

SB204 INTRODUCED



1 SB204
2 S69H758-1
3 By Senators Sessions, Allen
4 RFD: Fiscal Responsibility and Economic Development
5 First Read: 06-Mar-24



SYNOPSIS:

Under existing law, each corporation, including a foreign corporation authorized to transact business in this state, is required to provide an annual report to the Secretary of State.

This bill would repeal the statute requiring corporations to provide an annual report to the Secretary of State.

Under existing law, a corporation is required to maintain certain records, including the annual report that is provided to the Secretary of State.

This bill would remove this requirement.

A BILL
TO BE ENTITLED
AN ACT

Relating to corporations; to amend Section 10A-1-7.12, Section 10A-2A-1.40, as last amended by Act 2023-503, 2023 Regular Session, and Sections 10A-2A-1.41 and 10A-2A-16.01, Code of Alabama 1975, and repeal Section 10A-2A-16.11, Code of Alabama 1975, to remove the requirement that corporations file an annual report with the Secretary of State and remove any reference to an annual report.



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BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 10A-1-7.12, Section 10A-2A-1.40, as last amended by Act 2023-503, 2023 Regular Session, and Sections 10A-2A-1.41 and 10A-2A-16.01, Code of Alabama 1975, are amended to read as follows:

"§10A-1-7.12

The Secretary of State may commence a proceeding under Section 10A-1-7.13 to revoke the registration of a foreign entity authorized to transact business in this state if:

~~(1) the foreign entity does not deliver its annual report, if required by law, to the Secretary of State within 180 days after it is due;~~

~~(2)~~ (1) the foreign entity does not pay within 180 days after they are due any applicable privilege or corporation share tax, qualification fee or admission tax, or interest or penalties imposed by this title or other law;

~~(3)~~ (2) the foreign entity is without a registered agent or registered office in this state for 60 days or more;

~~(4)~~ (3) the foreign entity does not file a statement of change of registered agent or registered office with the Secretary of State under Section 10A-1-5.32 within 60 days of the change or its registered agent does not file a change of name or change of address of the registered office with the Secretary of State under Section 10A-1-5.33 within 60 days of the change;

~~(5)~~ (4) an organizer, governing person, or agent of the foreign entity signed a document he or she knew was false in any material respect with intent that the document be



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delivered to the Secretary of State for filing; or
~~(6)~~ (5) the Secretary of State receives a duly
authenticated certificate from the Secretary of State or other
official having custody of entity records in the state or
country under whose laws the foreign entity is formed or is
governed stating that the foreign entity has been terminated."

"§10A-2A-1.40

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

(1) AUTHORIZED STOCK means the stock of all classes and
series a corporation or foreign corporation is authorized to
issue.

(2) BENEFICIAL STOCKHOLDER means a person who owns the
beneficial interest in stock, which is either a record
stockholder or a person on whose behalf shares of stock are
registered in the name of an intermediary or nominee.

(3) CERTIFICATE OF INCORPORATION means the certificate
of incorporation described in Section 10A-2A-2.02, all
amendments to the certificate of incorporation, and any other
documents permitted or required to be delivered for filing by
a corporation with the Secretary of State under this chapter
or Chapter 1 that modify, amend, supplement, restate, or
replace the certificate of incorporation. After an amendment
of the certificate of incorporation or any other document
filed under this chapter or Chapter 1 that restates the
certificate of incorporation in its entirety, the certificate
of incorporation shall not include any prior documents. When



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used with respect to a corporation incorporated and existing on December 31, 2019, under a predecessor law of this state, the term "certificate of incorporation" means articles of incorporation, charter, or similar incorporating document, and all amendments and restatements to the certificate of incorporation, charter, or similar incorporating document. When used with respect to a foreign corporation, a nonprofit corporation, or a foreign nonprofit corporation, the "certificate of incorporation" of such an entity means the document of such entity that is equivalent to the certificate of incorporation of a corporation. The term "certificate of incorporation" as used in this chapter is synonymous to the term "certificate of formation" used in Chapter 1.

(4) CORPORATION, except in the phrase foreign corporation, means an entity incorporated or existing under this chapter.

