as required by the organization's
4987 governing statute;

4988 (7) if the surviving organization is a foreign
4989 organization not authorized to conduct activities and affairs
4990 in this state, the street and mailing address of an office for
4991 the purposes of Section 10A-3A-12.06(b);

4992 (8) any additional information required by the
4993 governing statute of any constituent organization;

4994 (9) if the plan of merger required approval by the
4995 members of a membership nonprofit corporation that is a
4996 constituent organization, a statement that the plan was duly
4997 approved by the members and, if voting by any separate voting
4998 group was required, by each separate voting group, in the
4999 manner required by this chapter, the certificate of
5000 incorporation or bylaws;

5001 (10) if the plan of merger required approval by a
5002 person or group of persons as specified in the certificate of
5003 incorporation pursuant to Section 10A-3A-12.08, a statement
5004 that the plan was duly approved by that person or group of
5005 persons;

5006 (11) if the plan of merger did not require approval by
5007 the members of a membership nonprofit corporation that is a
5008 constituent organization, a statement to that effect; and

5009 (12) a statement that the plan of merger will be
5010 furnished by the surviving organization, on request and
5011 without cost, to any member or owner of any constituent
5012 organization which is a party to the merger.



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5013 (b) In addition to the requirements of subsection (a),
5014 a statement of merger may contain any other provision not
5015 prohibited by law.

5016 (c) The statement of merger shall be delivered to the
5017 Secretary of State for filing and, subject to subsection (d),
5018 the merger shall take effect at the effective date and time
5019 determined in accordance with Article 4 of Chapter 1.

5020 (d) With respect to a merger in which one or more
5021 foreign organizations is a constituent organization or a
5022 foreign organization created by the merger is the surviving
5023 organization, the merger itself shall become effective at the
5024 later of:

5025 (1) when all documents required to be filed in foreign
5026 jurisdictions to effect the merger have become effective, or

5027 (2) when the statement of merger takes effect.

5028 (e) A statement of merger filed under this section may
5029 be combined with any filing required under the governing
5030 statute governing any domestic organization involved in the
5031 transaction if the combined filing satisfies the requirements
5032 of this section, the other governing statute, and Article 4 of
5033 Chapter 1.

5034 (f) A certified copy of the statement of merger
5035 required to be filed under this section may be filed in the
5036 real estate records in the office of the judge of probate in
5037 any county in which any constituent organization owned real
5038 property, without payment and without collection by the judge
5039 of probate of any deed or other transfer tax or fee. The judge
5040 of probate, however, shall be entitled to collect the filing



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5041 fee of five dollars (\$5). Any filing shall evidence chain of
5042 title, but lack of filing shall not affect the surviving
5043 organization's title to real property.

5044 (g) A statement of conversion is a filing instrument
5045 under Chapter 1.

5046 (h) The filing fees for a statement of conversion shall
5047 be as set forth in Chapter 1.

5048 §10A-3A-12.06. Effect of merger.

5049 (a) When a merger becomes effective:

5050 (1) the surviving organization continues or, in the
5051 case of a surviving organization created pursuant to the
5052 merger, comes into existence;

5053 (2) each constituent organization that merges into the
5054 surviving organization ceases to exist as a separate entity;

5055 (3) except as provided in the plan of merger, all
5056 property owned by, and every contract right possessed by, each
5057 constituent organization that ceases to exist vests in the
5058 surviving organization without transfer, reversion, or
5059 impairment and the title to any property and contract rights
5060 vested by deed or otherwise in the surviving organization
5061 shall not revert, be in any way impaired, or be deemed to be a
5062 transfer by reason of the merger;

5063 (4) all debts, obligations, and other liabilities of
5064 each constituent organization, other than the surviving
5065 organization, are debts, obligations, and liabilities of the
5066 surviving organization, and neither the rights of creditors,
5067 nor any liens upon the property of any constituent
5068 organization, shall be impaired by the merger;



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5069 (5) an action or proceeding pending by or against any
5070 constituent organization continues as if the merger had not
5071 occurred and the name of the surviving organization may, but
5072 need not be, substituted in any pending proceeding for the
5073 name of any constituent organization whose separate existence
5074 ceased in the merger;

5075 (6) except as prohibited by law other than this chapter
5076 or as provided in the plan of merger, all the rights,
5077 privileges, franchises, immunities, powers, and purposes of
5078 each constituent organization, other than the surviving
5079 organization, vest in the surviving organization;

5080 (7) except as otherwise provided in the plan of merger,
5081 the terms and conditions of the plan of merger take effect;

5082 (8) except as otherwise agreed, if a constituent
5083 organization that is a nonprofit corporation ceases to exist,
5084 the merger does not dissolve the nonprofit corporation;

5085 (9) if the surviving organization is created pursuant
5086 to the merger:

5087 (A) if it is a nonprofit corporation, the certificate
5088 of incorporation and bylaws become effective; or

5089 (B) if it is an organization other than a nonprofit
5090 corporation, the organizational documents that create the
5091 organization becomes effective;

5092 (10) if the surviving organization existed before the
5093 merger, any amendments provided for in the statement of merger
5094 for the organizational documents of that organization become
5095 effective;

5096 (11) the membership interests, if any, of each



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5097 nonprofit corporation or foreign nonprofit corporation that is
5098 a constituent organization to the merger, and the interests in
5099 an organization that is a constituent organization, that are
5100 to be converted in accordance with the terms of the merger
5101 into securities, interests, obligations, rights to acquire
5102 other securities or interests, cash, other property, or any
5103 combination of the foregoing, are converted, and the former
5104 holders of membership interests, if any, or interests are
5105 entitled only to the rights provided to them by those terms or
5106 to any rights they may have under the governing statute
5107 governing that constituent organization;

5108 (12) if the surviving organization exists before the
5109 merger:

5110 (A) except as provided in the plan of merger, all
5111 property and contract rights of the surviving organization
5112 remain its property and contract rights without transfer,
5113 reversion, or impairment;

5114 (B) the surviving organization remains subject to all
5115 its debts, obligations, and other liabilities; and

5116 (C) except as provided by law other than this chapter
5117 or the plan of merger, the surviving organization continues to
5118 hold all of its rights, privileges, franchises, immunities,
5119 powers and purposes.

5120 (b) A surviving organization that is a foreign
5121 organization:

5122 (1) consents to the jurisdiction of this state to
5123 enforce any debt, obligation, or other liability owed by a
5124 constituent organization, if before the merger the constituent



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5125 organization was subject to suit in this state on the debt,
5126 obligation, or other liability; and

5127 (2) consents that if it fails to designate or maintain
5128 a registered agent, or the designated registered agent cannot
5129 with reasonable diligence be served, then the service of
5130 process on that surviving organization for the purposes of
5131 enforcing a debt, obligation, or other liability under this
5132 subsection and for enforcing the rights, if any, of members of
5133 each nonprofit corporation that is a constituent organization
5134 may be made in the same manner and has the same consequences
5135 as provided in Section 10A-1-5.35.

5136 §10A-3A-12.07. Abandonment of a merger.

5137 (a) After a plan of merger has been adopted and
5138 approved as required by this Article 12, and before the
5139 statement of merger has become effective, the plan may be
5140 abandoned by a nonprofit corporation that is a party to the
5141 plan without action by its members, if any, or a person or
5142 group of persons under Section 10A-3A-12.08, if any, in
5143 accordance with any procedures set forth in the plan of merger
5144 or, if no procedures are set forth in the plan, in the manner
5145 determined by the board of directors.

5146 (b) If a merger is abandoned under subsection (a) after
5147 the statement of merger has been delivered to the Secretary of
5148 State for filing but before the merger has become effective, a
5149 statement of abandonment signed by all the parties that signed
5150 the statement of merger shall be delivered to the Secretary of
5151 State for filing before the statement of merger becomes
5152 effective. The statement shall take effect on filing and the



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5153 merger shall be deemed abandoned and shall not become
5154 effective. The statement of abandonment must contain:

5155 (1) the name of each party to the merger;

5156 (2) the date on which the statement of merger was filed
5157 by the Secretary of State; and

5158 (3) a statement that the merger has been abandoned in
5159 accordance with this section.

5160 §10A-3A-12.08. Approval by specified person or group of
5161 persons.

5162 (a) The certificate of incorporation of a membership
5163 nonprofit corporation may require that a merger under this
5164 article or under Article 8 of Chapter 1 be approved in writing
5165 by a specified person or group of persons in addition to the
5166 board of directors and members.

5167 (b) The certificate of incorporation of a nonmembership
5168 nonprofit corporation may require that a merger under this
5169 article or under Article 8 of Chapter 1 be approved in writing
5170 by a specified person or group of persons in addition to the
5171 board of directors.

5172 (c) A requirement in the certificate of incorporation
5173 described in subsections (a) or (b) of this section may only
5174 be approved by the written approval of the specified person or
5175 group of persons.

5176 §10A-3A-12.09. Nonexclusive.

5177 This article is not exclusive. This article does not
5178 preclude a nonprofit corporation from merging under law other
5179 than this chapter.

5180 ARTICLE 13. CONVERSIONS.



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5181 §10A-3A-13.01. Definitions.

5182 As used in this article, unless the context otherwise
5183 requires, the following terms mean:

5184 (1) CONVERTED ORGANIZATION means the organization into
5185 which a converting organization converts pursuant to this
5186 article.

5187 (2) CONVERTING NONPROFIT CORPORATION means a converting
5188 organization that is a nonprofit corporation.

5189 (3) CONVERTING ORGANIZATION means an organization that
5190 converts into another organization pursuant to this article.

5191 (4) GOVERNING STATUTE of an organization means the
5192 statute that governs the organization's internal affairs.

5193 (5) ORGANIZATION means a general partnership, including
5194 a limited liability partnership; limited partnership,
5195 including a limited liability limited partnership; limited
5196 liability company; business trust; business corporation;
5197 nonprofit corporation; professional corporation; or any other
5198 person having a governing statute. The term includes domestic
5199 and foreign organizations whether or not organized for profit.

5200 (6) ORGANIZATIONAL DOCUMENTS means:

5201 (A) for a general partnership or foreign general
5202 partnership, its partnership agreement and if applicable, its
5203 registration as a limited liability partnership or a foreign
5204 limited liability partnership;

5205 (B) for a limited partnership or foreign limited
5206 partnership, its certificate of formation and partnership
5207 agreement, or comparable writings as provided in its governing
5208 statute;



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5209 (C) for a limited liability company or foreign limited
5210 liability company, its certificate of formation and limited
5211 liability company agreement, or comparable writings as
5212 provided in its governing statute;

5213 (D) for a business or statutory trust or foreign
5214 business or statutory trust, its agreement of trust and
5215 declaration of trust, or comparable writings as provided in
5216 its governing statute;

5217 (E) for a business corporation or foreign business
5218 corporation, its certificate of incorporation, bylaws, and
5219 other agreements among its stockholders that are authorized by
5220 its governing statute or comparable writings as provided in
5221 its governing statute;

5222 (F) for a nonprofit corporation or foreign nonprofit
5223 corporation, its certificate of incorporation, bylaws, and
5224 other agreements that are authorized by its governing statute,
5225 or comparable writings as provided in its governing statute;

5226 (G) for a professional corporation or foreign
5227 professional corporation, its certificate of incorporation,
5228 bylaws, and other agreements among its stockholders that are
5229 authorized by its governing statute or comparable writings as
5230 provided in its governing statute; and

5231 (H) for any other organization, the basic writings that
5232 create the organization and determine its internal governance
5233 and the relations among the persons that own it, have an
5234 interest in it, or are members of it.

5235 §10A-3A-13.02. Conversion.

5236 (a) An organization other than a nonprofit corporation



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5237 may convert to a nonprofit corporation, and a nonprofit
5238 corporation may convert to an organization other than a
5239 nonprofit corporation pursuant to this article, and a plan of
5240 conversion, if:

5241 (1) the governing statute of the organization that is
5242 not a nonprofit corporation authorizes the conversion;

5243 (2) the law of the jurisdiction governing the
5244 converting organization and the converted organization does
5245 not prohibit the conversion; and

5246 (3) the converting organization and the converted
5247 organization each comply with the governing statute and
5248 organizational documents applicable to that organization in
5249 effecting the conversion.

5250 (b) A plan of conversion must be in writing and must
5251 include:

5252 (1) the name, type of organization, and mailing address
5253 of the principal office of the converting organization and its
5254 unique identifying number or other designation as assigned by
5255 the Secretary of State, if any, before conversion;

5256 (2) the name, type of organization, and mailing address
5257 of the principal office of the converted organization after
5258 conversion;

5259 (3) the terms and conditions of the conversion,
5260 including the manner and basis for converting interests, if
5261 any, in the converting organization into any combination of
5262 money, interests in the converted organization, and other
5263 consideration allowed in subsection (c); and

5264 (4) the organizational documents of the converted



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5265 organization.

5266 (c) In connection with a conversion, rights or
5267 securities of or interests, if any, in the converting
5268 organization may be exchanged for or converted into cash,
5269 property, or rights or securities of or interests, if any, in
5270 the converted organization, or, in addition to or in lieu
5271 thereof, may be exchanged for or converted into cash,
5272 property, rights, securities, or interests, if any, in another
5273 organization, or may be cancelled.

5274 (d) In addition to the requirements of subsection (b),
5275 a plan of conversion may contain any other provision not
5276 prohibited by law.

5277 (e) Terms of a plan of conversion may be made dependent
5278 on facts objectively ascertainable outside the plan in
5279 accordance with Section 10A-3A-1.04(c).

5280 §10A-3A-13.03. Action on a plan of conversion in a
5281 membership nonprofit corporation.

5282 In the case of a conversion of a membership nonprofit
5283 corporation the plan of conversion shall be adopted in the
5284 following manner:

5285 (a) The plan of conversion shall first be adopted by
5286 the board of directors.

5287 (b) The plan of conversion shall then be approved by
5288 the members entitled to vote thereon. In submitting the plan
5289 of conversion to the members for their approval, the board of
5290 directors must recommend that the members approve the plan of
5291 conversion, unless the board of directors makes a
5292 determination that because of conflicts of interest or other



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5293 special circumstances it should not make a recommendation, in
5294 which case the board of directors shall inform the members of
5295 the basis for its so proceeding.

5296 (c) The board of directors may set conditions for the
5297 approval of the plan of conversion by the members or the
5298 effectiveness of the plan of conversion.

5299 (d) If the approval of the members is to be given at a
5300 meeting, the nonprofit corporation shall notify each member
5301 entitled to vote of the meeting of members at which the plan
5302 of conversion is to be submitted for approval. The notice must
5303 state that the purpose, or one of the purposes, of the meeting
5304 is to consider the plan of conversion and must contain or be
5305 accompanied by a copy or summary of the plan of conversion.
5306 The notice must include or be accompanied by a copy of the
5307 organizational documents of the converted organization which
5308 are to be in writing as they will be in effect immediately
5309 after the conversion.

5310 (e) Unless the certificate of incorporation or the
5311 board of directors acting pursuant to subsection (c), requires
5312 a greater vote or a greater quorum, approval of the plan of
5313 conversion requires (i) the approval of the members entitled
5314 to vote at a meeting at which a quorum exists consisting of a
5315 majority of the votes entitled to be cast on the plan of
5316 conversion, and (ii) the approval of each class of members
5317 voting as a separate voting group at a meeting at which a
5318 quorum of the voting group exists consisting of a majority of
5319 the votes entitled to be cast on the plan of conversion by
5320 that voting group.



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5321 (f) In addition to the adoption and approval of the
5322 plan of conversion as required by this section, the plan of
5323 conversion must also be approved in writing by a person or
5324 group of persons, if any, whose approval is required under
5325 Section 10A-3A-13.08.

5326 §10A-3A-13.04. Action on a plan of conversion in a
5327 nonmembership nonprofit corporation.

5328 In the case of a conversion of a nonmembership
5329 nonprofit corporation the plan of conversion shall be adopted
5330 in the following manner:

5331 (a) The plan of conversion shall be adopted by the
5332 board of directors; and

5333 (b) A plan of conversion adopted by the board of
5334 directors under this section must also be approved in writing
5335 by a person or group of persons, if any, whose approval is
5336 required under Section 10A-3A-13.08.

5337 §10A-3A-13.05. Statement of conversion; effectiveness.

5338 (a) After a plan of conversion is approved:

5339 (1) if the converting organization is an organization
5340 formed under, or its internal affairs are governed by, the
5341 laws of this state, the converting organization shall file a
5342 statement of conversion in accordance with subsection (c),
5343 which statement of conversion must be signed in accordance
5344 with Section 10A-1-4.01 and which must include:

5345 (A) the name, type of organization, and mailing address
5346 of the principal office of the converting organization, and
5347 its unique identifying number or other designation as assigned
5348 by the Secretary of State, if any;



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5349 (B) a statement that the converting organization has
5350 been converted into the converted organization;

5351 (C) the name and type of organization of the converted
5352 organization and the jurisdiction of its governing statute;

5353 (D) the street and mailing address of the principal
5354 office of the converted organization;

5355 (E) the date the conversion is effective under the
5356 governing statute of the converted organization;

5357 (F) a statement that the conversion was approved as
5358 required by this chapter;

5359 (G) a statement that the conversion was approved as
5360 required by the governing statute of the converted
5361 organization;

5362 (H) a statement that a copy of the plan of conversion
5363 will be furnished by the converted organization, on request
5364 and without cost, to any owner of the converting organization;
5365 and

5366 (I) if the converted organization is a foreign
5367 organization not authorized to conduct activities and affairs
5368 in this state, the street and mailing address of an office for
5369 the purposes of Section 10A-3A-13.07(b); and

5370 (2) if the converted organization is a nonprofit
5371 corporation, the converting organization shall deliver for
5372 filing a certificate of incorporation in accordance with
5373 subsection (d), which certificate of incorporation must
5374 include, in addition to the information required by Section
5375 10A-3A-2.02:

5376 (A) a statement that the nonprofit corporation was



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5377 converted from the converting organization;

5378 (B) the name and type of organization of the converting
5379 organization, the jurisdiction of the converting
5380 organization's governing statute, and the converting
5381 organization's unique identifying number or other designation
5382 as assigned by the Secretary of State, if any; and

5383 (C) a statement that the conversion was approved in a
5384 manner that complied with the converting organization's
5385 governing statute.

5386 (b) A conversion becomes effective:

5387 (1) if the converted organization is a nonprofit
5388 corporation, when the certificate of incorporation takes
5389 effect; and

5390 (2) if the converted organization is not a nonprofit
5391 corporation, as provided by the governing statute of the
5392 converted organization.

5393 (c) If the converting organization is an organization
5394 formed under, or its internal affairs are governed by, the
5395 laws of this state, then the converting organization shall
5396 deliver for filing the statement of conversion required under
5397 subsection (a)(1) to the Secretary of State.

5398 (d) If the converted organization is a nonprofit
5399 corporation, then, the converting organization shall deliver
5400 for filing the certificate of incorporation required under
5401 subsection (a)(2) to the Secretary of State.

5402 (e) If the converting organization is required to
5403 deliver for filing a statement of conversion and a certificate
5404 of formation or a certificate of incorporation to the



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5405 Secretary of State, then the converting organization shall
5406 deliver for filing the statement of conversion and the
5407 certificate of formation or certificate of incorporation to
5408 the Secretary of State simultaneously.

5409 (f) If:

5410 (1) the converting organization is a filing entity or a
5411 foreign filing entity registered to conduct activities and
5412 affairs in this state;

5413 (2) the converted organization will be a filing entity
5414 or a foreign filing entity registered to conduct activities
5415 and affairs in this state;

5416 (3) the name of the converting organization and the
5417 converted organization are to be the same, other than words,
5418 phrases, or abbreviations indicating the type of entity; and

5419 (4) the name of the converted organization complies
5420 with Division A of Article 5 of Chapter 1 or Section
5421 10A-1-7.07, as the case may be; then notwithstanding Division
5422 B of Article 5 of Chapter 1, no name reservation shall be
5423 required and the converted organization shall for all purposes
5424 of this title be entitled to utilize the name of the
5425 converting organization without any further action by the
5426 converting organization or the converted organization.

5427 (g) A certified copy of any document required to be
5428 filed under this section may be filed in the real estate
5429 records in the office of the judge of probate in any county in
5430 which the converting organization owned real property, without
5431 payment and without collection by the judge of probate of any
5432 deed or other transfer tax or fee. The judge of probate shall,



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5433 however, be entitled to collect a filing fee of five dollars
5434 (\$5). Any such filing with the judge of probate shall evidence
5435 chain of title, but lack of filing shall not affect the
5436 converted organization's title to such real property.

5437 (h) A statement of conversion is a filing instrument
5438 under Chapter 1.

5439 (i) The filing fees for a statement of conversion shall
5440 be as set forth in Chapter 1.

5441 §10A-3A-13.06. Amendment of plan of conversion;
5442 abandonment.

5443 (a) A plan of conversion of a converting organization
5444 that is a nonprofit corporation may be amended:

5445 (1) in the same manner as the plan was approved, if the
5446 plan does not provide for the manner in which it may be
5447 amended; or

5448 (2) in the manner provided in the plan, except that if
5449 the plan has been approved by the members that were entitled
5450 to vote on, consent to, or approve of the plan, then those
5451 members are entitled to vote on, consent to, or approve of any
5452 amendment of the plan that will change:

5453 (i) the amount or kind of interests, if any, or other
5454 securities, obligations, rights to acquire interests, if any,
5455 or other securities, cash, other property, or any combination
5456 of the foregoing, to be received by the members, if any, of
5457 the converting nonprofit corporation under the plan;

5458 (ii) the organizational documents of the converted
5459 organization that will be in effect immediately after the
5460 conversion becomes effective, except for changes that do not



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5461 require approval of the interest holders of the converted
5462 organization under its governing statute or organizational
5463 documents; or

5464 (iii) any other terms or conditions of the plan, if the
5465 change would adversely affect the members in any material
5466 respect.

5467 (b) After a plan of conversion has been approved by a
5468 converting organization that is a nonprofit corporation in the
5469 manner required by this article and before the statement of
5470 conversion becomes effective, the plan may be abandoned by the
5471 nonprofit corporation without action by its members, if any,
5472 or a person or group of persons under Section 10A-3A-13.08, in
5473 accordance with any procedures set forth in the plan or, if no
5474 procedures are set forth in the plan, in the manner determined
5475 by the board of directors.

5476 (c) If a conversion is abandoned after the statement of
5477 conversion has been delivered to the Secretary of State for
5478 filing and before the statement of conversion becomes
5479 effective, a statement of abandonment, signed by the
5480 converting organization, must be delivered to the Secretary of
5481 State for filing before the statement of conversion becomes
5482 effective. The statement of abandonment takes effect on
5483 filing, and the conversion is abandoned and does not become
5484 effective. The statement of abandonment must contain:

5485 (1) the name of the converting organization;

5486 (2) the date on which the statement of conversion was
5487 filed by the Secretary of State; and

5488 (3) a statement that the conversion has been abandoned



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5489 in accordance with this section.

5490 §10A-3A-13.07. Effect of conversion.

