

**HB248 ENGROSSED**



1 HB248  
2 ARKTHQS-2  
3 By Representative Faulkner  
4 RFD: Judiciary  
5 First Read: 15-Jan-26



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A BILL  
TO BE ENTITLED  
AN ACT

Relating to the Alabama Business and Nonprofit Entities Code; to amend Sections 10A-1-1.04, 10A-1-1.11, 10A-1-1.13, 10A-1-2.17, 10A-1-3.32, 10A-1-4.14, 10A-1-4.21, 10A-1-4.23, 10A-1-4.24, 10A-1-4.25, and 10A-1-5.31, Section 10A-1-7.01, as amended by Act 2025-281, 2025 Regular Session, Sections 10A-1-7.11, 10A-2A-1.43, 10A-2A-2.02, 10A-2A-2.05, 10A-2A-2.07, 10A-2A-6.22, 10A-2A-8.27, 10A-2A-8.60, 10A-2A-14.10, 10A-2A-16.02, 10A-2A-16.03, 10A-2A-16.04, 10A-3A-1.60, 10A-3A-2.02, 10A-3A-2.07, 10A-3A-4.02, 10A-3A-4.03, and 10A-3A-4.04, Section 8 of Act 2025-281, now appearing as Section 10A-3A-8.26, Sections 10A-3A-8.60, 10A-5A-4.09, and 10A-8A-4.10, Section 10A-8A-5.02, as amended by Act 2025-281, 2025 Regular Session, Sections 10A-9A-3.04 and 10A-17-1.02, Code of Alabama 1975; to add Division G, consisting of Section 10A-2A-8.70, to Article 8 of Chapter 2A, Title 10A, Code of Alabama 1975; to add Sections 10A-3A-6.14, 10A-3A-8.61, and 10A-3A-8.62 to the Code of Alabama 1975; to add Division G, consisting of Section 10A-3A-8.70, to Article 8 of Chapter 3A, Title 10A, Code of Alabama 1975; to make technical corrections; to make technical corrections and



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29 codify common law; to clarify the law governing entities and  
30 clarify the internal affairs doctrine, thereby codifying  
31 common law; to provide a new procedure to correct or nullify  
32 filing instruments; to clarify that a registered agent may not  
33 perform its duties virtually; to clarify the process for a  
34 foreign entity doing business in the state that is withdrawing  
35 its certificate of authority to transact business in this  
36 state; to clarify certain proxy matters allowed in bylaws of  
37 business corporations and to clarify the forum selection  
38 provisions for business corporations and nonprofit  
39 corporations; to clarify the procedures, processes, rights,  
40 and responsibilities of owners and entities regarding records  
41 requests, to provide for expedited court review in the event  
42 of noncompliance, and to allow the court in any expedited  
43 review to determine the allocation among the parties to the  
44 review; to clarify the duties of stockholders to business  
45 corporations and fellow stockholders; to provide procedures  
46 for officers, directors, stockholders, and members of business  
47 corporations and nonprofit corporations to follow when the  
48 officers, directors, stockholders, and members of business  
49 corporations and nonprofit corporations are involved in a  
50 conflicting transaction or a corporate opportunity  
51 transaction, or both, which if followed would provide the  
52 officers, directors, stockholders, and members of business  
53 corporations and nonprofit corporations with certain safe  
54 harbors; and to repeal Sections 10A-2A-16.10 and 10A-3A-4.20,  
55 Code of Alabama 1975, providing for financial statements for  
56 stockholders and members, respectively.



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57 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

58 Section 1. Sections 10A-1-1.04, 10A-1-1.11, 10A-1-1.13,  
59 10A-1-2.17, 10A-1-3.32, 10A-1-4.14, 10A-1-4.21, 10A-1-4.23,  
60 10A-1-4.24, 10A-1-4.25, and 10A-1-5.31, Section 10A-1-7.01, as  
61 amended by Act 2025-281, 2025 Regular Session, Sections  
62 10A-1-7.11, 10A-2A-1.43, 10A-2A-2.02, 10A-2A-2.05,  
63 10A-2A-2.07, 10A-2A-6.22, 10A-2A-8.27, 10A-2A-8.60,  
64 10A-2A-14.10, 10A-2A-16.02, 10A-2A-16.03, 10A-2A-16.04,  
65 10A-3A-1.60, 10A-3A-2.02, 10A-3A-2.07, 10A-3A-4.02,  
66 10A-3A-4.03, and 10A-3A-4.04, Section 8 of Act 2025-281, now  
67 appearing as Section 10A-3A-8.26, Sections 10A-3A-8.60,  
68 10A-5A-4.09, and 10A-8A-4.10, Section 10A-8A-5.02, as amended  
69 by Act 2025-281, 2025 Regular Session, and Sections  
70 10A-9A-3.04 and 10A-17-1.02, Code of Alabama 1975, are amended  
71 to read as follows:

72 "§10A-1-1.04

73 (a) This section shall not apply to Chapters 2A, 3A, 4,  
74 and 11. In addition, provisions in a written limited liability  
75 company agreement under Chapter 5A, a written partnership  
76 agreement under Chapter 8A, and a written limited partnership  
77 agreement under Chapter 9A may provide that this section is  
78 not applicable.