(5) DELIVER or DELIVERY means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and, if authorized in accordance with Section 10A-2A-1.41, by electronic transmission.

(6) DISTRIBUTION means a direct or indirect transfer of cash or other property (except a corporation's own stock) or incurrence of indebtedness by a corporation to or for the benefit of its stockholders in respect of any of its stock. A distribution may be in the form of a payment of a dividend; a purchase, redemption, or other acquisition of stock; a distribution of indebtedness; a distribution in liquidation;



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113 or otherwise.

114 (7) DOCUMENT means a writing as defined in Chapter 1.

115 (8) EFFECTIVE DATE, when referring to a document
116 accepted for filing by the Secretary of State, means the time
117 and date determined in accordance with Article 4 of Chapter 1.

118 (9) ELECTRONIC MAIL means an electronic transmission
119 directed to a unique electronic mail address.

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

127 (11) ELIGIBLE ENTITY means an unincorporated entity,
128 foreign unincorporated entity, nonprofit corporation, or
129 foreign nonprofit corporation.

130 (12) ELIGIBLE INTERESTS means interests or memberships.

131 (13) EMPLOYEE includes an officer, but not a director.
132 A director may accept duties that make the director also an
133 employee.

134 (14) ENTITY includes corporation; foreign corporation;
135 nonprofit corporation; foreign nonprofit corporation; estate;
136 trust; unincorporated entity; foreign unincorporated entity;
137 and state, United States, and foreign government.

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

140 (16) FILING ENTITY means an unincorporated entity,



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other than a limited liability partnership, that is of a type that is created by filing a public organic record or is required to file a public organic record that evidences its creation.

(17) FOREIGN CORPORATION means a corporation incorporated under a law other than the law of this state which would be a corporation if incorporated under the law of this state.

(18) FOREIGN NONPROFIT CORPORATION means a corporation incorporated under a law other than the law of this state which would be a nonprofit corporation if incorporated under the law of this state.

(19) GOVERNING STATUTE means the statute governing the internal affairs of a corporation, foreign corporation, nonprofit corporation, foreign nonprofit corporation, unincorporated entity, or foreign unincorporated entity.

(20) GOVERNMENTAL SUBDIVISION includes authority, county, district, and municipality.

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

(22) INTEREST means either or both of the following rights under the governing statute governing an unincorporated entity:

(i) the right to receive distributions from the entity either in the ordinary course or upon liquidation; or

(ii) the right to receive notice or vote on issues involving its internal affairs, other than as an agent, assignee, proxy, or person responsible for managing its



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169 business and affairs.

170 (23) INTEREST HOLDER means a person who holds of record
171 an interest.

172 (24) KNOWLEDGE is determined as follows:

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

174 (1) has actual knowledge of it; or

175 (2) is deemed to know it under law other than this
176 chapter.

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

178 (1) knows of it;

179 (2) receives notification of it in accordance with
180 Section 10A-2A-1.41;

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

183 (4) is deemed to have notice of the fact under
184 subsection (d).

185 (c) A person notifies another of a fact by taking steps
186 reasonably required to inform the other person in ordinary
187 course in accordance with Section 10A-2A-1.41, whether or not
188 the other person knows the fact.

189 (d) A person is deemed to have notice of a
190 corporation's:

191 (1) matters included in the certificate of
192 incorporation upon filing;

193 (2) dissolution, 90 days after a certificate of
194 dissolution under Section 10A-2A-14.03 becomes effective;

195 (3) conversion, merger, or interest exchange under
196 Article 9 or Article 11, 90 days after a statement of



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conversion, or statement of merger or interest exchange becomes effective;

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

(5) revocation of dissolution and reinstatement, 90 days after certificate of revocation of dissolution and reinstatement under Section 10A-2A-14.04 becomes effective.

(e) A stockholder's knowledge, notice, or receipt of a notification of a fact relating to the corporation is not knowledge, notice, or receipt of a notification of a fact by the corporation solely by reason of the stockholder's capacity as a stockholder.

(f) The date and time of the effectiveness of a notice delivered in accordance with Section 10A-2A-1.41, is determined by Section 10A-2A-1.41.