5491 (a) When a conversion takes effect:

5492 (1) all property and contract rights owned by the
5493 converting organization remain vested in the converted
5494 organization without transfer, reversion, or impairment, and
5495 the title to any property vested by deed or otherwise in the
5496 converting organization shall not revert or be in any way
5497 impaired by reason of the conversion;

5498 (2) all debts, obligations, or other liabilities of the
5499 converting organization continue as debts, obligations, or
5500 other liabilities of the converted organization and neither
5501 the rights of creditors, nor the liens upon the property of
5502 the converting organization shall be impaired by the
5503 conversion;

5504 (3) an action or proceeding pending by or against the
5505 converting organization continues as if the conversion had not
5506 occurred and the name of the converted organization may, but
5507 need not, be substituted for the name of the converting
5508 organization in any pending action or proceeding;

5509 (4) except as prohibited by law other than this
5510 chapter, all of the rights, privileges, immunities, powers,
5511 and purposes of the converting organization remain vested in
5512 the converted organization;

5513 (5) except as otherwise provided in the plan of
5514 conversion, the terms and conditions of the plan of conversion
5515 take effect;

5516 (6) except as otherwise agreed, for all purposes of the



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5517 laws of this state, the converting organization shall not be
5518 required to wind up its affairs or pay its liabilities and
5519 distribute its assets, and the conversion shall not be deemed
5520 to constitute a dissolution of the converting organization;

5521 (7) for all purposes of the laws of this state, the
5522 rights, privileges, powers, interests in property, debts,
5523 liabilities, and duties of the converting organization, shall
5524 be the rights, privileges, powers, interests in property,
5525 debts, liabilities, and duties of the converted organization,
5526 and shall not be deemed as a consequence of the conversion, to
5527 have been transferred to the converted organization;

5528 (8) if the converted organization is a nonprofit
5529 corporation, for all purposes of the laws of this state, the
5530 nonprofit corporation shall be deemed to be the same
5531 organization as the converting organization, and the
5532 conversion shall constitute a continuation of the existence of
5533 the converting organization in the form of a nonprofit
5534 corporation;

5535 (9) if the converted organization is a nonprofit
5536 corporation, the existence of the nonprofit corporation shall
5537 be deemed to have commenced on the date the converting
5538 organization commenced its existence in the jurisdiction in
5539 which the converting organization was first created, formed,
5540 organized, incorporated, or otherwise came into being;

5541 (10) the conversion shall not affect the choice of law
5542 applicable to matters arising prior to conversion;

5543 (11) if the Secretary of State has assigned a unique
5544 identifying number or other designation to the converting



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5545 organization and (i) the converted organization is formed
5546 pursuant to, or its internal affairs are governed by, the laws
5547 of this state, or (ii) the converted organization is, within
5548 30 days after the effective date of the conversion, registered
5549 to transact business in this state, then that unique
5550 identifying number or other designation shall continue to be
5551 assigned to the converted organization; and

5552 (12) the interests, if any, of the converting
5553 organization are reclassified into interests or other
5554 securities, obligations, rights to acquire interests or other
5555 securities, cash, or other property in accordance with the
5556 terms of the conversion, and the interest holders, if any, of
5557 the converting organization are entitled only to the rights
5558 provided to them by those terms and to any rights they may
5559 have under the governing statute of the converting
5560 organization.

5561 (b) A converted organization that is a foreign entity
5562 consents to the jurisdiction of the courts of this state to
5563 enforce any debt, obligation, or other liability for which the
5564 converting nonprofit corporation, is liable if, before the
5565 conversion, the converting nonprofit corporation was subject
5566 to suit in this state on the debt, obligation, or other
5567 liability. If a converted organization is a foreign entity and
5568 fails to designate or maintain a registered agent, or the
5569 designated registered agent cannot with reasonable diligence
5570 be served, then service of process on that converted
5571 organization for the purposes of enforcing a debt, obligation,
5572 or other liability under this subsection may be made in the



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5573 same manner and has the same consequences as provided in
5574 Section 10A-1-5.35.

5575 §10A-3A-13.08. Approval by specified person or group of
5576 persons.

5577 (a) The certificate of incorporation of a membership
5578 nonprofit corporation may require that a conversion under this
5579 article or under Article 8 of Chapter 1 be approved in writing
5580 by a specified person or group of persons in addition to the
5581 board of directors and members.

5582 (b) The certificate of incorporation of a nonmembership
5583 nonprofit corporation may require that a conversion under this
5584 article or under Article 8 of Chapter 1 be approved in writing
5585 by a specified person or group of persons in addition to the
5586 board of directors.

5587 (c) A requirement in the certificate of incorporation
5588 described in subsections (a) or (b) of this section may only
5589 be approved by the written approval of the specified person or
5590 group of persons.

5591 §10A-3A-13.09. Nonexclusive.

5592 This article is not exclusive. This article does not
5593 preclude a nonprofit corporation from converting under law
5594 other than this chapter.

5595 ARTICLE 14. TRANSITIONAL PROVISIONS.

5596 §10A-3A-14.01. Application to existing nonprofit
5597 corporations.

5598 (a) Before January 1, 2025, this chapter governs only:

5599 (1) a nonprofit corporation incorporated on or after
5600 January 1, 2024; and



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5601 (2) a nonprofit corporation incorporated before January
5602 1, 2024, which elects, by amending or restating that nonprofit
5603 corporation's certificate of incorporation, to be governed by
5604 this chapter.

5605 (b) On and after January 1, 2025, this chapter governs
5606 all existing nonprofit corporations incorporated under:

5607 (1) any general or special law of this state providing
5608 for the incorporation of nonprofit corporations for a purpose
5609 or purposes for which a nonprofit corporation might be
5610 incorporated under this chapter, where the power has been
5611 reserved to amend, repeal, or modify the law under which the
5612 nonprofit corporation was incorporated; and

5613 (2) any predecessor statute hereto.

5614 (c) For purposes of applying this chapter to a
5615 nonprofit corporation incorporated before January 1, 2024:

5616 (1) the nonprofit corporation is not required to amend
5617 its certificate of incorporation to comply with Section
5618 10A-3A-2.02(a)(5); but once amended or restated, the
5619 certificate of incorporation must comply with Section
5620 10A-3A-2.02(a)(5);

5621 (2) if on December 31, 2023, the certificate of
5622 incorporation or bylaws of a nonprofit corporation in
5623 existence on that date provides members with the right to
5624 cumulate their votes for the election of directors, that right
5625 to cumulate their votes shall continue unless the certificate
5626 of incorporation or bylaws of the nonprofit corporation are
5627 amended to deny that right. Notwithstanding the foregoing, no
5628 such members may cumulate their votes for the election of



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5629 directors by utilizing an action by written consent.

5630 (3) the nonprofit corporation's incorporation document,
5631 whether a certificate of incorporation, certificate of
5632 formation, charter, or articles of incorporation is deemed to
5633 be the nonprofit corporation's certificate of incorporation;

5634 (4) the nonprofit corporation's bylaws are deemed to be
5635 the nonprofit corporation's bylaws;

5636 (5) any amendment or restatement of a nonprofit
5637 corporation's certificate of incorporation or bylaws on or
5638 after January 1, 2024, shall conform with this chapter; and

5639 (d) No nonprofit corporation may be incorporated after
5640 December 31, 2023, pursuant to Sections 10A-3-1.01 to
5641 10A-3-8.02, inclusive.

5642 §10-3A-14.02. Application to existing foreign nonprofit
5643 corporations.

5644 A foreign nonprofit corporation registered or
5645 authorized to transact business in this state on January 1,
5646 2024, is subject to this chapter and is deemed to be
5647 registered to transact business in this state, and is not
5648 required to renew its registration to transact business under
5649 Article 7 of Chapter 1, except as required by Article 7 of
5650 Chapter 1.

5651 §10A-3A-14.03. Saving Provisions.

5652 (a) Except as provided in subsection (b), the repeal of
5653 a statute by this chapter does not affect:

5654 (1) the operation of the statute or any action taken
5655 under it before its repeal;

5656 (2) any ratification, right, remedy, privilege,



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5657 obligation, or liability acquired, accrued, or incurred under
5658 the statute before its repeal;

5659 (3) any violation of the statute, or any penalty,
5660 forfeiture, or punishment incurred because of the violation
5661 before its repeal; or

5662 (4) any proceeding, reorganization, or dissolution
5663 commenced under the statute before its repeal, and the
5664 proceeding, reorganization, or dissolution may be completed in
5665 accordance with the statute as if it had not been repealed.

5666 (b) If a penalty or punishment imposed for violation of
5667 a statute repealed by this chapter is reduced by this chapter,
5668 the penalty or punishment, if not already imposed, shall be
5669 imposed in accordance with this chapter.

5670 §10A-3A-14.04. Severability.

5671 If any provision of this chapter or its application to
5672 any person or circumstance is held invalid by a court of
5673 competent jurisdiction, the invalidity does not affect other
5674 provisions or applications of this chapter that can be given
5675 effect without the invalid provision or application, and to
5676 this end the provisions of this chapter are severable.

5677 §10A-3A-14.05. Relation to electronic signatures in
5678 global and national commerce act.

5679 This chapter modifies, limits, and supersedes the
5680 Federal Electronic Signatures in Global and National Commerce
5681 Act, 15 U.S.C. § 7001 et seq., but does not modify, limit, or
5682 supersede Section 101(c) of that act, 15 U.S.C. § 7001(c), or
5683 authorize electronic delivery of any of the notices described
5684 in Section 103(b) of that act, 15 U.S.C. § 7003(b).

5685 §10A-3A-14.06. Interstate application.



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5686 A nonprofit corporation formed and existing under this
5687 chapter may conduct its activities and affairs, carry on its
5688 operations, and have and exercise the powers granted by this
5689 chapter in any state, foreign country, or other jurisdiction.

5690 Section 2. Sections 10A-1-1.03, 10A-1-1.08, 10A-1-3.32,
5691 10A-1-8.01, 10A-1-8.02, and 10A-1-9.01 of the Code of Alabama
5692 1975, are amended to read as follows:

5693 "§10A-1-1.03

5694 (a) If a term, including a term that is defined in
5695 subsection (b) of this section, is defined in a chapter of
5696 this title, then, when used in that chapter, the term shall
5697 have the meaning set forth in that chapter.

5698 (b) As used in this title, except as provided in
5699 subsection (a) of this section or where the context otherwise
5700 requires, the following terms mean:

5701 (1) AFFILIATE. A person who controls, is controlled by,
5702 or is under common control with another person. An affiliate
5703 of an individual includes the spouse, or a parent or sibling
5704 thereof, of the individual, or a child, grandchild, sibling,
5705 parent, or spouse of any thereof, of the individual, or an
5706 individual having the same home as the individual, or a trust
5707 or estate of which an individual specified in this sentence is
5708 a substantial beneficiary; a trust, estate, incompetent,
5709 conservatee, protected person, or minor of which the
5710 individual is a fiduciary; or an entity of which the
5711 individual is director, general partner, agent, employee or
5712 the governing authority or member of the governing authority.

5713 (2) ASSOCIATE. When used to indicate a relationship



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5714 with:

5715 (A) a domestic or foreign entity for which the person
5716 is:

5717 (i) an officer or governing person; or

5718 (ii) a beneficial owner of 10 percent or more of a
5719 class of voting ownership interests or similar securities of
5720 the entity;

5721 (B) a trust or estate in which the person has a
5722 substantial beneficial interest or for which the person serves
5723 as trustee or in a similar fiduciary capacity;

5724 (C) the person's spouse or a relative of the person
5725 related by consanguinity or affinity within the fifth degree
5726 who resides with the person; or

5727 (D) a governing person or an affiliate or officer of
5728 the person.

5729 (3) ASSOCIATION. Includes, but is not limited to, an
5730 unincorporated nonprofit association as defined in Chapter 17
5731 and an unincorporated professional association as defined in
5732 Article 1 of Chapter 30.

5733 (4) BENEFIT CORPORATION. A benefit corporation as
5734 defined in Chapter 2A.

5735 (5) BUSINESS CORPORATION. A corporation or foreign
5736 corporation as defined in Chapter 2A. The term includes a
5737 benefit corporation as defined in Chapter 2A.

5738 (6) BUSINESS TRUST. A business trust as defined in
5739 Chapter 16.

5740 (7) CERTIFICATE OF DISSOLUTION. Any document such as a
5741 certificate of dissolution, statement of dissolution, or



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5742 articles of dissolution, required or permitted to be filed
5743 publicly with respect to an entity's dissolution and winding
5744 up of its business, activity, activities, not for profit
5745 activity, or affairs.

5746 (8) CERTIFICATE OF FORMATION.

5747 (A) The document required to be filed publicly under
5748 this title to form a filing entity; and

5749 (B) if appropriate, a restated certificate of formation
5750 and all amendments of an original or restated certificate of
5751 formation; provided that a restated certificate of formation
5752 and an amendment of an original or restated certificate of
5753 formation shall not be deemed to be a certificate of formation
5754 for purposes of Section 10A-1-4.31.

5755 (9) CERTIFICATE OF OWNERSHIP. An instrument evidencing
5756 an ownership interest or membership interest in an entity.

5757 (10) CERTIFICATED OWNERSHIP INTEREST. An ownership
5758 interest of a domestic entity represented by a certificate.

5759 (11) CERTIFICATION or CERTIFIED. Duly authenticated by
5760 the proper officer or filing officer of the jurisdiction the
5761 laws of which govern the internal affairs of an entity.

5762 (12) CONTRIBUTION. A tangible or intangible benefit
5763 that a person transfers to an entity in consideration for an
5764 ownership interest in the entity or otherwise in the person's
5765 capacity as an owner or a member. A benefit that may
5766 constitute a contribution transferred in exchange for an
5767 ownership interest or transferred in the transferor's capacity
5768 as an owner or member may include cash, property, services
5769 rendered, a contract for services to be performed, a



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5770 promissory note or other obligation of a person to pay cash or
5771 transfer property to the entity, or securities or other
5772 interests in or obligations of an entity. In either case, the
5773 benefit does not include cash or property received by the
5774 entity:

5775 (A) with respect to a promissory note or other
5776 obligation to the extent that the agreed value of the note or
5777 obligation has previously been included as a contribution; or

5778 (B) that the person intends to be a loan to the entity.

5779 (13) CONVERSION. A conversion, whether referred to as a
5780 conversion, domestication, or otherwise, means:

5781 (A) the continuance of a domestic entity as a foreign
5782 entity of any type;

5783 (B) the continuance of a foreign entity as a domestic
5784 entity of any type; or

5785 (C) the continuance of a domestic entity of one type as
5786 a domestic entity of another type.

5787 (14) CONVERTED ENTITY. An entity resulting from a
5788 conversion.

5789 (15) CONVERTING ENTITY. An entity as the entity existed
5790 before the entity's conversion.

5791 (16) COOPERATIVE. Includes an employee cooperative as
5792 defined in Chapter 11.

5793 (17) CORPORATION. Includes a domestic or foreign
5794 business corporation, including a benefit corporation, as
5795 defined in Chapter 2A, a domestic or foreign nonprofit
5796 corporation as defined in Chapter 3 or Chapter 3A, a domestic
5797 or foreign professional corporation as defined in Chapter 4,



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5798 and those entities specified in Chapter 20 as corporate.

5799 (18) COURT. The designated court, and if none, the
5800 circuit court specifically set forth in this title, and if
5801 none, any other court having jurisdiction in a case.

5802 (19) DAY. When used in the computation of time,
5803 excludes the first day and includes the last day of the period
5804 so computed, unless the last day is a Saturday, Sunday, or
5805 legal holiday, in which event the period runs until the end of
5806 the next day that is not a Saturday, a Sunday, or a legal
5807 holiday. When the period of time to be computed is less than 7
5808 days, intermediate Saturdays, Sundays, and legal holidays
5809 shall be excluded.

5810 (20) DEBTOR IN BANKRUPTCY. A person who is the subject
5811 of:

5812 (A) an order for relief under the United States
5813 bankruptcy laws, Title 11, United States Code, or comparable
5814 order under a successor statute of general application; or

5815 (B) a comparable order under federal, state, or foreign
5816 law governing insolvency.

5817 (21) DESIGNATED COURT. The court or courts that are
5818 designated in the (i) certificate of incorporation or bylaws
5819 of a corporation as authorized by Chapter 2A, (ii) certificate
5820 of incorporation or bylaws of a nonprofit corporation as
5821 authorized by Chapter 3A, (iii) limited liability company
5822 agreement of a limited liability company formed pursuant to or
5823 governed by Chapter 5A, ~~(iii)~~ (iv) partnership agreement of a
5824 partnership formed pursuant to or governed by Chapter 8A, or
5825 ~~(iv)~~ (v) limited partnership agreement of a limited partnership



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5826 formed pursuant to or governed by Chapter 9A.

5827 (22) DIRECTOR. An individual who serves on the board of
5828 directors, by whatever name known, of a foreign or domestic
5829 corporation.

5830 (23) DISTRIBUTION. A transfer of property, including
5831 cash, from an entity to an owner or member of the entity in
5832 the owner's or member's capacity as an owner or member. The
5833 term includes a dividend, a redemption or purchase of an
5834 ownership interest, or a liquidating distribution.

5835 (24) DOMESTIC. With respect to an entity, means
5836 governed as to its internal affairs by this title.

5837 (25) DOMESTIC ENTITY. An entity governed as to its
5838 internal affairs by this title.

5839 (26) EFFECTIVE DATE OF THIS TITLE. January 1, 2011.

5840 (27) ELECTRONIC. Relating to technology having
5841 electrical, digital, magnetic, wireless, optical,
5842 electromagnetic, or similar capabilities.

5843 (28) ELECTRONIC SIGNATURE. An electronic signature as
5844 that term is defined in the Alabama Electronic Transactions
5845 Act, Chapter 1A of Title 8, or any successor statute.

5846 (29) ELECTRONIC TRANSMISSION or ELECTRONICALLY
5847 TRANSMITTED. Any form or process of communication not directly
5848 involving the physical transfer of paper or another tangible
5849 medium, which (i) is suitable for the retention, retrieval,
5850 and reproduction of information by the recipient, and (ii) is
5851 retrievable in paper form by the recipient through an
5852 automated process used in conventional commercial practice.

5853 (30) ELECTRONIC WRITING. Information that is stored in



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5854 an electronic or other nontangible medium and is retrievable
5855 in paper form through an automated process used in
5856 conventional commercial practice.

5857 (31) ENTITY. A domestic or foreign organization.

5858 (32) FILING ENTITY. A domestic entity that is a
5859 corporation, limited partnership, limited liability limited
5860 partnership, limited liability company, professional
5861 association, employee cooperative corporation, or real estate
5862 investment trust.

5863 (33) FILING INSTRUMENT. An instrument, document, or
5864 statement that is required or permitted by this title to be
5865 delivered for filing by or for an entity to a filing officer.

5866 (34) FILING OFFICER. An officer of this state with whom
5867 a filing instrument is required or permitted to be delivered
5868 for filing pursuant to this title.

5869 (35) FOREIGN. With respect to an entity, means governed
5870 as to its internal affairs by the laws of a jurisdiction other
5871 than this state.

5872 (36) FOREIGN ENTITY. An entity governed as to its
5873 internal affairs by the laws of a jurisdiction other than this
5874 state.

5875 (37) FOREIGN FILING ENTITY. A foreign entity that
5876 registers or is required to register as a foreign entity under
5877 Article 7.

5878 (38) FOREIGN GOVERNMENTAL AUTHORITY. A governmental
5879 official, agency, or instrumentality of a jurisdiction other
5880 than this state.

5881 (39) FOREIGN NONFILING ENTITY. A foreign entity that is



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5882 not a foreign filing entity.

5883 (40) GENERAL PARTNER.

5884 (A) Each partner in a general partnership; or

5885 (B) a person who is admitted to a limited partnership
5886 as a general partner in accordance with the governing
5887 documents of the limited partnership.

5888 (41) GENERAL PARTNERSHIP. A partnership as defined in
5889 Chapter 8A. The term includes a limited liability partnership
5890 as defined in Chapter 8A.

5891 (42) GOVERNING AUTHORITY. A person or group of persons
5892 who are entitled to manage and direct the affairs of an entity
5893 pursuant to this title and the governing documents of the
5894 entity, except that if the governing documents of the entity
5895 or this title divide the authority to manage and direct the
5896 affairs of the entity among different persons or groups of
5897 persons according to different matters, governing authority
5898 means the person or group of persons entitled to manage and
5899 direct the affairs of the entity with respect to a matter
5900 under the governing documents of the entity or this title. The
5901 term includes the board of directors of a corporation, by
5902 whatever name known, or other persons authorized to perform
5903 the functions of the board of directors of a corporation, the
5904 general partners of a general partnership or limited
5905 partnership, the persons who have direction and oversight of a
5906 limited liability company, and the trust managers of a real
5907 estate investment trust. The term does not include an officer
5908 who is acting in the capacity of an officer.

5909 (43) GOVERNING DOCUMENTS.



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5910 (A) In the case of a domestic entity:

5911 (i) the certificate of formation for a filing entity or
5912 the document or agreement under which a nonfiling entity is
5913 formed; and

5914 (ii) the other documents or agreements, including
5915 bylaws, partnership agreements of partnerships, limited
5916 liability company agreements of limited liability companies,
5917 or similar documents, adopted by the entity pursuant to this
5918 title to govern the formation or the internal affairs of the
5919 entity; or

5920 (B) in the case of a foreign entity, the instruments,
5921 documents, or agreements adopted under the law of its
5922 jurisdiction of formation to govern the formation or the
5923 internal affairs of the entity.

5924 (44) GOVERNING PERSON. A person serving as part of the
5925 governing authority of an entity.

5926 (45) INDIVIDUAL. A natural person and the estate of an
5927 incompetent or deceased natural person.

5928 (46) INSOLVENCY. The inability of a person to pay the
5929 person's debts as they become due in the usual course of
5930 business or affairs.

5931 (47) INSOLVENT. A person who is unable to pay the
5932 person's debts as they become due in the usual course of
5933 business or affairs.

5934 (48) JUDGE OF PROBATE. The judge of probate of the
5935 county in which an entity is required or permitted to deliver
5936 a filing instrument for filing pursuant to this title.

5937 (49) JURISDICTION OF FORMATION.



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5938 (A) In the case of a filing entity, this state;

5939 (B) in the case of a foreign entity, the jurisdiction
5940 in which the entity's certificate of formation or similar
5941 organizational instrument is filed, or if no certificate of
5942 formation or similar organizational instrument is filed, then
5943 the laws of the jurisdiction which govern the internal affairs
5944 of the foreign entity;

5945 (C) in the case of a general partnership which has
5946 filed a statement of partnership, a statement of not for
5947 profit partnership, or a statement of limited liability
5948 partnership in accordance with Chapter 8A, in this state;

5949 (D) in the case of a foreign limited liability
5950 partnership, the laws of the jurisdiction which govern the
5951 filing of the foreign limited liability partnership's
5952 statement of limited liability partnership or such filing in
5953 that jurisdiction; and

5954 (E) in the case of a foreign or domestic nonfiling
5955 entity other than those entities described in subsection (C)
5956 or (D):

5957 (i) the jurisdiction the laws of which are chosen in
5958 the entity's governing documents to govern its internal
5959 affairs if that jurisdiction bears a reasonable relation to
5960 the owners or members or to the domestic or foreign nonfiling
5961 entity's business, activities, and affairs under the
5962 principles of this state that otherwise would apply to a
5963 contract among the owners or members; or

5964 (ii) if subparagraph (i) does not apply, the
5965 jurisdiction in which the entity has its principal office.