79 ~~(a) For~~ (b) Except as provided in subsection (a), for  
80 purposes of this title, a person is disinterested with respect  
81 to the approval of a contract, transaction, or other matter or  
82 to the consideration of the disposition of a claim or  
83 challenge relating to a contract, transaction, or particular  
84 conduct, if the person or the person's associate:



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85 (1) is not a party to the contract or transaction or  
86 materially involved in the conduct that is the subject of the  
87 claim or challenge; and

88 (2) does not have a material financial interest in the  
89 outcome of the contract or transaction or the disposition of  
90 the claim or challenge.

91 ~~(b)~~ (c) For purposes of subsection ~~(a)~~ (b), a person is  
92 not materially involved in the conduct that is the subject of  
93 a claim or challenge and does not have a material financial  
94 interest in the outcome of a contract or transaction or the  
95 disposition of a claim or challenge solely because:

96 (1) the person was nominated or elected as a governing  
97 person by a person who is:

98 (A) interested in the contract or transaction; or

99 (B) alleged to have engaged in the conduct that is the  
100 subject of the claim or challenge;

101 (2) the person receives normal fees or customary  
102 compensation, reimbursement for expenses, or benefits as a  
103 governing person of the entity;

104 (3) the person has a direct or indirect equity interest  
105 in the entity;

106 (4) the entity has, or its subsidiaries have, an  
107 interest in the contract or transaction or was affected by the  
108 alleged conduct;

109 (5) the person or an associate of the person receives  
110 ordinary and reasonable compensation for reviewing, making  
111 recommendations regarding, or deciding on the disposition of  
112 the claim or challenge; or



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113 (6) in the case of a review by the person of the  
114 alleged conduct that is the subject of the claim or challenge:

115 (A) the person is named as a defendant in the  
116 derivative proceeding regarding the matter or as a person who  
117 engaged in the alleged conduct; or

118 (B) the person, acting as a governing person, approved,  
119 voted for, or acquiesced in the act being challenged if the  
120 act did not result in a material personal or financial benefit  
121 to the person and the challenging party fails to allege  
122 particular facts that, if true, raise a significant prospect  
123 that the governing person would be held liable to the entity  
124 or its owners or members as a result of the conduct."

125 "§10A-1-1.11

126 ~~(a) The law of this state governs the formation and~~  
127 ~~internal affairs of an entity if the entity's formation occurs~~  
128 ~~when a certificate of formation filed in accordance with~~  
129 ~~Article 4 takes effect. It is important to the economy of this~~  
130 ~~state, and to domestic entities, their governing authorities,~~  
131 ~~governing persons, officers, and their owners, employees,~~  
132 ~~creditors, and other constituencies, for the laws governing~~  
133 ~~domestic entities to be clear and comprehensible, and to be~~  
134 ~~applied using the plain meaning of the statute.~~

135 (b) A domestic entity, whether a filing entity or a  
136 nonfiling entity, is governed by the laws of this state  
137 regarding (i) the formation and internal affairs of the  
138 domestic entity; and (ii) the rights, privileges, powers,  
139 duties, and liabilities, if any, of its governing authorities,  
140 governing persons, officers, and owners.



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141 ~~(b)~~ (c) If the formation of an entity occurs when a  
142 certificate of formation or similar instrument filed with a  
143 foreign governmental authority takes effect, the laws of the  
144 state or other jurisdiction in which that foreign governmental  
145 authority is located governs (i) the formation and internal  
146 affairs of the entity, (ii) the duties and obligations of the  
147 governing authorities, governing persons, officers, and  
148 owners, and (iii) the liability of its ~~members~~ owners.

149 (d) The governing authorities, governing persons, and  
150 officers of a domestic entity, in exercising their duties  
151 under this title, may be informed by the laws and judicial  
152 decisions of other jurisdictions and the practices observed by  
153 entities in any other jurisdiction, but the failure or refusal  
154 of a governing authority, governing person, or officer to  
155 consider, or to conform the exercise of its, his, or her  
156 powers to, the laws, judicial decisions, or practices of  
157 another jurisdiction shall not constitute or indicate a breach  
158 of a duty."