(25) MEANS denotes an exhaustive definition.

(26) MEMBERSHIP means the rights of a member in a nonprofit corporation or foreign nonprofit corporation.

(27) ORGANIZATIONAL DOCUMENTS means the public organic record and private organizational documents of a corporation, foreign corporation, or eligible entity.

(28) PRINCIPAL OFFICE means the address of its principal office ~~(in or out of this state) so designated in the annual report where the~~ including, in the case of a foreign corporation, the address of its principal ~~executive offices of a corporation or foreign corporation are located~~ office in the state or other jurisdiction under whose



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225 [law it is incorporated.](#)

226 (29) PRIVATE ORGANIZATIONAL DOCUMENTS means (i) the
227 bylaws of a corporation, foreign corporation, nonprofit
228 corporation, or foreign nonprofit corporation, or (ii) the
229 rules, regardless of whether in writing, that govern the
230 internal affairs of an unincorporated entity or foreign
231 unincorporated entity, are binding on all its interest
232 holders, and are not part of its public organic record, if
233 any. Where private organizational documents have been amended
234 or restated, the term means the private organizational
235 documents as last amended or restated.

236 (30) PROCEEDING includes any civil suit and criminal,
237 administrative, and investigatory action.

238 (31) PUBLIC ORGANIC RECORD means (i) the certificate of
239 incorporation of a corporation, foreign corporation, nonprofit
240 corporation, or foreign nonprofit corporation, or (ii) the
241 document, if any, the filing of which is required to create an
242 unincorporated entity or foreign unincorporated entity, or
243 which creates the unincorporated entity or foreign
244 unincorporated entity and is required to be filed. Where a
245 public organic record has been amended or restated, the term
246 means the public organic record as last amended or restated.

247 (32) RECORD DATE means the date fixed for determining
248 the identity of the corporation's stockholders and their
249 stockholdings for purposes of this chapter. Unless another
250 time is specified when the record date is fixed, the
251 determination shall be made as of the close of business at the
252 principal office of the corporation on the date so fixed.



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(33) RECORD STOCKHOLDER means (i) the person in whose name shares of stock are registered in the records of the corporation, or (ii) the person identified as the beneficial owner of stock in a beneficial ownership certificate pursuant to Section 10A-2A-7.23 on file with the corporation to the extent of the rights granted by such certificate.

(34) SECRETARY means the corporate officer to whom the board of directors has delegated responsibility under Section 10A-2A-8.40(c) to maintain the minutes of the meetings of the board of directors and of the stockholders and for authenticating records of the corporation.

(35) STOCK EXCHANGE means a transaction pursuant to Section 10A-2A-11.03.

(36) STOCKHOLDER means a record stockholder.

(37) STOCK means the units into which the proprietary interests in a corporation or foreign corporation are divided.

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

(39) UNINCORPORATED ENTITY means an organization or artificial legal person that either has a separate legal existence or has the power to acquire an estate in real property in its own name and that is not any of the following: a corporation, foreign corporation, nonprofit corporation, foreign nonprofit corporation, a series of a limited liability company or of another type of entity, an estate, a trust, a



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state, United States, or foreign government. The term includes a general partnership, limited liability company, limited partnership, business trust, joint stock association, and unincorporated nonprofit association.

(40) UNITED STATES includes any district, authority, bureau, commission, department, and any other agency of the United States.

(41) UNRESTRICTED VOTING TRUST BENEFICIAL OWNER means, with respect to any stockholder rights, a voting trust beneficial owner whose entitlement to exercise the stockholder right in question is not inconsistent with the voting trust agreement.

(42) VOTING GROUP means all stock of one or more classes or series that under the certificate of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of stockholders. All stock entitled by the certificate of incorporation or this chapter to vote generally on the matter is for that purpose a single voting group.

(43) VOTING POWER means the current power to vote in the election of directors.

(44) VOTING TRUST BENEFICIAL OWNER means an owner of a beneficial interest in stock of the corporation held in a voting trust established pursuant to Section 10A-2A-7.30(a)."

"§10A-2A-1.41

(a) A notice under this chapter must be in writing unless oral notice is reasonable in the circumstances. Unless otherwise agreed between the sender and the recipient, words



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309 in a notice or other communication under this chapter must be
310 in English.