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5966 (50) LAW. Unless the context requires otherwise, both
5967 statutory and common law.

5968 (51) LICENSE. A license, certificate of registration,
5969 or other legal authorization.

5970 (52) LICENSING AUTHORITY. The state court, state
5971 regulatory licensing board, or other like agency which has the
5972 power to issue a license or other legal authorization to
5973 render professional services.

5974 (53) LIMITED LIABILITY COMPANY. A limited liability
5975 company as defined in Chapter 5A.

5976 (54) LIMITED LIABILITY LIMITED PARTNERSHIP. A limited
5977 liability limited partnership as defined in Chapter 9A.

5978 (55) LIMITED LIABILITY PARTNERSHIP. A limited liability
5979 partnership as defined in Chapter 8A.

5980 (56) LIMITED PARTNER. A person who has been admitted to
5981 a limited partnership as a limited partner as provided by:

5982 (A) in the case of a domestic limited partnership,
5983 Chapter 9A; or

5984 (B) in the case of a foreign limited partnership, the
5985 laws of its jurisdiction of formation.

5986 (57) LIMITED PARTNERSHIP. A limited partnership as
5987 defined in Chapter 9A. The term includes a limited liability
5988 limited partnership as defined in Chapter 9A.

5989 (58) MANAGERIAL OFFICIAL. An officer or a governing
5990 person.

5991 (59) MEMBER.

5992 (A) A person defined as a member under Chapter 5A;

5993 (B) in the case of a nonprofit corporation formed



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5994 pursuant to or governed by Chapter 3, a person having
5995 membership rights in the nonprofit corporation in accordance
5996 with its governing documents as provided in Chapter 3, and in
5997 the case of a nonprofit corporation formed pursuant to or
5998 governed by Chapter 3A, a person defined as a member under
5999 Chapter 3A;

6000 (C) in the case of an employee cooperative corporation
6001 formed pursuant to or governed by Chapter 11, a natural person
6002 who, as provided in Chapter 11, has been accepted for
6003 membership in and owns a membership share in an employee
6004 cooperative;

6005 (D) in the case of a nonprofit association, a person
6006 who, as provided in Chapter 17, may participate in the
6007 selection of persons authorized to manage the affairs of the
6008 nonprofit association or in the development of its policy.

6009 (60) MERGER. The combination of one or more domestic
6010 entities with one or more domestic entities or foreign
6011 entities resulting in:

6012 (A) one or more surviving domestic entities or foreign
6013 entities;

6014 (B) the creation of one or more new domestic entities
6015 or foreign entities, or one or more surviving domestic
6016 entities or foreign entities; or

6017 (C) one or more surviving domestic entities or foreign
6018 entities and the creation of one or more new domestic entities
6019 or foreign entities.

6020 (61) NONFILING ENTITY. A domestic entity that is not a
6021 filing entity. The term includes a domestic general



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6022 partnership, a limited liability partnership, and a nonprofit
6023 association.

6024 (62) NONPROFIT ASSOCIATION. An unincorporated nonprofit
6025 association as defined in Chapter 17. The term does not
6026 include a general partnership which has filed a statement of
6027 not for profit partnership in accordance with Chapter 8A, a
6028 limited partnership which is carrying on a not for profit
6029 purpose, or a limited liability company which is carrying on a
6030 not for profit purpose.

6031 (63) NONPROFIT CORPORATION. A domestic or foreign
6032 nonprofit corporation as defined in Chapter 3 or Chapter 3A.

6033 (64) NONPROFIT ENTITY. An entity that is a nonprofit
6034 corporation, nonprofit association, or other entity that is
6035 organized solely for one or more nonprofit purposes.

6036 (65) OFFICER. An individual elected, appointed, or
6037 designated as an officer of an entity by the entity's
6038 governing authority or under the entity's governing documents.

6039 (66) ORGANIZATION. A corporation, limited partnership,
6040 general partnership, limited liability company, business
6041 trust, real estate investment trust, joint venture, joint
6042 stock company, cooperative, association, or other
6043 organization, including, regardless of its organizational
6044 form, a bank, insurance company, credit union, and savings and
6045 loan association, whether for profit, not for profit,
6046 nonprofit, domestic, or foreign.

6047 (67) ORGANIZER. A person, who need not be an owner or
6048 member of the entity, who, having the capacity to contract, is
6049 authorized to execute documents in connection with the



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6050 formation of the entity. The term includes an incorporator.

6051 (68) OWNER.

6052 (A) With respect to a foreign or domestic business
6053 corporation or real estate investment trust, a stockholder or
6054 a shareholder;

6055 (B) with respect to a foreign or domestic partnership,
6056 a partner;

6057 (C) with respect to a foreign or domestic limited
6058 liability company or association, a member; and

6059 (D) with respect to another foreign or domestic entity,
6060 an owner of an equity interest in that entity.

6061 (69) OWNERSHIP INTEREST. An owner's interest in an
6062 entity. The term includes the owner's share of profits and
6063 losses or similar items and the right to receive
6064 distributions. The term does not include an owner's right to
6065 participate in management or participate in the direction or
6066 oversight of the entity. An ownership interest is personal
6067 property.

6068 (70) PARENT or PARENT ENTITY. An entity that:

6069 (A) owns at least 50 percent of the ownership or
6070 membership interest of a subsidiary; or

6071 (B) possesses at least 50 percent of the voting power
6072 of the owners or members of a subsidiary.

6073 (71) PARTNER. A limited partner or general partner.

6074 (72) PARTNERSHIP. Includes a general partnership, a
6075 limited liability partnership, a foreign limited liability
6076 partnership, a limited partnership, a foreign limited
6077 partnership, a limited liability limited partnership, and a



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6078 foreign limited liability limited partnership.

6079 (73) PARTNERSHIP AGREEMENT. Any agreement (whether
6080 referred to as a partnership agreement or otherwise), written,
6081 oral or implied, of the partners as to the activities and
6082 affairs of a general partnership or a limited partnership. The
6083 partnership agreement includes any amendments to the
6084 partnership agreement. In the case of limited partnerships
6085 formed prior to October 1, 1998, partnership agreement
6086 includes the certificate of partnership.

6087 (74) PARTY TO THE MERGER. A domestic entity or foreign
6088 entity that under a plan of merger is combined by a merger.
6089 The term does not include a domestic entity or foreign entity
6090 that is not to be combined into or with one or more domestic
6091 entities or foreign entities, regardless of whether ownership
6092 interests of the entity are to be issued under the plan of
6093 merger.

6094 (75) PERSON. An individual, including the estate of an
6095 incompetent or deceased individual, or an entity, whether
6096 created by the laws of this state or another state or foreign
6097 country, including, without limitation, a general partnership,
6098 limited liability partnership, limited partnership, limited
6099 liability limited partnership, limited liability company,
6100 corporation, professional corporation, nonprofit corporation,
6101 professional association, trustee, personal representative,
6102 fiduciary, as defined in Section 19-3-150 or person performing
6103 in any similar capacity, business trust, estate, trust,
6104 association, joint venture, government, governmental
6105 subdivision, agency, or instrumentality, or any other legal or



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6106 commercial entity.

6107 (76) PRESIDENT.

6108 (A) The individual designated as president of an entity
6109 under the entity's governing documents; or

6110 (B) the officer or committee of persons authorized to
6111 perform the functions of the principal executive officer of an
6112 entity without regard to the designated name of the officer or
6113 committee.

6114 (77) PRINCIPAL OFFICE. The office, in or out of this
6115 state, where the principal executive office, whether referred
6116 to as the principal executive office, chief executive office,
6117 or otherwise, of an entity is located.

6118 (78) PROFESSIONAL ASSOCIATION. A professional
6119 association as defined in Chapter 30.

6120 (79) PROFESSIONAL CORPORATION. A domestic or foreign
6121 professional corporation as defined in Chapter 4.

6122 (80) PROFESSIONAL ENTITY. A professional association
6123 and a professional corporation.

6124 (81) PROFESSIONAL SERVICE. Any type of service that may
6125 lawfully be performed only pursuant to a license issued by a
6126 state court, state regulatory licensing board, or other like
6127 agency pursuant to state laws.

6128 (82) PROPERTY. Includes all property, whether real,
6129 personal, or mixed, or tangible or intangible, or any right or
6130 interest therein.

6131 (83) REAL ESTATE INVESTMENT TRUST. An unincorporated
6132 trust, association, or other entity as defined in Chapter 10.

6133 (84) SECRETARY.



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6134 (A) The individual designated as secretary of an entity
6135 under the entity's governing documents; or

6136 (B) the officer or committee of persons authorized to
6137 perform the functions of secretary of an entity without regard
6138 to the designated name of the officer or committee.

6139 (85) SECRETARY OF STATE. The Secretary of State of the
6140 State of Alabama.

6141 (86) SIGN or SIGNATURE. With the present intent to
6142 authenticate or adopt a writing:

6143 (A) to execute or adopt a tangible symbol to a writing,
6144 and includes any manual, facsimile, or conformed signature; or

6145 (B) to attach to or logically associate with an
6146 electronic transmission an electronic sound, symbol, or
6147 process, and includes an electronic signature in an electronic
6148 transmission.

6149 (87) STATE. Includes, when referring to a part of the
6150 United States, a state or commonwealth, and its agencies and
6151 governmental subdivisions, and a territory or possession, and
6152 its agencies and governmental subdivisions, of the United
6153 States.

6154 (88) SUBSCRIBER. A person who agrees with or makes an
6155 offer to an entity to purchase by subscription an ownership
6156 interest in the entity.

6157 (89) SUBSCRIPTION. An agreement between a subscriber
6158 and an entity, or a written offer made by a subscriber to an
6159 entity before or after the entity's formation, in which the
6160 subscriber agrees or offers to purchase a specified ownership
6161 interest in the entity.



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6162 (90) SUBSIDIARY. An entity at least 50 percent of:

6163 (A) the ownership or membership interest of which is
6164 owned by a parent entity; or

6165 (B) the voting power of which is possessed by a parent
6166 entity.

6167 (91) TREASURER.

6168 (A) The individual designated as treasurer of an entity
6169 under the entity's governing documents; or

6170 (B) the officer or committee of persons authorized to
6171 perform the functions of treasurer of an entity without regard
6172 to the designated name of the officer or committee.

6173 (92) TRUSTEE. A person who serves as a trustee of a
6174 trust, including a real estate investment trust.

6175 (93) UNCERTIFICATED OWNERSHIP INTEREST. An ownership
6176 interest in a domestic entity that is not represented by a
6177 certificate.

6178 (94) VICE PRESIDENT.

6179 (A) The individual designated as vice president of an
6180 entity under the governing documents of the entity; or

6181 (B) the officer or committee of persons authorized to
6182 perform the functions of the president of the entity on the
6183 death, absence, or resignation of the president or on the
6184 inability of the president to perform the functions of office
6185 without regard to the designated name of the officer or
6186 committee.

6187 (95) WRITING or WRITTEN. Information that is inscribed
6188 on a tangible medium or that is stored in an electronic or
6189 other medium and is retrievable in perceivable form."



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6190 "§10A-1-1.08

6191 (a) The provisions of this title as described by this
6192 section may be cited as provided by this section.

6193 (b) Chapter 2A and the provisions of Chapter 1 to the
6194 extent applicable to business corporations may be cited as the
6195 Alabama Business Corporation Law.

6196 (c) Chapter 3 or Chapter 3A and the provisions of
6197 Chapter 1 to the extent applicable to nonprofit corporations
6198 may be cited as the Alabama Nonprofit Corporation Law.

6199 (d) Chapter 4 and the provisions of Chapter 1 to the
6200 extent applicable to professional corporations may be cited as
6201 the Alabama Professional Corporation Law.

6202 (e) Chapter 5A and the provisions of Chapter 1 to the
6203 extent applicable to limited liability companies may be cited
6204 as the Alabama Limited Liability Company Law.

6205 (f) Chapter 8A and the provisions of Chapter 1 to the
6206 extent applicable to general partnerships may be cited as the
6207 Alabama Partnership Law.

6208 (g) Chapter 9A and the provisions of Chapter 1 to the
6209 extent applicable to limited partnerships may be cited as the
6210 Alabama Limited Partnership Law.

6211 (h) Chapter 10 and the provisions of Chapter 1 to the
6212 extent applicable to real estate investment trusts may be
6213 cited as the Alabama Real Estate Investment Trust Law.

6214 (i) Chapter 11 and the provisions of Chapter 1 and
6215 Chapter 2A to the extent applicable to employee cooperative
6216 corporations may be cited as the Alabama Employee Cooperative
6217 Corporations Law.



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6218 (j) Chapter 17 and the provisions of Chapter 1 to the
6219 extent applicable to unincorporated nonprofit associations may
6220 be cited as the Alabama Unincorporated Nonprofit Association
6221 Law."

6222 "§10A-1-3.32

6223 (a) This section applies to domestic entities other
6224 than (i) corporations formed pursuant to or governed by
6225 Chapter 2A or Chapter 4, and real estate investment trusts
6226 formed pursuant to or governed by Chapter 10, each of which is
6227 governed by the separate recordkeeping requirements and record
6228 inspections provisions of Chapter 2A and (ii) nonprofit
6229 corporations formed pursuant to or governed by Chapter 3 or
6230 Chapter 3A, limited liability companies formed pursuant to or
6231 governed by Chapter 5A, general partnerships formed pursuant
6232 to or governed by Chapter 8A, and limited partnerships formed
6233 pursuant to or governed by Chapter 9A, each of which are
6234 governed by the separate recordkeeping requirements and record
6235 inspection provisions set forth in each entity's respective
6236 chapter governing that entity.

6237 (b) With respect to a domestic entity covered by this
6238 section, the books and records maintained under the chapter of
6239 this title applicable to that entity and any other books and
6240 records of that entity, wherever situated, are subject to
6241 inspection and copying at the reasonable request, and at the
6242 expense of, any owner or member or the owner's or member's
6243 agent or attorney during regular business hours. The right of
6244 access extends to the legal representative of a deceased owner
6245 or member or owner or member under legal disability. The



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6246 entity shall also provide former owners and members with
6247 access to its books and records pertaining to the period
6248 during which they were owners or members.

6249 (c) The governing documents of a domestic entity may
6250 not unreasonably restrict an owner's or member's right to
6251 information or access to books and records.

6252 (d) Any agent or governing person of a domestic entity
6253 who, without reasonable cause, refuses to allow any owner or
6254 member or the owner's or member's agent or legal counsel to
6255 inspect any books or records of that entity shall be
6256 personally liable to the agent or member for a penalty in an
6257 amount not to exceed 10 percent of the fair market value of
6258 the ownership interest of the owner or member, in addition to
6259 any other damages or remedy."

6260 "§10A-1-8.01

6261 ~~(a)~~—A conversion of an entity may be accomplished as
6262 provided in this section:

6263 (a) The plan of conversion must be in writing, and:

6264 (1) must include the following:

6265 (A) the name, type of entity, and mailing address of
6266 the principal office of the converting entity, and its unique
6267 identifying number or other designation as assigned by the
6268 Secretary of State, if any, before conversion;

6269 (B) the name, type of entity, and mailing address of
6270 the principal office of the converted entity after conversion;

6271 (C) the terms and conditions of the conversion,
6272 including the manner and basis for converting interests in the
6273 converting entity into any combination of money, interests in



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6274 the converted entity, and other consideration allowed in
6275 subsection (b); and

6276 (D) the organizational documents of the converted
6277 entity; and

6278 (2) may include other provisions relating to the
6279 conversion not prohibited by law.

6280 (b) In connection with a conversion, rights or
6281 securities of or interests in a converting entity may be
6282 exchanged for or converted into cash, property, or rights or
6283 securities of or interests in the converted entity, or, in
6284 addition to or in lieu thereof, may be exchanged for or
6285 converted into cash, property, or rights or securities of or
6286 interests in another entity, or may be cancelled.

6287 (c) The plan of conversion of an entity must be
6288 approved as follows:

6289 (1) CORPORATIONS.

6290 ~~(A) a. The terms and conditions of a plan of conversion~~
6291 ~~of a corporation, other than a nonprofit corporation, If a~~
6292 ~~corporation is governed by Chapter 2A and that corporation is~~
6293 ~~a converting entity, the plan of conversion under subsection~~
6294 ~~(a) must be approved in accordance with ~~the procedures and by~~~~
6295 ~~the stockholder vote required by Article 9 of Chapter 2A. ~~If~~~~
6296 ~~the governing documents provide for approval of a conversion~~
6297 ~~by less than all of a corporation's stockholders, approval of~~
6298 ~~the conversion shall constitute corporate action subject to~~
6299 ~~appraisal rights pursuant to Article 13 of Chapter 2A. No~~
6300 ~~conversion of a corporation to a general or limited~~
6301 ~~partnership may be effected without the consent in writing of~~



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6302 ~~each stockholder who will have personal liability with respect~~
6303 ~~to the converted entity, notwithstanding any provision in the~~
6304 ~~governing documents of the converting corporation providing~~
6305 ~~for less than unanimous stockholder approval for the~~
6306 ~~conversion.~~ If the conversion is a corporate action as
6307 described in Section 10A-2A-13.02, then the rights,
6308 obligations, and procedures under Article 13 of Chapter 2A
6309 shall be applicable to that conversion.

6310 (B) b. ~~The terms and conditions of a plan of conversion~~
6311 ~~of a nonprofit corporation must be approved by all the~~
6312 ~~nonprofit corporation's members entitled to vote thereon, if~~
6313 ~~it is a nonprofit corporation with members with voting rights,~~
6314 ~~or as otherwise provided in the nonprofit corporation's~~
6315 ~~governing documents; but in no case may the governing~~
6316 ~~documents provide for approval by less than a majority of the~~
6317 ~~members entitled to vote thereon. If the converting nonprofit~~
6318 ~~corporation has no members, or no members entitled to vote~~
6319 ~~thereon, the terms and conditions of the plan of conversion~~
6320 ~~must be approved by a unanimous vote of the board of directors~~
6321 ~~of the converting nonprofit corporation, or as otherwise~~
6322 ~~provided in the governing documents; but in no case may the~~
6323 ~~governing documents provide for approval by less than a~~
6324 ~~majority of the board of directors.~~ If a corporation is
6325 governed by Chapter 3A and that corporation is a converting
6326 entity, the plan of conversion under subsection (a) must be
6327 approved in accordance with Article 13 of Chapter 3A.

6328 (C) If a corporation is not governed by Chapter 2A or
6329 Chapter 3A and that corporation is a converting entity, the



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6330 plan of conversion under subsection (a) must be approved in
6331 accordance with the law of the jurisdiction of formation of
6332 that corporation.

6333 (2) LIMITED PARTNERSHIPS, INCLUDING LIMITED LIABILITY
6334 LIMITED PARTNERSHIPS. ~~The terms and conditions of a plan of~~
6335 ~~conversion of a limited partnership must be approved by all of~~
6336 ~~the partners or as otherwise provided in the partnership~~
6337 ~~agreement. No conversion of a limited partnership to a general~~
6338 ~~partnership may be effected without the consent in writing of~~
6339 ~~each limited partner who will have personal liability with~~
6340 ~~respect to the converted entity, notwithstanding any provision~~
6341 ~~in the limited partnership agreement of the converting limited~~
6342 ~~partnership providing for approval of the conversion by less~~
6343 ~~than all partners.~~ If a limited partnership is a converting
6344 entity, the plan of conversion under subsection (a) must be
6345 approved in accordance with Article 10 of Chapter 9A.

6346 (3) LIMITED LIABILITY COMPANIES. ~~The terms and~~
6347 ~~conditions of a plan of conversion of a limited liability~~
6348 ~~company must be approved by all of the limited liability~~
6349 ~~company's members or as otherwise provided in the limited~~
6350 ~~liability company's governing documents. No conversion of a~~
6351 ~~limited liability company to a general or limited partnership~~
6352 ~~may be effected without the consent in writing of each member~~
6353 ~~who will have personal liability with respect to the converted~~
6354 ~~entity, notwithstanding any provision in the governing~~
6355 ~~documents of the converting limited liability company~~
6356 ~~providing for less than unanimous member approval for the~~
6357 ~~conversion.~~ If a limited liability company is a converting



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6358 entity, the plan of conversion under subsection (a) must be
6359 approved in accordance with Article 10 of Chapter 5A.

6360 (4) GENERAL PARTNERSHIPS, INCLUDING LIMITED LIABILITY
6361 PARTNERSHIPS. ~~The terms and conditions of a plan of conversion~~
6362 ~~of a general partnership must be approved by all of the~~
6363 ~~partners or as otherwise provided in the partnership~~
6364 ~~agreement. No conversion of a limited liability partnership to~~
6365 ~~a general or limited partnership may be effected without the~~
6366 ~~consent in writing of each partner who will have personal~~
6367 ~~liability with respect to the converted entity,~~
6368 ~~notwithstanding any provision in the partnership agreement of~~
6369 ~~the converting limited liability partnership providing for~~
6370 ~~less than unanimous partner approval for the conversion. If a~~
6371 general partnership is a converting entity, the plan of
6372 conversion under subsection (a) must be approved in accordance
6373 with Article 9 of Chapter 8A. If a general partnership is the
6374 converting entity and that general partnership does not have
6375 an effective statement of partnership, statement of not for
6376 profit partnership, or statement of limited liability
6377 partnership on file with the Secretary of State, then that
6378 general partnership must, before proceeding with a conversion
6379 deliver to the Secretary of State for filing, a statement of
6380 partnership, statement of not for profit partnership, or
6381 statement of limited liability partnership simultaneously with
6382 the delivery to the Secretary of State for filing, of a
6383 statement of conversion.

6384 (5) REAL ESTATE INVESTMENT TRUST. The terms and
6385 conditions of ~~a~~ the plan of conversion under subsection (a) of



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6386 a real estate investment trust must be approved by all of the
6387 trust's shareholders or as otherwise provided in the trust's
6388 declaration of trust; but in no case may the vote required for
6389 shareholder approval be set at less than a majority of all the
6390 votes entitled to be cast. No conversion of a real estate
6391 investment trust to a general or limited partnership may be
6392 effected without the consent in writing of each shareholder
6393 who will have personal liability with respect to the converted
6394 entity, notwithstanding any provision in the declaration of
6395 trust of the converting real estate investment trust providing
6396 for less than unanimous shareholder approval for the
6397 conversion.

6398 (6) OTHER ENTITY. ~~The terms and conditions of a plan of~~
6399 ~~conversion of any entity not specified above must be approved~~
6400 ~~by all owners of the converting entity. No conversion of any~~
6401 ~~entity shall be effected without the consent in writing of any~~
6402 ~~owner of the converting entity who has limited liability and~~
6403 ~~who shall become an owner without limited liability protection~~
6404 ~~of the converted entity.~~ In the case of an entity not
6405 specified in paragraphs (1) through (5) above, a plan of
6406 conversion under subsection (a) must be approved in writing by
6407 all owners of that entity or, if the entity has no owners,
6408 then by all members of the governing authority of that entity.