311 (b) A notice or other communication may be given by any
312 method of delivery, except that notice or other communication
313 by electronic transmission must be in accordance with this
314 section. If the methods of delivery are impracticable, a
315 notice or other communication from the corporation may be
316 given by means of a broad non-exclusionary distribution to the
317 public (which may include a newspaper of general circulation
318 in the area where published; radio, television, or other form
319 of public broadcast communication; or other methods of
320 distribution that the corporation has previously identified to
321 its stockholders).

322 (c) A notice or other communication to a corporation or
323 to a foreign corporation registered to transact business in
324 this state may be delivered to the corporation's registered
325 agent at its registered office or to the secretary at the
326 corporation's principal office ~~shown in its most recent annual~~
327 ~~report~~ or, in the case of a foreign corporation ~~that has not~~
328 ~~yet delivered an annual report~~, in its foreign registration
329 under Chapter 1.

330 (d) A notice or other communications from the
331 corporation to a stockholder may be delivered by electronic
332 mail to the electronic mail address for that stockholder
333 required to be included in the record of stockholders
334 maintained pursuant to Section 10A-2A-16.01(d), unless that
335 stockholder has previously notified the corporation in writing
336 that the stockholder objects to receiving notices and other



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communications by electronic mail. Any notice or communication may be delivered by another form of electronic transmission if consented to by the stockholder or if authorized by subsection (j). Any notice or other communication from the corporation to any other person may be delivered by electronic transmission if consented to by the recipient or if authorized by subsection (j). Any consent given under this subsection or subsection (j) may be revoked with respect to future notices or communications by the person who consented by written notice to the person to whom the consent was delivered.

(e) A notice or other communication may no longer be delivered to an electronic mail address or other electronic transmission address pursuant to subsection (d) if (i) the corporation receives notice from the information processing system into which the notice or other communication was entered that two consecutive notices or other communications given by electronic transmissions have not been delivered to the electronic mail address or other electronic transmission address to which the notice or other communication was directed, and (ii) the notice of non-delivery becomes known to the secretary or an assistant secretary or to the transfer agent, or another person responsible for the giving of notices or other communications for the corporation; provided, however, the inadvertent failure to recognize the notice of non-delivery as a cessation of authority to provide a stockholder with notice by electronic mail or other electronic transmission shall not invalidate any meeting or other action.

(f) Unless otherwise agreed between the sender and the



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recipient, a notice or other communication by electronic transmission is received when:

(1) it enters an information processing system directed to (i) in the case of a stockholder, the electronic mail address for the stockholder required to be included in the record of stockholders maintained pursuant to Section 10A-2A-16.01(d) or other electronic transmission address at which the stockholder has consented to receive notice or other communications by electronic transmission, or (ii) in the case of any other recipient, the electronic transmission address at which the recipient has consented to receive notice or other communications by electronic transmission; and

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

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

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

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

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

(i) a stockholder's address included in the record of stockholders maintained pursuant to Section 10A-2A-16.01(d);



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

394 or

395 (iii) the corporation's principal office;

396 (2) if mailed by United States mail postage prepaid and
397 addressed to a stockholder at the stockholder's address
398 included in the record of stockholders maintained pursuant to
399 Section 10A-2A-16.01(d), upon deposit in the mail;

400 (3) if mailed by United States mail postage prepaid and
401 addressed to a recipient other than a stockholder at the
402 address included in the corporation's records, the earliest of
403 when it is actually received, or:

404 (i) if sent by registered or certified mail, return
405 receipt requested, the date shown on the return receipt signed
406 by or on behalf of the addressee; or

407 (ii) five days after it is deposited in the United
408 States mail;

409 (4) if sent by a nationally recognized commercial
410 carrier that issues a receipt or other confirmation of
411 delivery, the earliest of when it is actually received or the
412 date shown on the receipt or other confirmation of delivery
413 issued by the commercial carrier;

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

416 (6) if oral, when communicated.