6409 ~~(7) ENTITY WITHOUT OWNERS. If the converting entity~~
6410 ~~does not have owners, the terms and conditions of the plan of~~
6411 ~~conversion must be unanimously approved by the governing~~
6412 ~~authority of the converting entity.~~

6413 ~~(b) The plan of conversion must be in writing, and:~~



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6414 ~~(1) must include the following:~~

6415 ~~a. the name, type of entity, and mailing address of the~~
6416 ~~principal office of the converting entity, and its unique~~
6417 ~~identifying number or other designation as assigned by the~~
6418 ~~Secretary of State, if any, before conversion;~~

6419 ~~b. the name, type of entity, and mailing address of the~~
6420 ~~principal office of the converted entity after conversion;~~

6421 ~~c. the terms and conditions of the conversion,~~
6422 ~~including the manner and basis for converting interests in the~~
6423 ~~converting entity into any combination of money, interests in~~
6424 ~~the converted entity, and other consideration allowed in~~
6425 ~~subsection (c); and~~

6426 ~~d. the organizational documents of the converted~~
6427 ~~entity; and~~

6428 ~~(2) may include other provisions relating to the~~
6429 ~~conversion not prohibited by law.~~

6430 ~~(c) In connection with a conversion, rights or~~
6431 ~~securities of or interests in a converting entity may be~~
6432 ~~exchanged for or converted into cash, property, or rights or~~
6433 ~~securities of or interests in the converted entity, or, in~~
6434 ~~addition to or in lieu thereof, may be exchanged for or~~
6435 ~~converted into cash, property, or rights or securities of or~~
6436 ~~interests in another entity or may be cancelled.~~

6437 ~~(d) After a plan of conversion is approved and before~~
6438 ~~the conversion takes effect, the plan may be amended or~~
6439 ~~abandoned as provided in the plan, or if the plan does not~~
6440 ~~provide for amendment or abandonment, in the same manner as~~
6441 ~~required for the approval of the plan of conversion~~



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6442 ~~originally.~~

6443 ~~(e)~~ (d) After the plan of conversion is approved
6444 pursuant to subsection ~~(a)~~ (c):

6445 (1) if the converting entity is a ~~domestic~~ filing
6446 entity, the converting entity shall deliver to the Secretary
6447 of State for filing, a statement of conversion, which must
6448 include:

6449 ~~a.~~ (A) the name, type of entity, and mailing address of
6450 the principal office of the converting entity, and its unique
6451 identifying number or other designation as assigned by the
6452 Secretary of State, if any, before conversion;

6453 ~~b. the date of the filing of the certificate of~~
6454 ~~formation of the converting entity, if any, and all prior~~
6455 ~~amendments and the filing office or offices, if any, where~~
6456 ~~such is filed;~~

6457 ~~e.~~ (B) a statement that the converting entity has been
6458 converted into the converted entity;

6459 ~~d.~~ (C) the name and type of entity of the converted
6460 entity and the jurisdiction of its governing statute;

6461 ~~e.~~ (D) the street and mailing address of the principal
6462 office of the converted entity;

6463 ~~f.~~ (E) the date the conversion is effective under the
6464 governing statute of the converted entity;

6465 ~~g.~~ (F) a statement that the conversion was approved as
6466 required by this chapter;

6467 ~~h.~~ (G) a statement that the conversion was approved as
6468 required by the governing statute of the converted entity;

6469 ~~i.~~ (H) a statement that a copy of the plan of conversion



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6470 will be furnished by the converted entity, on request and
6471 without cost, to any owner of the converted or converting
6472 entity; and

6473 ~~j.~~ (I) if the converted entity is a foreign entity not
6474 authorized to conduct activities and affairs in this state,
6475 the street and mailing address of an office for the purposes
6476 of Section 10A-1-8.04(b); and

6477 (2) if the converted entity is (I) a filing entity, the
6478 converting entity shall deliver to the Secretary of State for
6479 filing a certificate of formation or (II) a general
6480 partnership, the converting entity shall deliver to the
6481 Secretary of State for filing a statement of partnership, a
6482 statement of not for profit partnership, or a statement of
6483 limited liability partnership, as applicable, which
6484 certificate of formation or statement of partnership,
6485 statement of not for profit partnership, or statement of
6486 limited liability partnership, as applicable, must include, in
6487 addition to the information required in the chapter governing
6488 the certificate of formation of the converted entity, the
6489 following:

6490 ~~a.~~ (A) The name, mailing address of the principal office
6491 of, type of entity, and the jurisdiction of the governing
6492 statute of the converting entity and its unique identifying
6493 number or other designation as assigned by the Secretary of
6494 State, if any, before conversion;

6495 ~~b.~~ (B) A statement that the converting entity has been
6496 converted into the converted entity;

6497 ~~c.~~ (C) The filing office where the certificate of



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6498 formation, if any, of the converting entity is filed and the
6499 date of the filing thereof;

6500 ~~e.~~ (D) If the converted entity is one in which one or
6501 more owners lack limited liability protection, a statement
6502 that each owner of the converting entity who is to become an
6503 owner without limited liability protection of the converted
6504 entity has consented in writing to the conversion as required
6505 by this section; and

6506 ~~e.~~ (E) A statement that the conversion was approved
6507 pursuant to this section and, if the converting entity is a
6508 foreign entity, that the conversion was approved as required
6509 by the governing statute of such foreign entity;

6510 (3) if the converting entity is required pursuant to
6511 subsections (e) (2) and (3) to deliver to the Secretary of
6512 State for filing both (I) a statement of conversion and
6513 (II) (A) a certificate of formation, or (B) a statement of
6514 partnership, statement of not for profit partnership, or
6515 statement of limited liability partnership, as applicable,
6516 then the converting entity shall deliver the statement of
6517 conversion and the certificate of formation or the statement
6518 of partnership, statement of not for profit partnership, or
6519 statement of limited liability partnership, as applicable, to
6520 the Secretary of State simultaneously; and

6521 (4) if the converting entity is a general partnership
6522 and that partnership does not have an effective statement of
6523 partnership, statement of not for profit partnership, or
6524 statement of limited liability partnership on file with the
6525 Secretary of State, then the converting entity must deliver to



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6526 the Secretary of State for filing, a statement of partnership,
6527 statement of not for profit partnership, or statement of
6528 limited liability partnership simultaneously with the delivery
6529 to the Secretary of State for filing, of a statement of
6530 conversion.

6531 (e) After a plan of conversion is approved and before
6532 the conversion takes effect, the plan may be amended or
6533 abandoned as provided in the plan, or if the plan does not
6534 provide for amendment or abandonment, in the same manner as
6535 required for the approval of the plan of conversion
6536 originally.

6537 (f) A conversion becomes effective:

6538 (1) if the converted entity is a ~~domestic~~ filing
6539 entity, the effective date determined in accordance with
6540 Article 4 of this chapter; and

6541 (2) if the converted entity is not a domestic filing
6542 entity, as provided by the governing statute of the converted
6543 entity.

6544 (g) When a conversion becomes effective:

6545 (1) all property and contract rights owned by the
6546 converting entity remain vested in the converted entity
6547 without transfer, reversion, or impairment, and the title to
6548 any property vested by deed or otherwise in the converting
6549 entity shall not revert or be in any way impaired by reason of
6550 the conversion;

6551 (2) all debts, obligations, or other liabilities of the
6552 converting entity continue as debts, obligations, or other
6553 liabilities of the converted entity and neither the rights of



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6554 creditors nor the liens upon the property of the converting
6555 entity shall be impaired by the conversion;

6556 (3) an action or proceeding pending by or against the
6557 converting entity continues as if the conversion had not
6558 occurred and the name of the converted entity may, but need
6559 not, be substituted for the name of the converting entity in
6560 any pending action or proceeding;

6561 (4) except as prohibited by law other than this
6562 chapter, all of the rights, privileges, immunities, powers,
6563 and purposes of the converting entity remain vested in the
6564 converted entity;

6565 (5) except as otherwise provided in the statement of
6566 conversion, the terms and conditions of the statement of
6567 conversion take effect;

6568 (6) except as otherwise agreed, for all purposes of the
6569 laws of this state, the converting entity shall not be
6570 required to wind up its affairs or pay its liabilities and
6571 distribute its assets, and the conversion shall not be deemed
6572 to constitute a dissolution of the converting entity;

6573 (7) for all purposes of the laws of this state, the
6574 rights, privileges, powers, interests in property, debts,
6575 liabilities, and duties of the converting entity, shall be the
6576 rights, privileges, powers, interests in property, debts,
6577 liabilities, and duties of the converted entity, and shall not
6578 be deemed as a consequence of the conversion, to have been
6579 transferred to the converted entity;

6580 (8) if the converted entity is a domestic entity, for
6581 all purposes of the laws of this state, the converted entity



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6582 shall be deemed to be the same entity as the converting
6583 entity, and the conversion shall constitute a continuation of
6584 the existence of the converting entity in the form of the
6585 converted entity;

6586 (9) if the converting entity is a domestic entity, the
6587 existence of the converted entity shall be deemed to have
6588 commenced on the date the converting entity commenced its
6589 existence in the jurisdiction in which the converting entity
6590 was first created, formed, organized, incorporated, or
6591 otherwise came into being;

6592 (10) the conversion shall not affect the choice of law
6593 applicable to matters arising prior to conversion;

6594 (11) if the Secretary of State has assigned a unique
6595 identifying number or other designation to the converting
6596 entity and (i) the converted entity is formed pursuant to the
6597 laws of this state, or (ii) the converted entity is, within 30
6598 days after the effective date of the conversion, registered to
6599 transact business in this state, then that unique identifying
6600 number or other designation shall continue to be assigned to
6601 the converted entity; and

6602 (12) ~~a.~~ (A) An owner with limited liability protection
6603 remains liable, if at all, for an obligation incurred by the
6604 converting entity before the conversion takes effect only to
6605 the extent, if any, the owner would have been liable if the
6606 conversion had not occurred.

6607 ~~b.~~ (B) An owner with limited liability protection who
6608 becomes an owner without limited liability protection is
6609 liable for an obligation of the converted entity incurred



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6610 after conversion to the extent provided for by the laws
6611 applicable to the converted entity.

6612 (13) An owner without limited liability protection who
6613 as a result of a conversion becomes an owner of a converted
6614 entity with limited liability protection remains liable for an
6615 obligation incurred by the converting entity before the
6616 conversion takes effect only to the extent, if any, the owner
6617 would have been liable if the conversion had not occurred.

6618 (h) If:

6619 (1) the converting entity is a filing entity, a general
6620 partnership with an effective statement of partnership,
6621 statement of not for profit partnership, or statement of
6622 limited liability partnership on file with the Secretary of
6623 State, a foreign filing entity registered to transact business
6624 or not for profit activity in this state, or a qualified
6625 foreign limited liability partnership;

6626 (2) the converted entity will be a filing entity, a
6627 general partnership with an effective statement of
6628 partnership, statement of not for profit partnership, or
6629 statement of limited liability partnership on file with the
6630 Secretary of State, a foreign filing entity registered to
6631 transact business or not for profit activity in this state, or
6632 a qualified foreign limited liability partnership;

6633 (3) the name of the converting entity and the converted
6634 entity are to be the same, other than words, phrases, or
6635 abbreviations indicating the type of entity; and

6636 (4) the name of the converted entity complies with
6637 Division A of Article 5 or Section 10A-1-7.07, as the case may



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6638 be;

6639 then, notwithstanding Division B of Article 5, no name
6640 reservation shall be required and the converted entity shall
6641 for all purposes of this title be entitled to utilize the name
6642 of the converting entity without any further action by the
6643 converting entity or the converted entity.

6644 (i) A certified copy of the statement of conversion may
6645 be delivered to the office of the judge of probate in any
6646 county in which the converting entity owned real property, to
6647 be recorded without payment and without collection by the
6648 judge of probate of any deed or other transfer tax or fee. The
6649 judge of probate shall, however, be entitled to collect a
6650 filing fee of five dollars (\$5). Any filing shall evidence
6651 chain of title, but lack of filing shall not affect the
6652 converted entity's title to the real property."

6653 "§10A-1-8.02

6654 ~~(a)~~ A merger of two or more entities, whether the other
6655 entity or entities are the same or another form of entity, may
6656 be accomplished as provided in this section.

6657 (a) The plan of merger must be in writing, and:

6658 (1) must include the following:

6659 (A) the name, type of entity, and mailing address of
6660 the principal office of each entity that is a party to the
6661 merger, the jurisdiction of the governing statute of each
6662 entity that is a party to the merger, and the respective
6663 unique identifying number or other designation as assigned by
6664 the Secretary of State, if any, of each entity that is a party
6665 to the merger;



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6666 (B) the name, type of entity, and mailing address of
6667 the principal office of the surviving entity and, if the
6668 surviving entity is to be created pursuant to the merger, the
6669 surviving entity's organizational documents;

6670 (C) the terms and conditions of the merger, including
6671 the manner and basis for converting the interests in each
6672 entity that is a party to the merger into any combination of
6673 money, interests in the surviving entity, and other
6674 consideration as allowed by subsection (b); and

6675 (D) if the surviving entity is not to be created
6676 pursuant to the merger, any amendments to be made by the
6677 merger to the surviving entity's organizational documents; and

6678 (2) may include other provisions relating to the merger
6679 not prohibited by law.

6680 (b) In connection with a merger, rights or securities
6681 of or interests in a merged entity may be exchanged for or
6682 converted into cash, property, or rights or securities of or
6683 interests in the surviving entity, or, in addition to or in
6684 lieu thereof, may be exchanged for or converted into cash,
6685 property, or rights or securities of or interests in another
6686 entity, or may be cancelled.

6687 (c) The plan of merger of an entity must be approved as
6688 follows:

6689 (1) CORPORATIONS.

6690 ~~(A) a. In the case of a corporation, other than a~~
6691 ~~nonprofit corporation, that~~ If a corporation is governed by
6692 Chapter 2A and that corporation is a party to a merger, a plan
6693 of merger under subsection (a) must be approved in accordance



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6694 with ~~the procedures and by the stockholder vote required by~~
6695 Article 11 of Chapter 2A. ~~If the governing documents of the~~
6696 ~~corporation provide for approval of a merger by less than all~~
6697 ~~of the corporation's stockholders, approval of the merger~~
6698 ~~shall constitute corporate action subject to appraisal rights~~
6699 ~~pursuant to Article 13 of Chapter 2A, as applicable. No merger~~
6700 ~~of a corporation into a general or limited partnership may be~~
6701 ~~effected without the consent in writing of each stockholder~~
6702 ~~who will have personal liability with respect to the surviving~~
6703 ~~entity, notwithstanding any provision in the governing~~
6704 ~~documents of the corporation that is a party to the merger~~
6705 ~~providing for less than unanimous stockholder approval for the~~
6706 ~~conversion.~~ If the merger is a corporate action as described
6707 in Section 10A-2A-13.02, then the rights, obligations, and
6708 procedures under Article 13 of Chapter 2A shall be applicable
6709 to that merger.

6710 (B)b. ~~In the case of a nonprofit corporation that is a~~
6711 ~~party to the merger, a plan of merger must be approved by all~~
6712 ~~the nonprofit corporation's members entitled to vote thereon,~~
6713 ~~if it is a nonprofit corporation with members with voting~~
6714 ~~rights, or as otherwise provided in the nonprofit~~
6715 ~~corporation's governing documents; but in no case may the~~
6716 ~~governing documents provide for approval by less than a~~
6717 ~~majority of the members entitled to vote thereon. If the~~
6718 ~~nonprofit corporation has no members, or no members entitled~~
6719 ~~to vote thereon, the plan of merger must be approved by a~~
6720 ~~unanimous vote of the board of directors of the nonprofit~~
6721 ~~corporation, except as otherwise provided in the governing~~



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6722 ~~documents; but in no case may the governing documents provide~~
6723 ~~for approval by less than a majority of the board of~~
6724 ~~directors.~~ If a nonprofit corporation is governed by Chapter
6725 3A and that corporation is a party to a merger, a plan of
6726 merger under subsection (a) must be approved in accordance
6727 with Article 12 of Chapter 3A.

6728 (C) If a corporation is not governed by Chapter 2A or
6729 Chapter 3A and that corporation is a party to a merger, the
6730 plan of merger under subsection (a) must be approved in
6731 accordance with the law of the jurisdiction of formation of
6732 that corporation.

6733 (2) LIMITED PARTNERSHIPS. In the case of a limited
6734 partnership that is a party to the merger, a plan of merger
6735 under subsection (a) must be approved in ~~writing by all of the~~
6736 ~~partners or as otherwise provided in the partnership~~
6737 ~~agreement. No merger of a limited partnership with a general~~
6738 ~~partnership in which the general partnership is the surviving~~
6739 ~~entity may be effected without the consent in writing of each~~
6740 ~~limited partner who will have personal liability with respect~~
6741 ~~to the surviving entity, notwithstanding any provision in the~~
6742 ~~limited partnership agreement of the merging limited~~
6743 ~~partnership providing for approval of the merger by less than~~
6744 ~~all partners~~ accordance with Article 10 of Chapter 9A.

6745 (3) LIMITED LIABILITY COMPANIES. In the case of a
6746 limited liability company that is a party to the merger, a
6747 plan of merger under subsection (a) must be approved in
6748 ~~writing by all of the limited liability company's members or~~
6749 ~~as otherwise provided in the limited liability company's~~



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6750 ~~governing documents. No merger of a limited liability company~~
6751 ~~with a general or limited partnership that is the surviving~~
6752 ~~entity may be effected without the consent in writing of each~~
6753 ~~member who will have personal liability with respect to the~~
6754 ~~surviving entity, notwithstanding any provision in the~~
6755 ~~governing documents of the merging limited liability company~~
6756 ~~providing for less than unanimous member approval for a merger~~
6757 accordance with Article 10 of Chapter 5A.

6758 (4) GENERAL PARTNERSHIPS, INCLUDING LIMITED LIABILITY
6759 PARTNERSHIPS. In the case of a general partnership that is a
6760 party to the merger, a plan of merger under subsection (a)
6761 ~~must be approved in writing by all of the partners or as~~
6762 ~~otherwise provided in the partnership agreement. No merger of~~
6763 ~~a limited liability partnership into a general or limited~~
6764 ~~partnership may be effected without the consent in writing of~~
6765 ~~each partner who will have personal liability with respect to~~
6766 ~~the surviving entity, notwithstanding any provision in the~~
6767 ~~partnership agreement of the limited liability partnership~~
6768 ~~providing for less than unanimous partner approval for a~~
6769 merger accordance with Article 9 of Chapter 8A. All general
6770 partnerships, other than a general partnership that is created
6771 pursuant to the merger, that are parties to a merger must have
6772 on file with the Secretary of State a statement of
6773 partnership, statement of not for profit partnership, or
6774 statement of limited liability partnership prior to delivering
6775 the statement of merger to the Secretary of State for filing.

6776 (5) REAL ESTATE INVESTMENT TRUST. In the case of a real
6777 estate investment trust that is a party to the merger, a plan



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6778 of merger under subsection (a) must be approved in writing by
6779 all of the trust's shareholders or as otherwise provided in
6780 the trust's declaration of trust, but in no case may the vote
6781 required for shareholder approval be set at less than a
6782 majority of all the votes entitled to be cast. No merger of a
6783 real estate investment trust with a general or limited
6784 partnership that is to be the surviving entity may be effected
6785 without the consent in writing of each shareholder who will
6786 have personal liability with respect to the surviving entity,
6787 notwithstanding any provision in the declaration of trust of
6788 the converting real estate investment trust providing for less
6789 than unanimous shareholder approval for the merger.

6790 (6) OTHER ENTITY. ~~In the case of an entity other than a~~
6791 ~~corporation, limited partnership, limited liability company,~~
6792 ~~general partnership, or real estate investment trust that is a~~
6793 ~~party to the merger, a plan of merger must be approved in~~
6794 ~~writing by all owners of the entity. No merger of any entity~~
6795 ~~shall be effected without the consent in writing of any owner~~
6796 ~~who has limited liability as an owner of an entity party to~~
6797 ~~the merger, and who will have personal liability with respect~~
6798 ~~to the surviving entity.~~ In the case of an entity not
6799 specified in paragraphs (1) through (5) above, a plan of
6800 merger under subsection (a) must be approved in writing by all
6801 owners of that entity or, if the entity has no owners, then by
6802 all members of the governing authority of that entity.

6803 ~~(b) The plan of merger must be in writing, and:~~
6804 ~~(1) must include the following:~~
6805 ~~a. the name, type of entity, and mailing address of the~~



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6806 ~~principal office of each entity that is a party to the merger,~~
6807 ~~the jurisdiction of the governing statute of each entity that~~
6808 ~~is a party to the merger, and the respective unique~~
6809 ~~identifying number or other designation as assigned by the~~
6810 ~~Secretary of State, if any, of each entity that is a party to~~
6811 ~~the merger;~~

6812 ~~b. the name, type of entity, and mailing address of the~~
6813 ~~principal office of the surviving entity and, if the surviving~~
6814 ~~entity is to be created pursuant to the merger, the surviving~~
6815 ~~entity's organizational documents;~~

6816 ~~c. the terms and conditions of the merger, including~~
6817 ~~the manner and basis for converting the interests in each~~
6818 ~~entity that is a party to the merger into any combination of~~
6819 ~~money, interests in the surviving entity, and other~~
6820 ~~consideration as allowed by subsection (c); and~~

6821 ~~d. if the surviving entity is not to be created~~
6822 ~~pursuant to the merger, any amendments to be made by the~~
6823 ~~merger to the surviving entity's organizational documents; and~~

6824 ~~(2) may include other provisions relating to the merger~~
6825 ~~not prohibited by law.~~

6826 ~~(c) In connection with a merger, rights or securities~~
6827 ~~of or interests in a merged entity may be exchanged for or~~
6828 ~~converted into cash, property, or rights or securities of or~~
6829 ~~interests in the surviving entity, or, in addition to or in~~
6830 ~~lieu thereof, may be exchanged for or converted into cash,~~
6831 ~~property, or rights or securities of or interests in another~~
6832 ~~entity or may be cancelled.~~

6833 ~~(d) After a plan of merger is approved and before the~~



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6834 ~~merger takes effect, the plan may be amended or abandoned as~~
6835 ~~provided in the plan, or if the plan does not provide for~~
6836 ~~amendment or abandonment, in the same manner as required for~~
6837 ~~the approval of the plan of merger originally.~~

6838 ~~(e)~~ (d) After each entity has approved the plan of
6839 merger pursuant to subsection (c), the entities must deliver
6840 to the Secretary of State for filing a statement of merger
6841 signed on behalf of each entity as provided by its governing
6842 statute which must include:

6843 (1) the name, type of entity, and mailing address of
6844 the principal office of each entity that is a party to the
6845 merger, the jurisdiction of the governing statute of each
6846 entity that is a party to the merger, and the respective
6847 unique identifying number or other designation as assigned by
6848 the Secretary of State, if any, of each entity that is a party
6849 to the merger;

6850 (2) the name, type of entity, and mailing address of
6851 the principal office of the surviving entity, the unique
6852 identifying number or other designation as assigned by the
6853 Secretary of State, if any, of the surviving entity, the
6854 jurisdiction of the governing statute of the surviving entity,
6855 and, if the surviving entity is created pursuant to the
6856 merger, a statement to that effect;

6857 ~~(3) for each entity other than a general partnership,~~
6858 ~~the date of the filing of the certificate of formation, if~~
6859 ~~any, and all prior amendments and the filing office or~~
6860 ~~offices, if any, where such is filed;~~

6861 ~~(4)~~ (3) for each general partnership, the date of the



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6862 filing of the statement of partnership, statement of not for
6863 profit partnership, or statement of limited liability
6864 partnership, if any, and all prior amendments and the filing
6865 office or offices, if any, where such is filed;

6866 ~~(5)~~ (4) the date the merger is effective under the
6867 governing statute of the surviving entity;

6868 ~~(6)~~ (5) if the surviving entity is to be created
6869 pursuant to the merger, (i) if it will be a filing entity, its
6870 certificate of formation; or (ii) if it will be a non-filing
6871 entity, any document that creates the entity that is required
6872 to be in a public writing or in the case of a general
6873 partnership, its statement of partnership, statement of not
6874 for profit partnership, or statement of limited liability
6875 partnership, as applicable;

6876 ~~(7)~~ (6) if the surviving entity is a domestic entity
6877 that exists before the merger, any amendments provided for in
6878 the plan of merger for the organizational documents that
6879 created the domestic entity that are required to be in a
6880 public writing, or in the case of a general partnership, its
6881 statement of partnership, statement of not for profit
6882 partnership, or statement of limited liability partnership, as
6883 applicable;

6884 ~~(8)~~ (7) a statement as to each entity that the merger
6885 was approved as required by the entity's governing statute;

6886 ~~(9)~~ (8) a statement that a copy of the plan of merger
6887 will be furnished by the surviving entity, on request and
6888 without cost, to any owner of any entity which is a party to
6889 the merger;



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6890 ~~(10)~~ (9) if the surviving entity is a foreign entity not
6891 authorized to conduct activities and affairs in this state,
6892 the street and mailing address of an office for the purposes
6893 of Section 10A-1-8.04; and

6894 ~~(11)~~ (10) any additional information required by the
6895 governing statute of any entity that is a party to the merger.