417 (j) A notice or other communication may be in the form
418 of an electronic transmission that cannot be directly
419 reproduced in paper form by the recipient through an automated
420 process used in conventional commercial practice only if (i)



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the electronic transmission is otherwise retrievable in perceivable form, and (ii) the sender and the recipient have consented in writing to the use of such form of electronic transmission.

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

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

(m) Whenever a notice or communication would otherwise be required to be given under this chapter to a stockholder, the notice or communication need not be given if the corporation is not permitted to deliver the notice or communication by electronic transmission pursuant to subsections (d) and (e) and:

(1) notices and communications to stockholders of two consecutive annual meetings, and all notices and communications of meetings during the period between those two



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consecutive annual meetings, have been sent to that stockholder at that stockholder's address included in the record of stockholders maintained pursuant to Section 10A-2A-16.01(d) and have been returned undeliverable or could not be delivered; or

(2) all, but not less than two, distributions to stockholders during a 12-month period, or two consecutive distributions to stockholders during a period of more than 12 months, have been sent to that stockholder at that stockholder's address included in the record of stockholders maintained pursuant to Section 10A-2A-16.01(d) and have been returned undeliverable or could not be delivered; or

(3) no address has been provided to the corporation by or on behalf of a stockholder and the corporation has not otherwise obtained an address for that stockholder it believes to be reliable.

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

(n) Whenever a notice or communication is required to be given, under this chapter or the certificate of incorporation or bylaws of any corporation, to any person with whom notice to or communication with is unlawful, the giving of the notice or communication to that person shall not be required and there shall be no duty to apply to any



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governmental authority or agency for a license or permit to give the notice or communication to that person. Any action or meeting which shall be taken or held without notice or communication to the person with whom notice to or communication with is unlawful shall have the same force and effect as if the notice or communication had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate or other filing instrument under any other sections of this chapter, the certificate or other filing instrument shall state, if that is the fact and if notice or communication is required, that notice or communication was given to all persons entitled to receive notice or communication except those persons with whom notice to or communication with is unlawful."

"§10A-2A-16.01

(a) A corporation shall maintain the following records:

- (1) its certificate of incorporation as currently in effect;
- (2) any notices to stockholders referred to in Section 10A-2A-1.20(c)(5) specifying facts on which a filed document is dependent if those facts are not included in the certificate of incorporation or otherwise available as specified in Section 10A-2A-1.20(c)(5);
- (3) its bylaws as currently in effect;
- (4) all written communications within the past three years to stockholders generally;
- (5) minutes of all meetings of, and records of all actions taken without a meeting by, its stockholders, its



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board of directors, and board committees established under
Section 10A-2A-8.25; and

(6) a list of the names and business addresses of its
current directors and officers; ~~and~~
~~(7) its most recent annual report delivered to the~~
~~Secretary of State under Section 10A-2A-16.11.~~

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

(c) A corporation shall maintain accounting records in
a form that permits preparation of its financial statements.

(d) A corporation shall maintain a record of its
current stockholders in alphabetical order by class or series
of stock showing the address of each stockholder to which
notices and other communications from the corporation are to
be sent, and which shall include the number and class or
series of stock held by each stockholder. In addition, if a
stockholder has provided an electronic mail address to the
corporation or has consented to receive notices or other
communications by electronic mail or other electronic
transmission, the record of stockholders shall include the
electronic mail or other electronic transmission address of
the stockholder if notices or other communications are being
delivered by the corporation to the stockholder at that
electronic mail or other electronic transmission address
pursuant to Section 10A-2A-1.41(d). An electronic mail address



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533 of a stockholder shall be deemed to be provided by a
534 stockholder if it is contained in a communication to the
535 corporation by or on behalf of the stockholder, unless the
536 communication expressly indicates that the electronic mail
537 address may not be used to deliver notices or other
538 communications.

539 (e) A corporation shall maintain the records specified
540 in this section in a manner so that they may be made available
541 for inspection within a reasonable time."

542 Section 2. Section 10-2A-16.11 of the Code of Alabama
543 1975, requiring each corporation, including foreign
544 corporations authorized to transact business in this state, to
545 file an annual report with the Secretary of State, is
546 repealed.

547 Section 3. This act shall become effective on October
548 1, 2024.