6896 ~~(f)~~ (e) Prior to the statement of merger being delivered
6897 for filing to the Secretary of State in accordance with
6898 subsection ~~(e)~~ (d), all parties to the merger that are general
6899 partnerships, other than a general partnership that is created
6900 pursuant to the merger, must have on file with the Secretary
6901 of State a statement of partnership, statement of not for
6902 profit partnership, or statement of limited liability
6903 partnership.

6904 (f) After a plan of merger is approved and before the
6905 merger takes effect, the plan may be amended or abandoned as
6906 provided in the plan, or if the plan does not provide for
6907 amendment or abandonment, in the same manner as required for
6908 the approval of the plan of merger originally.

6909 (g) If all of the entities that are parties to the
6910 merger are domestic entities, the merger becomes effective on
6911 the effective date determined in accordance with Article 4. If
6912 one or more parties to the merger is a foreign entity, or a
6913 foreign entity created by the merger is the surviving entity,
6914 the merger shall become effective at the later of:

6915 (1) when all documents required to be filed in foreign
6916 jurisdictions to effect the merger have become effective, or

6917 (2) the effective date determined in accordance with



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6918 Article 4.

6919 (h) When a merger becomes effective:

6920 (1) the surviving entity continues or, in the case of a
6921 surviving entity created pursuant to the merger, comes into
6922 existence;

6923 (2) each entity that merges into the surviving entity
6924 ceases to exist as a separate entity;

6925 (3) except as provided in the plan of merger, all
6926 property owned by, and every contract right possessed by, each
6927 merging entity that ceases to exist vests in the surviving
6928 entity without transfer, reversion, or impairment and the
6929 title to any property and contract rights vested by deed or
6930 otherwise in the surviving entity shall not revert, be in any
6931 way impaired, or be deemed to be a transfer by reason of the
6932 merger;

6933 (4) all debts, obligations, and other liabilities of
6934 each merging entity, other than the surviving entity, are
6935 debts, obligations, and liabilities of the surviving entity,
6936 and neither the rights of creditors, nor any liens upon the
6937 property of any entity that is a party to the merger, shall be
6938 impaired by the merger;

6939 (5) an action or proceeding, pending by or against any
6940 merging entity that ceases to exist continues as if the merger
6941 had not occurred and the name of the surviving entity may, but
6942 need not be substituted in any pending proceeding for the name
6943 of any merging entity whose separate existence ceased in the
6944 merger;

6945 (6) except as prohibited by law other than this chapter



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6946 or as provided in the plan of merger, all the rights,
6947 privileges, franchises, immunities, powers, and purposes of
6948 each merging entity, other than the surviving entity, vest in
6949 the surviving entity;

6950 (7) except as otherwise provided in the plan of merger,
6951 the terms and conditions of the plan of merger take effect;

6952 (8) except as otherwise agreed, if a merged entity
6953 ceases to exist, the merger does not dissolve the merged
6954 entity;

6955 (9) if the surviving entity is created pursuant to the
6956 merger:

6957 ~~(i)~~ (A) if it is a general partnership, the statement of
6958 partnership, statement of not for profit partnership, or
6959 statement of limited liability partnership becomes effective;
6960 or

6961 ~~(i)~~ (B) if it is an entity other than a partnership,
6962 the organizational documents that create the entity become
6963 effective;

6964 (10) the interests in a merging entity that are to be
6965 converted in accordance with the terms of the merger into
6966 interests, obligations, rights to acquire interests, cash,
6967 other property, or any combination of the foregoing, are
6968 converted as provided in the plan of merger, and the former
6969 holders of interests are entitled only to the rights provided
6970 to them by those terms or to any appraisal or dissenters'
6971 rights they may have under the governing statute governing the
6972 merging entity;

6973 (11) if the surviving entity exists before the merger:



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6974 ~~(i)~~ (A) except as provided in the plan of merger, all
6975 the property and contract rights of the surviving entity
6976 remain its property and contract rights without transfer,
6977 reversion, or impairment;

6978 ~~(ii)~~ (B) the surviving entity remains subject to all its
6979 debts, obligations, and other liabilities; and

6980 ~~(iii)~~ (C) except as provided by law other than this
6981 chapter or the plan of merger, the surviving entity continues
6982 to hold all of its rights, privileges, franchises, immunities,
6983 powers, and purposes.

6984 (12) Service of process in an action or proceeding
6985 against a surviving foreign entity to enforce an obligation of
6986 a domestic entity that is a party to a merger may be made by
6987 registered mail addressed to the surviving entity at the
6988 address set forth in the statement of merger or by any method
6989 provided by the Alabama Rules of Civil Procedure. Any notice
6990 or demand required or permitted by law to be served on a
6991 domestic entity may be served on the surviving foreign entity
6992 by registered mail addressed to the surviving entity at the
6993 address set forth in the statement of merger or in any other
6994 manner similar to the procedure provided by the Alabama Rules
6995 of Civil Procedure for the service of process.

6996 (13) ~~a.~~ (A) An owner of an entity with limited liability
6997 protection remains liable, if at all, for an obligation
6998 incurred prior to the merger by an entity that ceases to exist
6999 as a result of the merger only to the extent, if any, that the
7000 owner would have been liable under the laws applicable to
7001 owners of the form of entity that ceased to exist if the



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7002 merger had not occurred.

7003 ~~b.~~ (B) An owner with limited liability protection who,
7004 as a result of the merger, becomes an owner without limited
7005 liability protection of the surviving entity is liable for an
7006 obligation of the surviving entity incurred after merger to
7007 the extent provided for by the laws applicable to the
7008 surviving entity.

7009 (14) An owner without limited liability protection of
7010 an entity that ceases to exist as a result of a merger and who
7011 as a result of the merger becomes an owner of a surviving
7012 entity with limited liability protection remains liable for an
7013 obligation of the entity that ceases to exist incurred before
7014 the merger takes effect only to the extent, if any, that the
7015 owner would have been liable if the merger had not occurred.

7016 (i) A certified copy of the statement of merger
7017 required to be filed under this section may be filed in the
7018 real estate records in the office of the judge of probate in
7019 any county in which any merged entity owned real property,
7020 without payment and without collection by the judge of probate
7021 of any deed or other transfer tax or fee. The judge of
7022 probate, however, shall be entitled to collect a filing fee of
7023 five dollars (\$5). Any such filing shall evidence chain of
7024 title, but lack of filing shall not affect the surviving
7025 entity's title to such real property."

7026 "§10A-1-9.01

7027 This article does not apply to business corporations,
7028 nonprofit corporations, limited liability companies, general
7029 partnerships, and limited partnerships."



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7030 Section 3. Sections 10A-2A-1.40, 10A-2A-1.43,
7031 10A-2A-1.51, 10A-2A-2.02, 10A-2A-2.06, 10A-2A-7.04,
7032 10A-2A-7.32, 10A-2A-7.20, 10A-2A-8.10, 10A-2A-8.21,
7033 10A-2A-8.22, 10A-2A-8.24, 10A-2A-8.59, 10A-2A-10.06,
7034 10A-2A-10.07, 10A-2A-10.08, 10A-2A-11.02, 10A-2A-11.06,
7035 10A-2A-12.02, and 10A-2A-14.13 of the Code of Alabama 1975,
7036 are amended to read as follows:

7037 "§10A-2A-1.40

7038 As used in this chapter, unless otherwise specified or
7039 unless the context otherwise requires, the following terms
7040 have the following meanings:

7041 (1) AUTHORIZED STOCK means the stock of all classes and
7042 series a corporation or foreign corporation is authorized to
7043 issue.

7044 (2) BENEFICIAL STOCKHOLDER means a person who owns the
7045 beneficial interest in stock, which is either a record
7046 stockholder or a person on whose behalf shares of stock are
7047 registered in the name of an intermediary or nominee.

7048 (3) CERTIFICATE OF INCORPORATION means the certificate
7049 of incorporation described in Section 10A-2A-2.02, all
7050 amendments to the certificate of incorporation, and any other
7051 documents permitted or required to be delivered for filing by
7052 a corporation with the Secretary of State under this chapter
7053 or Chapter 1 that modify, amend, supplement, restate, or
7054 replace the certificate of incorporation. After an amendment
7055 of the certificate of incorporation or any other document
7056 filed under this chapter or Chapter 1 that restates the
7057 certificate of incorporation in its entirety, the certificate



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7058 of incorporation shall not include any prior documents. When
7059 used with respect to a corporation incorporated and existing
7060 on December 31, 2019, under a predecessor law of this state,
7061 the term "certificate of incorporation" means articles of
7062 incorporation, charter, or similar incorporating document, and
7063 all amendments and restatements to the certificate of
7064 incorporation, charter, or similar incorporating document.
7065 When used with respect to a foreign corporation, a nonprofit
7066 corporation, or a foreign nonprofit corporation, the
7067 "certificate of incorporation" of such an entity means the
7068 document of such entity that is equivalent to the certificate
7069 of incorporation of a corporation. The term "certificate of
7070 incorporation" as used in this chapter is synonymous to the
7071 term "certificate of formation" used in Chapter 1.

7072 (4) CORPORATION, except in the phrase foreign
7073 corporation, means an entity incorporated or existing under
7074 this chapter.

7075 (5) DELIVER or DELIVERY means any method of delivery
7076 used in conventional commercial practice, including delivery
7077 by hand, mail, commercial delivery, and, if authorized in
7078 accordance with Section 10A-2A-1.41, by electronic
7079 transmission.

7080 (6) DISTRIBUTION means a direct or indirect transfer of
7081 cash or other property (except a corporation's own stock) or
7082 incurrence of indebtedness by a corporation to or for the
7083 benefit of its stockholders in respect of any of its stock. A
7084 distribution may be in the form of a payment of a dividend; a
7085 purchase, redemption, or other acquisition of stock; a



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7086 distribution of indebtedness; a distribution in liquidation;
7087 or otherwise.

7088 (7) DOCUMENT means a writing as defined in Chapter 1.

7089 (8) EFFECTIVE DATE, when referring to a document
7090 accepted for filing by the Secretary of State, means the time
7091 and date determined in accordance with Article 4 of Chapter 1.

7092 (9) ELECTRONIC MAIL means an electronic transmission
7093 directed to a unique electronic mail address.

7094 (10) ELECTRONIC MAIL ADDRESS means a destination,
7095 commonly expressed as a string of characters, consisting of a
7096 unique user name or mailbox (commonly referred to as the
7097 "local part" of the address) and a reference to an internet
7098 domain (commonly referred to as the "domain part" of the
7099 address), whether or not displayed, to which electronic mail
7100 can be sent or delivered.

7101 (11) ELIGIBLE ENTITY means an unincorporated entity,
7102 foreign unincorporated entity, nonprofit corporation, or
7103 foreign nonprofit corporation.

7104 (12) ELIGIBLE INTERESTS means interests or memberships.

7105 (13) EMPLOYEE includes an officer, but not a director.
7106 A director may accept duties that make the director also an
7107 employee.

7108 (14) ENTITY includes corporation; foreign corporation;
7109 nonprofit corporation; foreign nonprofit corporation; estate;
7110 trust; unincorporated entity; foreign unincorporated entity;
7111 and state, United States, and foreign government.

7112 (15) EXPENSES means reasonable expenses of any kind
7113 that are incurred in connection with a matter.



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7114 (16) FILING ENTITY means an unincorporated entity,
7115 other than a limited liability partnership, that is of a type
7116 that is created by filing a public organic record or is
7117 required to file a public organic record that evidences its
7118 creation.

7119 (17) FOREIGN CORPORATION means a corporation
7120 incorporated under a law other than the law of this state
7121 which would be a corporation if incorporated under the law of
7122 this state.

7123 (18) FOREIGN NONPROFIT CORPORATION means a corporation
7124 incorporated under a law other than the law of this state
7125 which would be a nonprofit corporation if incorporated under
7126 the law of this state.

7127 (19) GOVERNING STATUTE means the statute governing the
7128 internal affairs of a corporation, foreign corporation,
7129 nonprofit corporation, foreign nonprofit corporation,
7130 unincorporated entity, or foreign unincorporated entity.

7131 (20) GOVERNMENTAL SUBDIVISION includes authority,
7132 county, district, and municipality.

7133 (21) INCLUDES and INCLUDING denote a partial definition
7134 or a nonexclusive list.

7135 (22) INTEREST means either or both of the following
7136 rights under the governing statute governing an unincorporated
7137 entity:

7138 (i) the right to receive distributions from the entity
7139 either in the ordinary course or upon liquidation; or

7140 (ii) the right to receive notice or vote on issues
7141 involving its internal affairs, other than as an agent,



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7142 assignee, proxy, or person responsible for managing its
7143 business and affairs.

7144 (23) INTEREST HOLDER means a person who holds of record
7145 an interest.

7146 (24) KNOWLEDGE is determined as follows:

7147 (a) A person knows a fact when the person:

7148 (1) has actual knowledge of it; or

7149 (2) is deemed to know it under law other than this
7150 chapter.

7151 (b) A person has notice of a fact when the person:

7152 (1) knows of it;

7153 (2) receives notification of it in accordance with
7154 Section 10A-2A-1.41;

7155 (3) has reason to know the fact from all of the facts
7156 known to the person at the time in question; or

7157 (4) is deemed to have notice of the fact under
7158 subsection (d).

7159 (c) A person notifies another of a fact by taking steps
7160 reasonably required to inform the other person in ordinary
7161 course in accordance with Section 10A-2A-1.41, whether or not
7162 the other person knows the fact.

7163 (d) A person is deemed to have notice of a
7164 corporation's:

7165 (1) matters included in the certificate of
7166 incorporation upon filing;

7167 (2) dissolution, 90 days after a certificate of
7168 dissolution under Section 10A-2A-14.03 becomes effective;

7169 (3) conversion, merger, or interest exchange under



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7170 Article 9 or Article 11, 90 days after a statement of
7171 conversion, or statement of merger or interest exchange
7172 becomes effective;

7173 (4) conversion or merger under Article 8 of Chapter 1,
7174 90 days after a statement of conversion or statement of merger
7175 becomes effective; and

7176 (5) revocation of dissolution and reinstatement, 90
7177 days after certificate of revocation of dissolution and
7178 reinstatement under Section 10A-2A-14.04 becomes effective.

7179 (e) A stockholder's knowledge, notice, or receipt of a
7180 notification of a fact relating to the corporation is not
7181 knowledge, notice, or receipt of a notification of a fact by
7182 the corporation solely by reason of the stockholder's capacity
7183 as a stockholder.

7184 (f) The date and time of the effectiveness of a notice
7185 delivered in accordance with Section 10A-2A-1.41, is
7186 determined by Section 10A-2A-1.41.

7187 (25) MEANS denotes an exhaustive definition.

7188 (26) MEMBERSHIP means the rights of a member in a
7189 nonprofit corporation or foreign nonprofit corporation.

7190 ~~(27) MERGER means a transaction pursuant to Section~~
7191 ~~10A-2A-11.02.~~

7192 ~~(28)~~ (27) ORGANIZATIONAL DOCUMENTS means the public
7193 organic record and private organizational documents of a
7194 corporation, foreign corporation, or eligible entity.

7195 ~~(29)~~ (28) PRINCIPAL OFFICE means the office (in or out
7196 of this state) so designated in the annual report where the
7197 principal executive offices of a corporation or foreign



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7198 corporation are located.

7199 ~~(30)~~ (29) PRIVATE ORGANIZATIONAL DOCUMENTS means (i) the
7200 bylaws of a corporation, foreign corporation, nonprofit
7201 corporation, or foreign nonprofit corporation, or (ii) the
7202 rules, regardless of whether in writing, that govern the
7203 internal affairs of an unincorporated entity or foreign
7204 unincorporated entity, are binding on all its interest
7205 holders, and are not part of its public organic record, if
7206 any. Where private organizational documents have been amended
7207 or restated, the term means the private organizational
7208 documents as last amended or restated.

7209 ~~(31)~~ (30) PROCEEDING includes any civil suit and
7210 criminal, administrative, and investigatory action.

7211 ~~(32)~~ (31) PUBLIC ORGANIC RECORD means (i) the
7212 certificate of incorporation of a corporation, foreign
7213 corporation, nonprofit corporation, or foreign nonprofit
7214 corporation, or (ii) the document, if any, the filing of which
7215 is required to create an unincorporated entity or foreign
7216 unincorporated entity, or which creates the unincorporated
7217 entity or foreign unincorporated entity and is required to be
7218 filed. Where a public organic record has been amended or
7219 restated, the term means the public organic record as last
7220 amended or restated.

7221 ~~(33)~~ (32) RECORD DATE means the date fixed for
7222 determining the identity of the corporation's stockholders and
7223 their stockholdings for purposes of this chapter. Unless
7224 another time is specified when the record date is fixed, the
7225 determination shall be made as of the close of business at the



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7226 principal office of the corporation on the date so fixed.

7227 ~~(34)~~ (33) RECORD STOCKHOLDER means (i) the person in
7228 whose name shares of stock are registered in the records of
7229 the corporation, or (ii) the person identified as the
7230 beneficial owner of stock in a beneficial ownership
7231 certificate pursuant to Section 10A-2A-7.23 on file with the
7232 corporation to the extent of the rights granted by such
7233 certificate.

7234 ~~(35)~~ (34) SECRETARY means the corporate officer to whom
7235 the board of directors has delegated responsibility under
7236 Section 10A-2A-8.40(c) to maintain the minutes of the meetings
7237 of the board of directors and of the stockholders and for
7238 authenticating records of the corporation.

7239 ~~(36)~~ (35) STOCK EXCHANGE means a transaction pursuant to
7240 Section 10A-2A-11.03.

7241 ~~(37)~~ (36) STOCKHOLDER means a record stockholder.

7242 ~~(38)~~ (37) STOCK means the units into which the
7243 proprietary interests in a corporation or foreign corporation
7244 are divided.

7245 ~~(39)~~ (38) TYPE OF ENTITY means a generic form of entity:
7246 (i) recognized at common law; or (ii) formed under a governing
7247 statute, regardless of whether some entities formed under that
7248 law are subject to provisions of that law that create
7249 different categories of the form of entity.

7250 ~~(40)~~ (39) UNINCORPORATED ENTITY means an organization or
7251 artificial legal person that either has a separate legal
7252 existence or has the power to acquire an estate in real
7253 property in its own name and that is not any of the following:



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7254 a corporation, foreign corporation, nonprofit corporation,
7255 foreign nonprofit corporation, a series of a limited liability
7256 company or of another type of entity, an estate, a trust, a
7257 state, United States, or foreign government. The term includes
7258 a general partnership, limited liability company, limited
7259 partnership, business trust, joint stock association, and
7260 unincorporated nonprofit association.

7261 ~~(41)~~ (40) UNITED STATES includes any district,
7262 authority, bureau, commission, department, and any other
7263 agency of the United States.

7264 ~~(42)~~ (41) UNRESTRICTED VOTING TRUST BENEFICIAL OWNER
7265 means, with respect to any stockholder rights, a voting trust
7266 beneficial owner whose entitlement to exercise the stockholder
7267 right in question is not inconsistent with the voting trust
7268 agreement.

7269 ~~(43)~~ (42) VOTING GROUP means all stock of one or more
7270 classes or series that under the certificate of incorporation
7271 or this chapter are entitled to vote and be counted together
7272 collectively on a matter at a meeting of stockholders. All
7273 stock entitled by the certificate of incorporation or this
7274 chapter to vote generally on the matter is for that purpose a
7275 single voting group.

7276 ~~(44)~~ (43) VOTING POWER means the current power to vote
7277 in the election of directors.

7278 ~~(45)~~ (44) VOTING TRUST BENEFICIAL OWNER means an owner
7279 of a beneficial interest in stock of the corporation held in a
7280 voting trust established pursuant to Section 10A-2A-7.30(a)."

7281 "§10A-2A-1.43



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7282 (a) A "qualified director" is a director who, at the
7283 time action is to be taken under:

7284 (1) Section 10A-2A-2.02(b)(6), is not a director (i) to
7285 whom the limitation or elimination of the duty of an officer
7286 to offer potential business opportunities to the corporation
7287 would apply, or (ii) who has a material relationship with any
7288 other person to whom the limitation or elimination would
7289 apply;

7290 ~~(2) Section 10A-2A-7.44, does not have (i) a material~~
7291 ~~interest in the outcome of the proceeding, or (ii) a material~~
7292 ~~relationship with a person who has such an interest;~~

7293 ~~(3)~~ (2) Section 10A-2A-8.53 or Section 10A-2A-8.55, (i)
7294 is not a party to the proceeding, (ii) is not a director as to
7295 whom a transaction is a director's conflicting interest
7296 transaction or who sought a disclaimer of the corporation's
7297 interest in a business opportunity under Section 10A-2A-8.60,
7298 which transaction or disclaimer is challenged, and (iii) does
7299 not have a material relationship with a director described in
7300 either clause (i) or clause (ii) of this subsection ~~(a)(3)~~
7301 (a)(2); or

7302 ~~(4)~~ (3) Section 10A-2A-8.60, is not a director (i) as to
7303 whom the contract or transaction is a director's conflicting
7304 interest transaction, (ii) who has a material relationship
7305 with another director as to whom the transaction is a
7306 director's conflicting interest transaction, (iii) pursues or
7307 takes advantage of the business opportunity, directly, or
7308 indirectly through or on behalf of another person, or (iv) has
7309 a material relationship with a director or officer who pursues



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7310 or takes advantage of the business opportunity, directly, or
7311 indirectly through or on behalf of another person.

7312 (b) For purposes of this section:

7313 (1) "material relationship" means a familial,
7314 financial, professional, employment, or other relationship
7315 that would reasonably be expected to impair the objectivity of
7316 the director's judgment when participating in the action to be
7317 taken; and

7318 (2) "material interest" means an actual or potential
7319 benefit or detriment (other than one which would devolve on
7320 the corporation or the stockholders generally) that would
7321 reasonably be expected to impair the objectivity of the
7322 director's judgment when participating in the action to be
7323 taken.

7324 (c) The presence of one or more of the following
7325 circumstances shall not automatically prevent a director from
7326 being a qualified director:

7327 (1) nomination or election of the director to the
7328 current board of directors by any director who is not a
7329 qualified director with respect to the matter (or by any
7330 person that has a material relationship with that director),
7331 acting alone or participating with others; or

7332 (2) service as a director of another corporation of
7333 which a director who is not a qualified director with respect
7334 to the matter (or any individual who has a material
7335 relationship with that director), is or was also a director;
7336 ~~or~~.

7337 ~~(3) with respect to action to be taken under Section~~



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7338 ~~10A-2A-7.44, status as a named defendant, as a director~~
7339 ~~against whom action is demanded, or as a director who approved~~
7340 ~~the conduct being challenged."~~

7341 "§10A-2A-1.51

7342 (a) If the defective corporate action ratified under
7343 this Division D of Article 1 would have required under any
7344 other section of this chapter a filing in accordance with this
7345 chapter, then, regardless of whether a filing was previously
7346 made in respect of such defective corporate action and in lieu
7347 of a filing otherwise required by this chapter, the
7348 corporation shall file a certificate of validation in
7349 accordance with this section, and that certificate of
7350 validation shall serve to amend or substitute for any other
7351 filing with respect to such defective corporate action
7352 required by this chapter.

7353 (b) The certificate of validation must set forth:

7354 (1) the name of the corporation;

7355 (2) the unique identifying number or other designation
7356 as assigned by the Secretary of State;

7357 ~~(1)~~ (3) the defective corporate action that is the
7358 subject of the certificate of validation (including, in the
7359 case of any defective corporate action involving the issuance
7360 of putative stock, the number and type of shares of putative
7361 stock issued and the date or dates upon which that putative
7362 stock was purported to have been issued);

7363 ~~(2)~~ (4) the date of the defective corporate action;

7364 ~~(3)~~ (5) the nature of the failure of authorization in
7365 respect of the defective corporate action;



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7366 ~~(4)~~ (6) a statement that the defective corporate action
7367 was ratified in accordance with Section 10A-2A-1.47, including
7368 the date on which the board of directors ratified that
7369 defective corporate action and the date, if any, on which the
7370 stockholders approved the ratification of that defective
7371 corporate action; and

7372 ~~(5)~~ (7) the information required by subsection (c).

7373 (c) The certificate of validation must also contain the
7374 following information:

7375 (1) if a filing was previously made in respect of the
7376 defective corporate action and no changes to that filing are
7377 required to give effect to the ratification of that defective
7378 corporate action in accordance with Section 10A-2A-1.47, the
7379 certificate of validation must set forth (i) the name, title,
7380 and filing date of the filing previously made and any
7381 certificate of correction to that filing, and (ii) a statement
7382 that a copy of the filing previously made, together with any
7383 certificate of correction to that filing, is attached as an
7384 exhibit to the certificate of validation;

7385 (2) if a filing was previously made in respect of the
7386 defective corporate action and that filing requires any change
7387 to give effect to the ratification of that defective corporate
7388 action in accordance with Section 10A-2A-1.47, the certificate
7389 of validation must set forth (i) the name, title, and filing
7390 date of the filing previously made and any certificate of
7391 correction to that filing, and (ii) a statement that a filing
7392 containing all of the information required to be included
7393 under the applicable section or sections of this chapter to



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7394 give effect to that defective corporate action is attached as
7395 an exhibit to the certificate of validation, and (iii) the
7396 date and time that filing is deemed to have become effective;
7397 or

7398 (3) if a filing was not previously made in respect of
7399 the defective corporate action and the defective corporate
7400 action ratified under Section 10A-2A-1.47 would have required
7401 a filing under any other section of this chapter, the
7402 certificate of validation must set forth (i) a statement that
7403 a filing containing all of the information required to be
7404 included under the applicable section or sections of this
7405 chapter to give effect to that defective corporate action is
7406 attached as an exhibit to the certificate of validation, and
7407 (ii) the date and time that filing is deemed to have become
7408 effective."

7409 "§10A-2A-2.02

7410 Section 10A-1-3.05 shall not apply to this chapter.

7411 Instead:

7412 (a) The certificate of incorporation must set forth:

7413 (1) a corporate name for the corporation that satisfies
7414 the requirements of Article 5 of Chapter 1;

7415 (2) the number of shares of stock the corporation is
7416 authorized to issue;

7417 (3) the street and mailing addresses of the
7418 corporation's initial registered office, the county within
7419 this state in which the street and mailing address is located,
7420 and the name of the corporation's initial registered agent at
7421 that office as required by Article 5 of Chapter 1; and



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7422 (4) the name and address of each incorporator.

7423 (b) The certificate of incorporation may set forth:

7424 (1) the names and addresses of the individuals who are
7425 to serve as the initial directors;

7426 (2) provisions not inconsistent with law regarding:

7427 (i) the purpose or purposes for which the corporation
7428 is organized;

7429 (ii) managing the business and regulating the affairs
7430 of the corporation;

7431 (iii) defining, limiting, and regulating the powers of
7432 the corporation, its board of directors, and stockholders;

7433 (iv) a par value for authorized stock or classes of
7434 stock; or

7435 (v) subject to subsection (f), a provision imposing
7436 personal liability for the debts of the corporation on its
7437 stockholders to a specified extent and upon specified
7438 conditions; otherwise, the stockholders of a corporation shall
7439 not be personally liable for the payment of the corporation's
7440 debts, except as they may be liable by reason of their own
7441 conduct or acts;

7442 (3) any provision that under this chapter is permitted
7443 to be set forth in the certificate of incorporation or
7444 required or permitted to be set forth in the bylaws;

7445 (4) a provision eliminating or limiting the liability
7446 of a director to the corporation or its stockholders for money
7447 damages for any action taken, or any failure to take any
7448 action, as a director, except liability for (i) the amount of
7449 a financial benefit received by a director to which the



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7450 director is not entitled; (ii) an intentional infliction of
7451 harm on the corporation or the stockholders; (iii) a violation
7452 of Section 10A-2A-8.32; or (iv) an intentional violation of
7453 criminal law;

7454 (5) a provision permitting or making obligatory
7455 indemnification of a director for liability as defined in
7456 Section 10A-2A-8.50 to any person for any action taken, or any
7457 failure to take any action, as a director, except liability
7458 for (i) receipt of a financial benefit to which the director
7459 is not entitled, (ii) an intentional infliction of harm on the
7460 corporation or its stockholders, (iii) a violation of Section
7461 10A-2A-8.32, or (iv) an intentional violation of criminal law;
7462 and

7463 (6) a provision limiting or eliminating any duty of a
7464 director or any other person to offer the corporation the
7465 right to have or participate in any, or one or more classes or
7466 categories of, business opportunities, before the pursuit or
7467 taking of the opportunity by the director or other person;
7468 provided that any application of that provision to an officer
7469 or a related person of that officer (i) also requires approval
7470 of that application by the board of directors, subsequent to
7471 the effective date of the provision, by action of qualified
7472 directors taken in compliance with the same procedures as are
7473 set forth in Section 10A-2A-8.60, and (ii) may be limited by
7474 the authorizing action of the board of directors.

7475 (c) The certificate of incorporation need not set forth
7476 any of the corporate powers enumerated in Sections 10A-1-2.11,
7477 10A-1-2.12, and 10A-1-2.13.



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7478 (d) Provisions of the certificate of incorporation may
7479 be made dependent upon facts objectively ascertainable outside
7480 the certificate of incorporation in accordance with Section
7481 10A-2A-1.20(c).

7482 (e) As used in this section, "related person" ~~has the~~
7483 ~~meaning specified in Section 10A-2A-8.60~~ means:

7484 (i) the individual's spouse;

7485 (ii) a child, stepchild, grandchild, parent,
7486 stepparent, grandparent, sibling, stepsibling, half sibling,
7487 aunt, uncle, niece, or nephew (or spouse of any such person)
7488 of the individual or of the individual's spouse;

7489 (iii) a natural person living in the same home as the
7490 individual;

7491 (iv) an entity (other than the corporation or an entity
7492 controlled by the corporation) controlled by the individual or
7493 any person specified above in this definition;

7494 (v) a domestic or foreign:

7495 (A) business or nonprofit corporation (other than the
7496 corporation or an entity controlled by the corporation) of
7497 which the individual is a director;

7498 (B) unincorporated entity of which the individual is a
7499 general partner or a member of the governing authority; or

7500 (C) individual, trust or estate for whom or of which
7501 the individual is a trustee, guardian, personal
7502 representative, or like fiduciary; or

7503 (vi) a person that is, or an entity that is, controlled
7504 by an employer of the individual.

7505 (f) The certificate of incorporation may not contain



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7506 any provision that would impose liability on a stockholder for
7507 the attorney's fees or expenses of the corporation or any
7508 other party in connection with an internal corporate claim, as
7509 defined in Section 10A-2A-2.07(d).

7510 (g) The certificate of incorporation is part of a
7511 binding contract between the corporation and the stockholders,
7512 subject to the provisions of this chapter."

7513 "§10A-2A-2.06

7514 (a) Unless the certificate of incorporation provides
7515 otherwise, ~~the board of directors may adopt~~ bylaws may be
7516 adopted to be effective only in an emergency defined in
7517 subsection (d). The emergency bylaws, which are subject to
7518 amendment or repeal by the stockholders, may make all
7519 provisions necessary for managing the corporation during the
7520 emergency, including:

7521 (1) procedures for calling a meeting of the board of
7522 directors;

7523 (2) quorum requirements for the meeting; and

7524 (3) designation of additional or substitute directors.

7525 (b) All provisions of the regular bylaws not
7526 inconsistent with the emergency bylaws remain effective during
7527 the emergency. The emergency bylaws are not effective after
7528 the emergency ends.

7529 (c) Corporate action taken in good faith in accordance
7530 with the emergency bylaws:

7531 (1) binds the corporation; and

7532 (2) may not be used to impose liability on a director,
7533 officer, employee, or agent of the corporation.



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7534 (d) An emergency exists for purposes of this section if
7535 a quorum of the board of directors cannot readily be assembled
7536 because of some catastrophic event."

7537 "§10A-2A-7.04

7538 (a) Unless otherwise provided in the certificate of
7539 incorporation, any action required or permitted by this
7540 chapter to be taken at any meeting of the stockholders may be
7541 taken without a meeting, and without prior notice, if one or
7542 more consents in writing setting forth the action so taken are
7543 signed by the holders of outstanding stock having not less
7544 than the minimum number of votes that would be required to
7545 authorize or take the action at a meeting at which all shares
7546 of stock entitled to vote on the action were present and
7547 voted; provided, however, that if a corporation's certificate
7548 of incorporation authorizes stockholders to cumulate their
7549 votes when electing directors pursuant to Section 10A-2A-7.28,
7550 directors may not be elected by less than unanimous written
7551 consent. The action must be evidenced by one or more written
7552 consents describing the action taken, signed by the
7553 stockholders approving the action and delivered to the
7554 corporation for filing by the corporation with the minutes or
7555 corporate records.

7556 (b) If not otherwise fixed under Section 10A-2A-7.07
7557 and if prior action by the board of directors is not required
7558 respecting the action to be taken without a meeting, the
7559 record date for determining the stockholders entitled to take
7560 action without a meeting shall be the first date on which a
7561 signed written consent is delivered to the corporation. If not



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7562 otherwise fixed under Section 10A-2A-7.07 and if prior action
7563 by the board of directors is required respecting the action to
7564 be taken without a meeting, the record date shall be the close
7565 of business on the day the resolution of the board of
7566 directors taking the prior action is adopted. No written
7567 consent shall be effective to take the corporate action
7568 referred to therein unless, within 60 days of the earliest
7569 date on which a consent is delivered to the corporation as
7570 required by this section, written consents signed by
7571 sufficient stockholders to take the action have been delivered
7572 to the corporation. Any person executing a consent may
7573 provide, whether through instruction to an agent or otherwise,
7574 that such consent will be effective at a future time,
7575 including a time determined upon the happening of an event,
7576 occurring not later than 60 days after such instruction is
7577 given or such provision is made, if evidence of the
7578 instruction or provision is provided to the corporation. A
7579 written consent may be revoked by a writing to that effect
7580 delivered to the corporation before unrevoked written consents
7581 sufficient in number to take the corporate action have been
7582 delivered to the corporation.

7583 (c) A consent signed pursuant to the provisions of this
7584 section has the effect of a vote taken at a meeting and may be
7585 described as such in any document. Unless the certificate of
7586 incorporation, bylaws or a resolution of the board of
7587 directors provides for a reasonable delay to permit tabulation
7588 of written consents, the action taken by written consent shall
7589 be effective when written consents signed by sufficient



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7590 stockholders to take the action have been delivered to the
7591 corporation.

7592 (d) If this chapter requires that notice of a proposed
7593 action be given to nonvoting stockholders and the action is to
7594 be taken by written consent of the voting stockholders, the
7595 corporation shall give its nonvoting stockholders written
7596 notice of the action not more than 10 days after (i) written
7597 consents sufficient to take the action have been delivered to
7598 the 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 nonvoting stockholders in a notice of a meeting
7604 at which the proposed action would have been submitted to the
7605 stockholders for action.

7606 (e) If action is taken by less than unanimous written
7607 consent of the voting stockholders, the corporation shall give
7608 its nonconsenting voting stockholders written notice of the
7609 action not more than 10 days after (i) written consents
7610 sufficient to take the action have been delivered to the
7611 corporation, or (ii) any later date that tabulation of
7612 consents is completed pursuant to an authorization under
7613 subsection (c). The notice must reasonably describe the action
7614 taken and contain or be accompanied by the same material that,
7615 under any provision of this chapter, would have been required
7616 to be sent to voting stockholders in a notice of a meeting at
7617 which the action would have been submitted to the stockholders



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7618 for action.

7619 (f) The notice requirements in subsections (d) and (e)
7620 shall not delay the effectiveness of actions taken by written
7621 consent, and a failure to comply with those notice
7622 requirements shall not invalidate actions taken by written
7623 consent, provided that this subsection shall not be deemed to
7624 limit judicial power to fashion any appropriate remedy in
7625 favor of a stockholder adversely affected by a failure to give
7626 the notice within the required time period."

7627 "§10A-2A-7.20

7628 (a) After fixing a record date for a meeting, a
7629 corporation shall prepare an alphabetical list of the names of
7630 all its stockholders who are entitled to notice of the
7631 stockholders' meeting. If the board of directors fixes a
7632 different record date under Section 10A-2A-7.07(e) to
7633 determine the stockholders entitled to vote at the meeting, a
7634 corporation also shall prepare an alphabetical list of the
7635 names of all its stockholders who are entitled to vote at the
7636 meeting. Each list must be arranged by voting group (and
7637 within each voting group by class or series of stock) and
7638 contain the address of, and number and class or series of
7639 shares of stock held by, each stockholder, and if the notice
7640 or other communications regarding the meeting have been or
7641 will be sent by the corporation to a stockholder by electronic
7642 mail or other electronic transmission, the electronic mail or
7643 other electronic transmission address of that stockholder.

7644 (b) The list of stockholders entitled to notice and to
7645 vote shall be available for inspection by any stockholder. 7



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7646 ~~beginning two business days after notice of~~ no later than the
7647 tenth day before each meeting of stockholders; provided,
7648 however, if the record date for determining the stockholders
7649 entitled to vote is less than 10 days before the meeting ~~is~~
7650 ~~given for which the list was prepared and continuing through~~
7651 ~~the meeting,~~ date, the list shall reflect the stockholders
7652 entitled to vote as of the tenth day before the meeting date.
7653 The list shall be available (i) at the corporation's principal
7654 office or at a place identified in the meeting notice in the
7655 city where the meeting will be held or (ii) on a reasonably
7656 accessible electronic network, provided that the information
7657 required to gain access to such list is provided with the
7658 notice of the meeting. ~~The list of stockholders entitled to~~
7659 ~~vote shall be similarly available for inspection promptly~~
7660 ~~after the record date for voting.~~ In the event that the
7661 corporation determines to make a list of stockholders
7662 available on an electronic network, the corporation may take
7663 reasonable steps to ensure that such information is available
7664 only to stockholders of the corporation. A stockholder, or the
7665 stockholder's agent or attorney, is entitled on written demand
7666 to inspect and, subject to the requirements of Section
7667 10A-2A-16.02(c), to copy a list of stockholders, during
7668 regular business hours and at the stockholder's expense,
7669 during the period it is available for inspection. A
7670 corporation may satisfy the stockholder's right to copy a list
7671 of stockholders by furnishing a copy in the manner described
7672 in Section 10A-2A-16.03(b). A stockholder and the
7673 stockholder's agent or attorney who inspects or is furnished a



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7674 copy of a list of stockholders under this subsection (b) ~~or~~
7675 ~~under subsection (c)~~ or who copies the list under this
7676 subsection (b) may use the information on that list only for
7677 purposes related to the meeting and its subject matter and
7678 must keep the information on that list confidential.

7679 ~~(c) If the meeting is to be held at a place, the~~
7680 ~~corporation shall make the list of stockholders entitled to~~
7681 ~~vote available at the meeting and any adjournment, and any~~
7682 ~~stockholder, or the stockholder's agent or attorney, is~~
7683 ~~entitled to inspect the list at any time during the meeting~~
7684 ~~and any adjournment. If the meeting is to be held solely by~~
7685 ~~means of remote communication, then such list shall also be~~
7686 ~~available for such inspection during the meeting and any~~
7687 ~~adjournment on a reasonably accessible electronic network, and~~
7688 ~~the information required to access such list shall be provided~~
7689 ~~with the notice of the meeting. The corporation may satisfy~~
7690 ~~its obligation to make such list available for inspection~~
7691 ~~during a meeting by furnishing a copy of the list in the~~
7692 ~~manner described in Section 10A-2A-16.03(b) to the~~
7693 ~~stockholders prior to the meeting.~~

7694 ~~(d)~~ (c) If the corporation refuses to allow a
7695 stockholder, or the stockholder's agent or attorney, to
7696 inspect a list of stockholders before ~~or at~~ the meeting or any
7697 adjournment (or copy a list as permitted by subsection (b)),
7698 the designated court, and if none, the circuit court for the
7699 county in which the corporation's principal office is located
7700 in this state, and if none in this state, the circuit court
7701 for the county in which the corporation's most recent



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7702 registered office is located, on application of the
7703 stockholder, may summarily order the inspection or copying at
7704 the corporation's expense and may postpone the meeting for
7705 which the list was prepared until the inspection or copying is
7706 complete.

7707 ~~(e)~~ (d) Refusal or failure to prepare or make available
7708 a list of stockholders does not affect the validity of action
7709 taken at the meeting.

7710 ~~(f)~~ (e) The stock transfer records of the corporation
7711 shall be prima facie evidence as to who are the stockholders
7712 entitled to examine the stockholders' list or transfer records
7713 or to vote at any meeting of stockholders."

7714 "§10A-2A-7.32

7715 (a) An agreement among the stockholders of a
7716 corporation that complies with this section is effective among
7717 the stockholders and the corporation even though it is
7718 inconsistent with one or more other provisions of this chapter
7719 in that it:

7720 (1) eliminates the board of directors or restricts the
7721 discretion or powers of the board of directors;

7722 (2) governs the authorization or making of
7723 distributions, regardless of whether they are in proportion to
7724 ownership of stock, subject to the limitations in Section
7725 10A-2A-6.40;

7726 (3) establishes who shall be directors or officers of
7727 the corporation, or their terms of office or manner of
7728 selection or removal;

7729 (4) governs, in general or in regard to specific



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7730 matters, the exercise or division of voting power by or
7731 between the stockholders and directors or by or among any of
7732 them, including use of weighted voting rights ~~or director~~
7733 ~~proxies~~;

7734 (5) establishes the terms and conditions of any
7735 agreement for the transfer or use of property or the provision
7736 of services between the corporation and any stockholder,
7737 director, officer, l or employee of the corporation or among any
7738 of them;

7739 (6) transfers to one or more stockholders or other
7740 persons all or part of the authority to exercise the corporate
7741 powers or to manage the business and affairs of the
7742 corporation, including the resolution of any issue about which
7743 there exists a deadlock among directors or stockholders;

7744 (7) requires dissolution of the corporation at the
7745 request of one or more of the stockholders or upon the
7746 occurrence of a specified event or contingency; or

7747 (8) otherwise governs the exercise of the corporate
7748 powers or the management of the business and affairs of the
7749 corporation or the relationship among the stockholders, the
7750 directors and the corporation, or among any of them, and is
7751 not contrary to public policy.

7752 (b) An agreement authorized by this section shall be:

7753 (1) as set forth (i) in the certificate of
7754 incorporation or bylaws and approved by all persons who are
7755 stockholders at the time of the agreement, or (ii) in a
7756 written agreement that is signed by all persons who are
7757 stockholders at the time of the agreement and is made known to



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7758 the corporation; and

7759 (2) subject to amendment only by all persons who are
7760 stockholders at the time of the amendment, unless the
7761 agreement provides otherwise.

7762 (c) The existence of an agreement authorized by this
7763 section shall be noted conspicuously on the front or back of
7764 each certificate for outstanding stock or in the information
7765 required by Section 10A-1-3.45. If at the time of the
7766 agreement the corporation has stock outstanding represented by
7767 certificates, the corporation shall recall the outstanding
7768 certificates and issue substitute certificates that comply
7769 with this subsection. The failure to note the existence of the
7770 agreement as required by this subsection shall not affect the
7771 validity of the agreement or any action taken pursuant to it.
7772 Any purchaser of stock who, at the time of purchase, did not
7773 have knowledge of the existence of the agreement shall be
7774 entitled to rescission of the purchase. A purchaser shall be
7775 deemed to have knowledge of the existence of the agreement if
7776 its existence is noted on the certificate or if the stock is
7777 not represented by a certificate, the information required by
7778 Section 10A-1-3.45 is delivered to the purchaser at or before
7779 the time of purchase of the stock. An action to enforce the
7780 right of rescission authorized by this subsection shall be
7781 commenced within the earlier of 90 days after discovery of the
7782 existence of the agreement or two years after the time of
7783 purchase of the stock.

7784 (d) If the agreement ceases to be effective for any
7785 reason, the board of directors may, if the agreement is



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7786 contained or referred to in the corporation's certificate of
7787 incorporation or bylaws, adopt an amendment to the certificate
7788 of incorporation or bylaws, without stockholder action, to
7789 delete the agreement and any references to it.

7790 (e) An agreement authorized by this section that limits
7791 the discretion or powers of the board of directors shall
7792 relieve the directors of, and impose upon the person or
7793 persons in whom the discretion or powers are vested, liability
7794 for acts or omissions imposed by law on directors to the
7795 extent that the discretion or powers of the directors are
7796 limited by the agreement. An agreement authorized by this
7797 section that eliminates the board of directors shall impose on
7798 the person or persons in whom the discretion or powers of the
7799 directors are vested the liability for acts or omissions as
7800 are imposed by law on directors.

7801 (f) The existence or performance of an agreement
7802 authorized by this section shall not be a ground for imposing
7803 personal liability on any stockholder for the acts or debts of
7804 the corporation even if the agreement or its performance
7805 treats the corporation as if it were a partnership or results
7806 in failure to observe the corporate formalities otherwise
7807 applicable to the matters governed by the agreement.

7808 (g) Incorporators or subscribers for stock may act as
7809 stockholders with respect to an agreement authorized by this
7810 section if no stock has been issued when the agreement is
7811 made.

7812 (h) Limits, if any, on the duration of an agreement
7813 authorized by this section must be set forth in the



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7814 agreement."

7815 "§10A-2A-8.10

7816 (a) ~~Unless the certificate of incorporation provides~~

7817 ~~otherwise~~ Except as otherwise provided in Section

7818 10A-2A-8.10(b) or the certificate of incorporation, if a

7819 vacancy occurs on ~~a~~ the board of directors, including a

7820 vacancy resulting from an increase in the number of directors:

7821 (1) the stockholders may fill the vacancy;

7822 (2) the board of directors may fill the vacancy; or

7823 (3) if the directors remaining in office are less than

7824 a quorum, they may fill the vacancy by the affirmative vote of

7825 a majority of all the directors remaining in office.

7826 (b) ~~If~~ Unless the certificate of incorporation provides

7827 otherwise, if the vacant office was held by a director elected

7828 by a voting group of stockholders, only the holders of stock

7829 of that voting group are entitled to vote to fill the vacancy

7830 if it is filled by the stockholders, and only the remaining

7831 directors elected by that voting group, even if less than a

7832 quorum, are entitled to fill the vacancy if it is filled by

7833 the directors.

7834 (c) A vacancy that will occur at a specific later date

7835 (by reason of a resignation effective at a later date under

7836 Section 10A-2A-8.07(b) or otherwise) may be filled before the

7837 vacancy occurs but the new director may not take office until

7838 the vacancy occurs."

7839 "§10A-2A-8.21

7840 (a) Except to the extent that the certificate of

7841 incorporation or bylaws require that action by the board of



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7842 directors be taken at a meeting, action required or permitted
7843 by this chapter to be taken by the board of directors may be
7844 taken without a meeting if each director signs a consent
7845 describing the action to be taken and delivers it to the
7846 corporation.

7847 (b) Action taken under this section is the act of the
7848 board of directors when one or more consents signed by all the
7849 directors are delivered to the corporation. ~~The consent may~~
7850 ~~specify a later time as the time at which the action taken is~~
7851 ~~to be effective.~~ Any director executing a consent may provide,
7852 whether through instruction to an agent or otherwise, that
7853 such consent will be effective at a future time, including a
7854 time determined upon the happening of an event, occurring not
7855 later than 60 days after such instruction is given or such
7856 provision is made, if evidence of the instruction or provision
7857 is provided to the corporation. A director's consent may be
7858 withdrawn by a revocation signed by the director and delivered
7859 to the corporation before delivery to the corporation of
7860 unrevoked written consents signed by all the directors.

7861 (c) A consent signed under this section has the effect
7862 of action taken at a meeting of the board of directors and may
7863 be described as such in any document."

7864 "§10A-2A-8.22

7865 (a) Unless the certificate of incorporation or bylaws
7866 provide otherwise, regular meetings of the board of directors
7867 may be held without notice of the place, if any, date, time,
7868 ~~place,~~ or purpose of the meeting.

7869 (b) Unless the certificate of incorporation or bylaws



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7870 provide for a longer or shorter period, special meetings of
7871 the board of directors shall be preceded by at least two days'
7872 notice of the place, if any, date, and time, ~~and place~~ of the
7873 meeting. The notice need not describe the purpose of the
7874 special meeting unless required by the certificate of
7875 incorporation or bylaws."

7876 "§10A-2A-8.24

7877 (a) Unless the certificate of incorporation or bylaws
7878 provide for a greater or lesser number or unless otherwise
7879 expressly provided in this chapter, a quorum of a board of
7880 directors consists of a majority of the number of directors
7881 specified in or fixed in accordance with the certificate of
7882 incorporation or bylaws.

7883 (b) The quorum of the board of directors specified in
7884 or fixed in accordance with the certificate of incorporation
7885 or bylaws may not consist of less than one-third of the
7886 specified or fixed number of directors.

7887 (c) If a quorum is present when a vote is taken, the
7888 affirmative vote of a majority of directors present is the act
7889 of the board of directors unless the certificate of
7890 incorporation or bylaws require the vote of a greater number
7891 of directors or unless otherwise expressly provided in this
7892 chapter.

7893 (d) A director who is present at a meeting of the board
7894 of directors or a committee when corporate action is taken is
7895 deemed to have assented to the action taken unless: (i) the
7896 director objects at the beginning of the meeting (or promptly
7897 upon arrival) to holding it or transacting business at the



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7898 meeting; (ii) the dissent or abstention from the action taken
7899 is entered in the minutes of the meeting; or (iii) the
7900 director delivers written notice of the director's dissent or
7901 abstention to the presiding officer of the meeting before its
7902 adjournment or to the corporation immediately after
7903 adjournment of the meeting. The right of dissent or abstention
7904 is not available to a director who votes in favor of the
7905 action taken.

7906 (e) A director, in that person's capacity as a
7907 director, may not appoint an agent or proxy to vote, consent,
7908 approve, attend, act, or otherwise carry out the duties of
7909 that director for any purpose."

7910 "§10A-2A-8.59

7911 ~~Division A of Article 6 of Chapter 1 shall not apply to~~
7912 ~~this chapter. Instead, a A corporation may provide~~
7913 indemnification or advance expenses to a director or an
7914 officer only as permitted by this Division E of this Article
7915 8."

7916 "§10A-2A-10.06

7917 ~~Division B of Article 3 of Chapter 1 shall not apply to~~
7918 ~~this chapter. Instead:~~

7919 (a) After an amendment to the certificate of
7920 incorporation has been adopted and approved in the manner
7921 required by this chapter and by the certificate of
7922 incorporation, the corporation shall deliver to the Secretary
7923 of State for filing a certificate of amendment, which must set
7924 forth:

7925 (1) the name of the corporation;



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7926 (2) the text of each amendment adopted, or the
7927 information required by Section 10A-2A-1.20(c)(5);

7928 (3) if an amendment provides for an exchange,
7929 reclassification, or cancellation of issued stock, provisions
7930 for implementing the amendment if not contained in the
7931 amendment itself, (which may be made dependent upon facts
7932 objectively ascertainable outside the certificate of amendment
7933 in accordance with Section 10A-2A-1.20(c)(5));

7934 (4) the date of each amendment's adoption;

7935 (5) if an amendment:

7936 (i) was adopted by the incorporators or board of
7937 directors without stockholder approval, a statement that the
7938 amendment was duly adopted by the incorporators or by the
7939 board of directors, as the case may be, and that stockholder
7940 approval was not required;

7941 (ii) required approval by the stockholders, a statement
7942 that the amendment was duly approved by the stockholders in
7943 the manner required by this chapter and by the certificate of
7944 incorporation; or

7945 (iii) is being filed pursuant to Section
7946 10A-2A-1.20(c)(5), a statement to that effect; and

7947 (6) the unique identifying number or other designation
7948 as assigned by the Secretary of State.

7949 (b) A certificate of amendment shall take effect at the
7950 effective date determined in accordance with Article 4 of
7951 Chapter 1."

7952 "§10A-2A-10.07

7953 ~~Division B of Article 3 of Chapter 1 shall not apply to~~



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7954 ~~this chapter. Instead:~~

7955 (a) A corporation's board of directors may restate its
7956 certificate of incorporation at any time, without stockholder
7957 approval, to consolidate all amendments into a single
7958 document.

7959 (b) If the restated certificate of incorporation
7960 includes one or more new amendments that require stockholder
7961 approval, the amendments shall be adopted and approved as
7962 provided in Section 10A-2A-10.03.

7963 (c) A corporation that restates its certificate of
7964 incorporation shall deliver to the Secretary of State for
7965 filing a certificate of restatement setting forth:

7966 (1) the name of the corporation;

7967 (2) the text of the restated certificate of
7968 incorporation;

7969 (3) a statement that the restated certificate of
7970 incorporation consolidates all amendments into a single
7971 document;

7972 (4) if a new amendment is included in the restated
7973 certificate of incorporation, the statements required under
7974 Section 10A-2A-10.06 with respect to the new amendment; and

7975 (5) the unique identifying number or other designation
7976 as assigned by the Secretary of State.

7977 (d) The duly adopted restated certificate of
7978 incorporation supersedes the original certificate of
7979 incorporation and all amendments to the certificate of
7980 incorporation.

7981 ~~(e) The Secretary of State may certify the restated~~



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7982 ~~certificate of incorporation as the certificate of~~
7983 ~~incorporation currently in effect, without including the~~
7984 ~~statements required by subsection (c) (4)."~~

7985 "§10A-2A-10.08

7986 ~~Division B of Article 3 of Chapter 1 shall not apply to~~
7987 ~~this chapter. Instead:~~

7988 (a) A corporation's certificate of incorporation may be
7989 amended without action by the board of directors or
7990 stockholders to carry out a plan of reorganization ordered or
7991 decreed by a court of competent jurisdiction under the
7992 authority of a law of the United States if the certificate of
7993 incorporation after the amendment only contains provisions
7994 required or permitted by Section 10A-2A-2.02.

7995 (b) The individual or individuals designated by the
7996 court shall deliver to the Secretary of State for filing a
7997 certificate of amendment setting forth:

7998 (1) the name of the corporation;

7999 (2) the text of each amendment approved by the court;

8000 (3) the date of the court's order or decree approving
8001 the certificate of amendment;

8002 (4) the title of the reorganization proceeding in which
8003 the order or decree was entered;

8004 (5) a statement that the court had jurisdiction of the
8005 proceeding under federal statute; and

8006 (6) the unique identifying number or other designation
8007 as assigned by the Secretary of State.

8008 (c) Stockholders of a corporation undergoing
8009 reorganization do not have dissenters' rights except as and to



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8010 the extent provided in the reorganization plan.

8011 (d) This section does not apply after entry of a final
8012 decree in the reorganization proceeding even though the court
8013 retains jurisdiction of the proceeding for limited purposes
8014 unrelated to consummation of the reorganization plan."

8015 "§10A-2A-11.02

8016 (a) A corporation may merge with one or more other
8017 constituent organizations pursuant to this article, and a plan
8018 of merger, if:

8019 (1) the governing statute of each of the other
8020 organizations authorizes the merger;

8021 (2) the merger is not prohibited by the law of a
8022 jurisdiction that enacted any of those governing statutes; and

8023 (3) each of the other organizations complies with its
8024 governing statute in effecting the merger.

8025 (b) A plan of merger must be in writing and must
8026 include:

8027 (1) the name, type of organization, and mailing address
8028 of the principal office of each constituent organization, the
8029 jurisdiction of the governing statute of each constituent
8030 organization, and the respective unique identifying number or
8031 other designation as assigned by the Secretary of State, if
8032 any, of each constituent organization;

8033 (2) the name, type of organization, and mailing address
8034 of the principal office of the surviving organization, the
8035 unique identifying number or other designation as assigned by
8036 the Secretary of State, if any, of the surviving organization,
8037 the jurisdiction of the governing statute of the surviving



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8038 organization, and, if the surviving organization is created
8039 pursuant to the merger, a statement to that effect;

8040 (3) the terms and conditions of the merger, including
8041 the manner and basis for converting the stock or eligible
8042 interests in each constituent organization into any
8043 combination of money, stock, eligible interests in the
8044 surviving organization, and other consideration as allowed by
8045 subsection (c);

8046 (4) if the surviving organization is to be created
8047 pursuant to the merger, the surviving organization's
8048 organizational documents; and

8049 (5) if the surviving organization is not to be created
8050 pursuant to the merger, any amendments to be made by the
8051 merger to the surviving organization's organizational
8052 documents.

8053 (c) In connection with a merger, rights, securities,
8054 stock, or eligible interests, if any, in a constituent
8055 organization may be exchanged for or converted into cash,
8056 property, rights, securities, stock, or eligible interests, if
8057 any, in the surviving organization, or, in addition to or in
8058 lieu thereof, may be exchanged for or converted into cash,
8059 property, rights, securities, stock, or eligible interests, if
8060 any, in another organization, or may be cancelled.

8061 (d) In addition to the requirements of subsection (b),
8062 a plan of merger may contain any other provision not
8063 prohibited by law.

8064 (e) Terms of a plan of merger may be made dependent on
8065 facts objectively ascertainable outside the plan in accordance



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8066 with Section 10A-2A-1.20(c).

8067 (f) A plan of merger may be amended only with the
8068 consent of each constituent organization, except as provided
8069 in the plan. A domestic constituent organization may approve
8070 an amendment to a plan:

8071 (1) in the same manner as the plan was approved, if the
8072 plan does not provide for the manner in which it may be
8073 amended; or

8074 (2) in the manner provided in the plan, except that if
8075 the plan has been approved by the stockholders, members, or
8076 interest holders that were entitled to vote on, consent to, or
8077 approve of, the plan, then those stockholders, members, or
8078 interest holders are entitled to vote on, consent to, or
8079 approve of any amendment of the plan that will change:

8080 (i) the amount or kind of stock or other securities,
8081 eligible interests, obligations, rights to acquire stock,
8082 other securities or eligible interests, cash, or other
8083 property to be received under the plan by the stockholders,
8084 members, or interest holders of a constituent organization;

8085 (ii) the certificate of incorporation of any
8086 corporation, foreign corporation, nonprofit corporation,
8087 foreign nonprofit corporation or the organizational documents
8088 of any unincorporated entity or foreign unincorporated entity,
8089 that will be the surviving organization, except for changes
8090 permitted by Section 10A-2A-10.05 or by comparable provisions
8091 of the governing statute of the foreign corporation, nonprofit
8092 corporation, foreign nonprofit corporation, unincorporated
8093 entity, or foreign unincorporated entity; or



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8094 (iii) any of the other terms or conditions of the plan
8095 if the change would adversely affect the stockholders,
8096 members, or interest holders in any material respect."

8097 "§10A-2A-11.06

8098 (a) After a plan of merger has been adopted and
8099 approved as required by this article, then a statement of
8100 merger shall be signed by each party to the merger except as
8101 provided in Section 10A-2A-11.05(a). The statement of merger
8102 must set forth:

8103 (1) the name, type of organization, and mailing address
8104 of the principal office of each constituent organization, the
8105 jurisdiction of the governing statute of each constituent
8106 organization, and the respective unique identifying number or
8107 other designation as assigned by the Secretary of State, if
8108 any, of each constituent organization;

8109 (2) the name, type of organization, and mailing address
8110 of the principal office of the surviving organization, the
8111 unique identifying number or other designation as assigned by
8112 the Secretary of State, if any, of the surviving organization,
8113 the jurisdiction of the governing statute of the surviving
8114 organization, and, if the surviving organization is created
8115 pursuant to the merger, a statement to that effect;

8116 ~~(3) the date of the filing of the certificate of~~
8117 ~~formation, if any, and all prior amendments and the filing~~
8118 ~~office or offices, if any, and where the certificate of~~
8119 ~~formation is filed of each constituent organization which was~~
8120 ~~formed under the laws of this state;~~

8121 ~~(4)~~ (3) the date the merger is effective under the



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8122 governing statute of the surviving organization;

8123 ~~(5)~~ (4) if the surviving organization is to be created
8124 pursuant to the merger:

8125 (A) if it will be a corporation, the corporation's
8126 certificate of incorporation; or

8127 (B) if it will be an organization other than a
8128 corporation, any organizational document that creates the
8129 organization that is required to be in a public writing or in
8130 the case of a limited liability partnership, its statement of
8131 limited liability partnership;

8132 ~~(6)~~ (5) if the surviving organization exists before the
8133 merger, any amendments provided for in the plan of merger for
8134 the organizational document that created the organization that
8135 are in a public writing;

8136 ~~(7)~~ (6) a statement as to each constituent organization
8137 that the merger was approved as required by the organization's
8138 governing statute;

8139 ~~(8)~~ (7) if the surviving organization is a foreign
8140 organization not authorized to conduct activities and affairs
8141 in this state, the street and mailing address of an office for
8142 the purposes of Section 10A-2A-11.07(c);

8143 ~~(9)~~ (8) any additional information required by the
8144 governing statute of any constituent organization;

8145 ~~(10)~~ (9) if the plan of merger required approval by the
8146 stockholders of a corporation that is a constituent
8147 organization, a statement that the plan was duly approved by
8148 the stockholders and, if voting by any separate voting group
8149 was required, by each separate voting group, in the manner



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8150 required by this chapter and the certificate of incorporation;

8151 ~~(11)~~ (10) if the plan of merger did not require approval

8152 by the stockholders of a corporation that is a constituent

8153 organization, a statement to that effect; and

8154 ~~(12)~~ (11) a statement that the plan of merger will be

8155 furnished by the surviving organization, on request and

8156 without cost, to any owner of any constituent organization

8157 which is a party to the merger.

8158 (b) After a plan of stock exchange in which the

8159 acquired entity is a corporation has been adopted and approved

8160 as required by this chapter, a statement of stock exchange

8161 shall be signed by the acquired entity and the acquiring

8162 entity. The statement of stock exchange shall set forth:

8163 (1) the name and mailing address of the principal
8164 office of the acquired entity, and the jurisdiction of its
8165 governing statute, and its unique identifying number or other
8166 designation as assigned by the Secretary of State, if any;

8167 (2) the name, jurisdiction of formation, and type of
8168 entity of the corporation or foreign corporation that is the
8169 acquiring entity;

8170 (3) a statement that the plan of stock exchange was
8171 duly approved by the acquired entity by:

8172 (i) the required vote or consent of each class or
8173 series of stock included in the exchange; and

8174 (ii) the required vote or consent of each other class
8175 or series of stock entitled to vote on approval of the
8176 exchange by the certificate of incorporation of the acquired
8177 entity; and



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8178 (4) if the stock exchange did not require the approval
8179 by the stockholders of a corporation that is a party to the
8180 stock exchange, a statement to that effect.

8181 (c) In addition to the requirements of subsection (a)
8182 or subsection (b), a statement of merger or stock exchange may
8183 contain any other provision not prohibited by law.

8184 (d) The statement of merger or stock exchange shall be
8185 delivered to the Secretary of State for filing and, subject to
8186 subsection (e), the merger or stock exchange shall take effect
8187 at the effective date determined in accordance with Article 4
8188 of Chapter 1.

8189 (e) With respect to a merger in which one or more
8190 foreign organizations is a constituent organization or a
8191 foreign organization created by the merger is the surviving
8192 organization, the merger itself shall become effective at the
8193 later of:

8194 (1) when all documents required to be filed in foreign
8195 jurisdictions to effect the merger have become effective, or

8196 (2) when the statement of merger takes effect.

8197 (f) A statement of merger filed under this section may
8198 be combined with any filing required under the governing
8199 statute governing any domestic organization involved in the
8200 transaction if the combined filing satisfies the requirements
8201 of this section, the other governing statute, and Article 4 of
8202 Chapter 1.

8203 ~~(g) After a merger becomes effective, if the surviving~~
8204 ~~organization is a corporation, then, except for certified~~
8205 ~~copies of the statement of merger permitted to be delivered to~~



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8206 ~~the judge of probate for filing pursuant to subsection (h),~~
8207 ~~all filing instruments required to be filed under this title~~
8208 ~~regarding that surviving organization shall be delivered for~~
8209 ~~filing to the Secretary of State.~~

8210 ~~(h)~~ (g) A certified copy of the statement of merger
8211 required to be filed under this section may be filed in the
8212 real estate records in the office of the judge of probate in
8213 any county in which any constituent organization owned real
8214 property, without payment and without collection by the judge
8215 of probate of any deed or other transfer tax or fee. The judge
8216 of probate, however, shall be entitled to collect the filing
8217 fee of five dollars (\$5). Any filing shall evidence chain of
8218 title, but lack of filing shall not affect the surviving
8219 organization's title to real property."

8220 "§10A-2A-12.02

8221 (a) A sale, lease, exchange, or other disposition of
8222 assets, other than a disposition described in Section
8223 10A-2A-12.01, requires approval of the corporation's
8224 stockholders if the disposition would leave the corporation
8225 without a significant continuing business activity. A
8226 corporation will conclusively be deemed to have retained a
8227 significant continuing business activity if it retains a
8228 business activity that represented, for the corporation and
8229 its subsidiaries on a consolidated basis, at least (i) 25
8230 percent of total assets at the end of the most recently
8231 completed fiscal year, and (ii) either 25 percent of either
8232 income from continuing operations before taxes or 25 percent
8233 of revenues from continuing operations, in each case for the



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8234 most recently completed fiscal year.

8235 (b) To obtain the approval of the stockholders under
8236 subsection (a) the board of directors shall first adopt a
8237 resolution authorizing the disposition. The disposition shall
8238 then be approved by the stockholders. In submitting the
8239 disposition to the stockholders for approval, the board of
8240 directors shall recommend that the stockholders approve the
8241 disposition, unless (i) the board of directors makes a
8242 determination that because of conflicts of interest or other
8243 special circumstances it should not make a recommendation, or
8244 (ii) Section 10A-2A-8.26 applies. If either (i) or (ii)
8245 applies, the board of directors shall inform the stockholders
8246 of the basis for its so proceeding.

8247 (c) The board of directors may set conditions for the
8248 approval by the stockholders of a disposition or the
8249 effectiveness of the disposition.

8250 (d) If a disposition is required to be approved by the
8251 stockholders under subsection (a), and if the approval is to
8252 be given at a meeting, the corporation shall notify each
8253 stockholder, regardless of whether entitled to vote, of the
8254 meeting of stockholders at which the disposition is to be
8255 submitted for approval. The notice must state that the
8256 purpose, or one of the purposes, of the meeting is to consider
8257 the disposition and must contain a description of the
8258 disposition, including the terms and conditions of the
8259 disposition and the consideration to be received by the
8260 corporation.

8261 (e) Unless the certificate of incorporation or the



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8262 board of directors acting pursuant to subsection (c) requires
8263 a greater vote or a greater quorum, the approval of a
8264 disposition by the stockholders shall require the approval of
8265 the stockholders at a meeting at which a quorum exists
8266 consisting of a majority of the votes entitled to be cast on
8267 the disposition.

8268 (f) After a disposition has been approved by the
8269 stockholders under this Article 12, and at any time before the
8270 disposition has been consummated, it may be abandoned by the
8271 corporation without action by the stockholders, subject to any
8272 contractual rights of other parties to the disposition.

8273 (g) A disposition of assets in the course of
8274 dissolution under Article 14 is not governed by this section.

8275 (h) For purposes of this section only, the property and
8276 assets of the corporation include the property and assets of
8277 any subsidiary of the corporation. As used in this subsection,
8278 "subsidiary" means any entity wholly owned and controlled,
8279 directly or indirectly, by the corporation and includes,
8280 without limitation, corporations, partnerships, limited
8281 partnerships, limited liability partnerships, limited
8282 liability companies, and/or statutory trusts. ~~Notwithstanding~~
8283 ~~subsection (a) of this section, except to the extent the~~
8284 ~~certificate of incorporation otherwise provides, no vote by~~
8285 ~~stockholders shall be required for a sale, lease, or exchange~~
8286 ~~of property and assets of the corporation to a subsidiary."~~

8287 "§10A-2A-14.13

8288 (a) If after a hearing the court determines that one or
8289 more grounds for judicial dissolution described in Section



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8290 10A-2A-14.10 exist, ~~it~~ the court may enter a decree dissolving
8291 the corporation and specifying the effective date of the
8292 dissolution, ~~and~~. If the court enters a decree dissolving the
8293 corporation, then the clerk of the court shall deliver a
8294 certified copy of the decree to the Secretary of State for
8295 filing.

8296 (b) After entering the decree of dissolution, the court
8297 shall direct the winding-up and liquidation of the
8298 corporation's business and affairs in accordance with Section
8299 10A-2A-14.05 and the notification of claimants in accordance
8300 with Sections 10A-2A-14.06 and 10A-2A-14.07."

8301 Section 4. Sections 10A-2A-10.00 and 10A-2A-10.10 are
8302 added to the Code of Alabama 1975, to read as follows:

8303 §10A-2A-10.00. Applicability of Chapter 1.

8304 Division B of Article 3 of Chapter 1 shall not apply to
8305 this chapter.

8306 §10A-2A-10.10. Effect of filing of restated certificate
8307 of incorporation.

8308 (a) A restated certificate of incorporation takes
8309 effect when the filing of the restated certificate of
8310 incorporation takes effect as provided by Article 4 of Chapter
8311 1.

8312 (b) On the date and time the restated certificate of
8313 incorporation takes effect, the original certificate of
8314 incorporation and each prior amendment or restatement of the
8315 certificate of incorporation is superseded and the restated
8316 certificate of incorporation is the effective certificate of
8317 incorporation.



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8318 (c) Section 10A-2A-10.09 applies to an amendment
8319 effected by a restated certificate of incorporation.

8320 Section 5. Sections 10A-5A-2.03 and 10A-5A-10.07 of the
8321 Code of Alabama 1975, are amended to read as follows:

8322 "§10A-5A-2.03

8323 ~~(a) The filing of a certificate of amendment to the~~
8324 ~~certificate of formation shall have the effect, and shall take~~
8325 ~~effect, as provided in Section 10A-1-3.14.~~

8326 ~~(b) The filing of a restated certificate of formation~~
8327 ~~shall have the effect, and shall take effect, as provided in~~
8328 ~~Section 10A-1-3.18.~~

8329 (a) (1) An amendment to a certificate of formation takes
8330 effect when the filing of the certificate of amendment takes
8331 effect as provided by Article 4 of Chapter 1.

8332 (2) An amendment to a certificate of formation does not
8333 affect:

8334 (i) an existing cause of action in favor of or against
8335 the limited liability company for which the certificate of
8336 amendment is sought;

8337 (ii) a pending suit to which the limited liability
8338 company is a party; or

8339 (iii) an existing right of a person other than an
8340 existing member.

8341 (3) If the name of a limited liability company is
8342 changed by amendment, an action brought by or against the
8343 limited liability company in the former name of that limited
8344 liability company does not abate because of the name change.

8345 (b) (1) A restated certificate of formation takes effect



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8346 when the filing of the restated certificate of formation takes
8347 effect as provided by Article 4 of Chapter 1.

8348 (2) On the date and time the restated certificate of
8349 formation takes effect, the original certificate of formation
8350 and each prior amendment or restatement of the certificate of
8351 formation is superseded and the restated certificate of
8352 formation is the effective certificate of formation.

8353 (3) Subsections (b) (1) and (2) apply to an amendment
8354 effected by a restated certificate of formation."

8355 "§10A-5A-10.07

8356 (a) After each constituent organization has approved
8357 the plan of merger, a statement of merger must be signed on
8358 behalf of:

8359 (1) each constituent limited liability company, as
8360 provided in Section 10A-5A-2.04(a); and

8361 (2) each other constituent organization, as provided by
8362 its governing statute.

8363 (b) A statement of merger under this section must
8364 include:

8365 (1) the name, type of organization, and mailing address
8366 of the principal office of each constituent organization, the
8367 jurisdiction of the governing statute of each constituent
8368 organization, and the respective unique identifying number or
8369 other designation as assigned by the Secretary of State, if
8370 any, of each constituent organization;

8371 (2) the name, type of organization, and mailing address
8372 of the principal office of the surviving organization, the
8373 unique identifying number or other designation as assigned by



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8374 the Secretary of State, if any, of the surviving organization,
8375 the jurisdiction of the governing statute of the surviving
8376 organization, and, if the surviving organization is created
8377 pursuant to the merger, a statement to that effect;

8378 ~~(3) the date of the filing of the certificate of~~
8379 ~~formation, if any, and all prior amendments and the filing~~
8380 ~~office or offices, if any, and where such is filed of each~~
8381 ~~constituent organization which was formed under the laws of~~
8382 ~~this state;~~

8383 ~~(4)~~ (3) the date the merger is effective under the
8384 governing statute of the surviving organization;

8385 ~~(5)~~ (4) if the surviving organization is to be created
8386 pursuant to the merger:

8387 (A) if it will be a limited liability company, the
8388 limited liability company's certificate of formation; or

8389 (B) if it will be an organization other than a limited
8390 liability company, any organizational document that creates
8391 the organization that is required to be in a public writing;

8392 ~~(6)~~ (5) if the surviving organization exists before the
8393 merger, any amendments provided for in the plan of merger for
8394 the organizational document that created the organization that
8395 are required to be in a public writing;

8396 ~~(7)~~ (6) a statement as to each constituent organization
8397 that the merger was approved as required by the organization's
8398 governing statute;

8399 ~~(8)~~ (7) a statement that a copy of the plan of merger
8400 will be furnished by the surviving organization, on request
8401 and without cost, to any owner of any constituent organization



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8402 which is a party to the merger;

8403 ~~(9)~~ (8) if the surviving organization is a foreign
8404 organization not authorized to conduct activities and affairs
8405 in this state, the street and mailing address of an office for
8406 the purposes of Section 10A-5A-10.08(b); and

8407 ~~(10)~~ (9) any additional information required by the
8408 governing statute of any constituent organization.

8409 (c) The statement of merger shall be delivered for
8410 filing to the Secretary of State.

8411 (d) A merger becomes effective under this article:

8412 (1) if the surviving organization is a limited
8413 liability company, upon the later of:

8414 (A) the filing of the statement of merger with the
8415 Secretary of State; or

8416 (B) as specified in the statement of merger; or

8417 (2) if the surviving organization is not a limited
8418 liability company, as provided by the governing statute of the
8419 surviving organization.

8420 ~~(e) After a merger becomes effective, if the surviving~~
8421 ~~organization is a limited liability company, then, except for~~
8422 ~~certified copies of the statement of merger permitted to be~~
8423 ~~delivered to the judge of probate for filing pursuant to~~
8424 ~~subsection (f), all filing instruments required to be filed~~
8425 ~~under this title regarding that surviving organization shall~~
8426 ~~be delivered for filing to the Secretary of State.~~

8427 ~~(f)~~ (e) A certified copy of the statement of merger
8428 required to be filed under this section may be filed in the
8429 real estate records in the office of the judge of probate in



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8430 any county in which any constituent organization owned real
8431 property, without payment and without collection by the judge
8432 of probate of any deed or other transfer tax or fee. The judge
8433 of probate, however, shall be entitled to collect the filing
8434 fee of five dollars (\$5). Any such filing shall evidence chain
8435 of title, but lack of filing shall not affect the surviving
8436 organization's title to such real property.

8437 ~~(g)~~ (f) A statement of merger is a filing instrument
8438 under Chapter 1.

8439 ~~(h)~~ (g) The filing fees for a statement of merger shall
8440 be as set forth in Chapter 1."

8441 Section 6. Section 10A-8A-9.08 of the Code of Alabama
8442 1975, is amended to read as follows:

8443 "§10A-8A-9.08

8444 (a) After each constituent organization has approved
8445 the plan of merger, a statement of merger must be signed on
8446 behalf of:

8447 (1) each constituent partnership, as provided in
8448 Section 10A-8A-2.03(a); and

8449 (2) each other constituent organization, as provided by
8450 its governing statute.

8451 (b) A statement of merger under this section must
8452 include:

8453 (1) the name, type of organization, and mailing address
8454 of the principal office of each constituent organization, the
8455 jurisdiction of the governing statute of each constituent
8456 organization, and the respective unique identifying numbers or
8457 other designations as assigned by the Secretary of State, if



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8458 any, of each constituent organization;

8459 (2) the name, type of organization, and mailing address
8460 of the principal office of the surviving organization, the
8461 unique identifying number or other designation as assigned by
8462 the Secretary of State, if any, of the surviving organization,
8463 the jurisdiction of the governing statute of the surviving
8464 organization, and, if the surviving organization is created
8465 pursuant to the merger, a statement to that effect;

8466 ~~(3) the date of the filing of the certificate of~~
8467 ~~formation, if any, and all prior amendments and the filing~~
8468 ~~office or offices, if any, and where such is filed of each~~
8469 ~~constituent organization which was formed under the laws of~~
8470 ~~this state;~~

8471 ~~(4)~~ (3) the date of the filing of the statement of
8472 partnership, statement of not for profit partnership, or
8473 statement of limited liability partnership, if any, and all
8474 prior amendments and the filing office or offices, if any, and
8475 where such is filed of each constituent organization which is
8476 a partnership;

8477 ~~(5)~~ (4) the date the merger is effective under the
8478 governing statute of the surviving organization;

8479 ~~(6)~~ (5) if the surviving organization is to be created
8480 pursuant to the merger:

8481 (A) if it will be a partnership, the partnership's
8482 statement of partnership, statement of not for profit
8483 partnership, or statement of limited liability partnership; or

8484 (B) if it will be an organization other than a
8485 partnership, any organizational document that creates the



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8486 organization that is required to be in a public writing;

8487 ~~(7)~~ (6) if the surviving organization exists before the
8488 merger, any amendments provided for in the plan of merger for
8489 the organizational document that are required to be in a
8490 public writing;

8491 ~~(8)~~ (7) a statement as to each constituent organization
8492 that the merger was approved as required by the organization's
8493 governing statute;

8494 ~~(9)~~ (8) a statement that a copy of the plan of merger
8495 will be furnished by the surviving organization, on request
8496 and without cost, to any owner of any constituent organization
8497 which is a party to the merger;

8498 ~~(10)~~ (9) if the surviving organization is a foreign
8499 organization not authorized to conduct business or not for
8500 profit activity in this state, the street and mailing address
8501 of an office for the purposes of Section 10A-8A-9.09(b); and

8502 ~~(11)~~ (10) any additional information required by the
8503 governing statute of any constituent organization.

8504 (c) Prior to the statement of merger being delivered
8505 for filing to the Secretary of State in accordance with
8506 subsection (d), all constituent organizations that are
8507 partnerships, other than a partnership that is created
8508 pursuant to the merger, must have on file with the Secretary
8509 of State a statement of partnership, statement of not for
8510 profit partnership, or statement of limited liability
8511 partnership.

8512 (d) The statement of merger shall be delivered for
8513 filing to the Secretary of State.



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8514 (e) A merger becomes effective under this article:

8515 (1) if the surviving organization is a partnership,
8516 upon the later of:

8517 (A) the filing of the statement of merger with the
8518 Secretary of State; or

8519 (B) as specified in the statement of merger; or

8520 (2) if the surviving organization is not a partnership,
8521 as provided by the governing statute of the surviving
8522 organization.

8523 ~~(f) After a merger becomes effective, if the surviving~~
8524 ~~organization is a partnership, then, except (I) the statement~~
8525 ~~of merger permitted to be delivered to the judge of probate~~
8526 ~~for filing pursuant to subsection (g) and (II) certified~~
8527 ~~copies of statements of authority, denial, and cancellations~~
8528 ~~thereof permitted to be delivered to the judge of probate for~~
8529 ~~filing pursuant to Sections 10A-8A-3.03 and 10A-8A-3.04 for~~
8530 ~~certified copies of, all filing instruments required to be~~
8531 ~~filed under this title regarding that surviving organization~~
8532 ~~shall be delivered for filing to the Secretary of State.~~

8533 ~~(g)~~ (f) A certified copy of the statement of merger
8534 required to be filed under this section may be filed in the
8535 real estate records in the office of the judge of probate in
8536 any county in which any constituent organization owned real
8537 property, without payment and without collection by the judge
8538 of probate of any deed or other transfer tax or fee. The judge
8539 of probate, however, shall be entitled to collect the filing
8540 fee of five dollars (\$5). Any such filing shall evidence chain
8541 of title, but lack of filing shall not affect the surviving



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8542 organization's title to such real property.

8543 ~~(h)~~ (g) A statement of merger is a filing instrument
8544 under Chapter 1.

8545 ~~(i)~~ (h) The filing fees for a statement of merger shall
8546 be as set forth in Chapter 1."

8547 Section 7. Sections 10A-9A-2.02 and 10A-9A-10.08 of the
8548 Code of Alabama 1975, are amended to read as follows:

8549 "§10A-9A-2.02

8550 Division B of Article 3 of Chapter 1 shall not apply to
8551 this chapter. Instead:

8552 (a) A certificate of formation may be amended at any
8553 time.

8554 (b) A certificate of formation may be restated with or
8555 without amendment at any time.

8556 (c) To amend its certificate of formation, a limited
8557 partnership must deliver a certificate of amendment for filing
8558 to the Secretary of State which certificate of amendment shall
8559 state:

8560 (1) the name of the limited partnership;

8561 (2) the unique identifying number or other designation
8562 as assigned by the Secretary of State; and

8563 (3) the changes the amendment makes to the certificate
8564 of formation as most recently amended or restated.

8565 (d) Prior to a statement of dissolution being delivered
8566 to the Secretary of State for filing, a limited partnership
8567 shall promptly deliver a certificate of amendment for filing
8568 with the Secretary of State to reflect:

8569 (1) the admission of a new general partner; or



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8570 (2) the dissociation of a person as a general partner.

8571 (e) Prior to a statement of dissolution being delivered
8572 to the Secretary of State for filing, if a general partner
8573 knows that any information in a filed certificate of formation
8574 was inaccurate when the certificate of formation was filed or
8575 has become inaccurate due to changed circumstances and if such
8576 information is required to be set forth in a newly filed
8577 certificate of formation under this chapter, the general
8578 partner shall promptly:

8579 (1) cause the certificate of formation to be amended;

8580 or

8581 (2) if appropriate, deliver for filing with the
8582 Secretary of State a certificate of correction in accordance
8583 with Chapter 1.

8584 (f) A certificate of formation may be amended at any
8585 time pursuant to this section for any other proper purpose as
8586 determined by the limited partnership. A certificate of
8587 formation may also be amended in a statement of merger
8588 pursuant to Article 8 of Chapter 1 or Article 10 of this
8589 chapter.

8590 (g) In order to restate its certificate of formation, a
8591 limited partnership must deliver a restated certificate of
8592 formation for filing with the Secretary of State. A restated
8593 certificate of formation must:

8594 (1) be designated as such in the heading;

8595 (2) state the name of the limited partnership;

8596 (3) state the unique identifying number or other
8597 designation as assigned by the Secretary of State;



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8598 (4) set forth any amendment or change effected in
8599 connection with the restatement of the certificate of
8600 formation. Any such restatement that effects an amendment
8601 shall be subject to any other provision of this chapter not
8602 inconsistent with this section, which would apply if a
8603 separate certificate of amendment were filed to effect the
8604 amendment or change;

8605 (5) set forth the text of the restated certificate of
8606 formation; and

8607 (6) state that the restated certificate of formation
8608 consolidates all amendments into a single document.

8609 (h) The original certificate of formation, as
8610 theretofore amended, shall be superseded by the restated
8611 certificate of formation and thenceforth, the restated
8612 certificate of formation, including any further amendment or
8613 changes made thereby, shall be the certificate of formation of
8614 the limited partnership, but the original effective date of
8615 formation shall remain unchanged.

8616 (i) An amended or restated certificate of formation may
8617 contain only the provisions that would be permitted at the
8618 time of the amendment if the amended or restated certificate
8619 of formation were a newly filed original certificate of
8620 formation.

8621 ~~(j) The filing of a certificate of amendment to the~~
8622 ~~certificate of formation shall have the effect, and shall take~~
8623 ~~effect, as provided in Section 10A-1-3.14.~~

8624 ~~(k) The filing of a restated certificate of formation~~
8625 ~~shall have the effect, and shall take effect, as provided in~~



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8626 ~~Section 10A-1-3.18.~~

8627 (j) (1) An amendment to a certificate of formation takes
8628 effect when the filing of the certificate of amendment takes
8629 effect as provided by Article 4 of Chapter 1.

8630 (2) An amendment to a certificate of formation does not
8631 affect:

8632 (i) an existing cause of action in favor of or against
8633 the limited partnership for which the certificate of amendment
8634 is sought;

8635 (ii) a pending suit to which the limited partnership is
8636 a party; or

8637 (iii) an existing right of a person other than an
8638 existing partner.

8639 (3) If the name of a limited partnership is changed by
8640 amendment, an action brought by or against the limited
8641 partnership in the former name of that limited partnership
8642 does not abate because of the name change.

8643 (k) (1) A restated certificate of formation takes effect
8644 when the filing of the restated certificate of formation takes
8645 effect as provided by Article 4 of Chapter 1.

8646 (2) On the date and time the restated certificate of
8647 formation takes effect, the original certificate of formation
8648 and each prior amendment or restatement of the certificate of
8649 formation is superseded and the restated certificate of
8650 formation is the effective certificate of formation.

8651 (3) Subsections (j) (2) and (3) apply to an amendment
8652 effected by a restated certificate of formation."

8653 "§10A-9A-10.08



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8654 (a) After each constituent organization has approved
8655 the plan of merger, a statement of merger must be signed on
8656 behalf of:

8657 (1) each constituent limited partnership, as provided
8658 in Section 10A-9A-2.03(a); and

8659 (2) each other constituent organization, as provided by
8660 its governing statute.

8661 (b) A statement of merger under this section must
8662 include:

8663 (1) the name, type of organization, and mailing address
8664 of the principal office of each constituent organization, the
8665 jurisdiction of the governing statute of each constituent
8666 organization, and the respective unique identifying numbers or
8667 other designations as assigned by the Secretary of State, if
8668 any, of each constituent organization;

8669 (2) the name, type of organization, and mailing address
8670 of the principal office of the surviving organization, the
8671 unique identifying number or other designation as assigned by
8672 the Secretary of State, if any, of the surviving organization,
8673 the jurisdiction of the governing statute of the surviving
8674 organization, and, if the surviving organization is created
8675 pursuant to the merger, a statement to that effect;

8676 ~~(3) the date of the filing of the certificate of~~
8677 ~~formation, if any, and all prior amendments and the filing~~
8678 ~~office or offices, if any, and where such is filed of each~~
8679 ~~constituent organization which was formed under the laws of~~
8680 ~~this state;~~

8681 ~~(4)~~ (3) the date the merger is effective under the



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8682 governing statute of the surviving organization;

8683 ~~(5)~~ (4) if the surviving organization is to be created
8684 pursuant to the merger:

8685 (A) if it will be a limited partnership, the limited
8686 partnership's certificate of formation; or

8687 (B) if it will be an organization other than a limited
8688 partnership, any organizational document that creates the
8689 organization that is required to be in a public writing;

8690 ~~(6)~~ (5) if the surviving organization exists before the
8691 merger, any amendments provided for in the plan of merger for
8692 the organizational document that created the organization that
8693 are required to be in a public writing;

8694 ~~(7)~~ (6) a statement as to each constituent organization
8695 that the merger was approved as required by the organization's
8696 governing statute;

8697 ~~(8)~~ (7) a statement that a copy of the plan of merger
8698 will be furnished by the surviving organization, on request
8699 and without cost, to any owner of any constituent organization
8700 which is a party to the merger;

8701 ~~(9)~~ (8) if the surviving organization is a foreign
8702 organization not authorized to conduct activities and affairs
8703 in this state, the street and mailing address of an office for
8704 the purposes of Section 10A-9A-10.09(b); and

8705 ~~(10)~~ (9) any additional information required by the
8706 governing statute of any constituent organization.

8707 (c) The statement of merger shall be delivered for
8708 filing to the Secretary of State.

8709 (d) A merger becomes effective under this article:



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8710 (1) if the surviving organization is a limited
8711 partnership, upon the later of:

8712 (A) the filing of the statement of merger with the
8713 Secretary of State; or

8714 (B) as specified in the statement of merger; or

8715 (2) if the surviving organization is not a limited
8716 partnership, as provided by the governing statute of the
8717 surviving organization.

8718 ~~(e) After a merger becomes effective, if the surviving~~
8719 ~~organization is a limited partnership, then, except for~~
8720 ~~certified copies of the statement of merger permitted to be~~
8721 ~~delivered to the judge of probate for filing pursuant to~~
8722 ~~subsection (f), all filing instruments required to be filed~~
8723 ~~under this title regarding that surviving organization shall~~
8724 ~~be delivered for filing to the Secretary of State.~~

8725 ~~(f)~~ (e) A certified copy of the statement of merger
8726 required to be filed under this section may be filed in the
8727 real estate records in the office of the judge of probate in
8728 any county in which any constituent organization owned real
8729 property, without payment and without collection by the judge
8730 of probate of any deed or other transfer tax or fee. The judge
8731 of probate, however, shall be entitled to collect the filing
8732 fee of five dollars (\$5). Any such filing shall evidence chain
8733 of title, but lack of filing shall not affect the surviving
8734 organization's title to such real property.

8735 ~~(g)~~ (f) A statement of merger is a filing instrument
8736 under Chapter 1.

8737 ~~(h)~~ (g) The filing fees for a statement of merger shall



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8738 be as set forth in Chapter 1."

8739 Section 8. This act shall become effective January 1,
8740 2024, following its passage and approval by the Governor, or
8741 its otherwise becoming law.