159 "§10A-1-1.13

160 For purposes of this title, the internal affairs of an  
161 entity include, without limitation:

162 (1) the rights, powers, and duties of its governing  
163 authority, governing persons, officers, owners, and members;  
164 ~~and~~

165 (2) matters relating to its membership or ownership  
166 interests, ~~other than the right of members or owners to~~  
167 ~~inspect entity records.;~~ and

168 (3) matters which are peculiar to the relationships



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169 among or between the entity and its governing authority,  
170 governing persons, officers, owners, and members."

171 "§10A-1-2.17

172 Except as otherwise provided in the governing documents  
173 or in the specific ~~article~~ chapter that applies to that  
174 entity, an owner may lend money to and transact any lawful  
175 business with the entity and, subject to other applicable law,  
176 have the same rights and obligations with respect thereto as a  
177 person who is not an owner."

178 "§10A-1-3.32

179 (a) This section applies to domestic entities other  
180 than (i) corporations formed pursuant to or governed by  
181 Chapter 2A or Chapter 4, and real estate investment trusts  
182 formed pursuant to or governed by Chapter 10, each of which is  
183 governed by the separate recordkeeping requirements and record  
184 inspections provisions of Chapter 2A and (ii) nonprofit  
185 corporations formed pursuant to or governed by Chapter 3A,  
186 limited liability companies formed pursuant to or governed by  
187 Chapter 5A, general partnerships formed pursuant to or  
188 governed by Chapter 8A, ~~and~~ limited partnerships formed  
189 pursuant to or governed by Chapter 9A, and a statewide trade  
190 association formed pursuant to or governed by Chapter 18, each  
191 of which ~~are~~ is governed by the separate recordkeeping  
192 requirements and record inspection provisions set forth in  
193 each entity's respective chapter governing that entity.

194 (b) With respect to a domestic entity covered by this  
195 section, the books and records maintained under the chapter of  
196 this title applicable to that entity and any other books and



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197 records of that entity, wherever situated, are subject to  
198 inspection and copying at the reasonable request, and at the  
199 expense of, any owner or member or the owner's or member's  
200 agent or attorney during regular business hours. ~~The right of~~  
201 ~~access extends to the legal representative of a deceased owner~~  
202 ~~or member or owner or member under legal disability. The~~  
203 ~~entity shall also provide former owners and members with~~  
204 ~~access to its books and records pertaining to the period~~  
205 ~~during which they were owners or members~~ at a reasonable  
206 location specified by the entity if the owner or member meets  
207 the requirements of subsection (c) and gives the entity a  
208 signed written notice of the owner's or member's demand at  
209 least 10 business days before the date on which the owner or  
210 member wishes to inspect and copy. If an owner or member shall  
211 designate an agent or attorney to inspect and copy the  
212 records, the demand shall be accompanied by a power of  
213 attorney or other writing which authorizes the agent or  
214 attorney to so act on behalf of that person.

215 (c) (1) An owner or member of a domestic entity covered  
216 by this section may inspect and copy the records described in  
217 subsection (b) only if:

218 (i) the owner or member has delivered to the entity a  
219 signed written notice of the owner's or member's demand at  
220 least 10 business days before the date on which the owner or  
221 member wishes to inspect and copy;

222 (ii) the owner's or member's demand is made in good  
223 faith and for a proper purpose;

224 (iii) the owner's or member's demand describes with



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225 reasonable particularity the owner's or member's purpose and  
226 the records the owner or member desires to inspect; and

227 (iv) the records are directly related to the owner's or  
228 member's purpose.

229 (2) For purposes of this subsection (c), a proper  
230 purpose shall mean a purpose directly related to the owner's  
231 or member's interest as an owner or member; provided, however,  
232 that a demand shall not be for a proper purpose if the entity  
233 reasonably determines that the demand is in connection with:

234 (i) an active or pending derivative proceeding in the  
235 right of the entity that is or is expected to be instituted or  
236 maintained by the owner or member or the owner's or member's  
237 affiliate; or

238 (ii) an active or pending civil lawsuit to which the  
239 entity, or its affiliate, and the owner or member, or the  
240 owner's or member's affiliate, are, or are expected to be,  
241 adversarial named parties.

242 (d) The entity may redact portions of the records to be  
243 inspected and copied under subsection (b) to the extent the  
244 portions so redacted are not directly related to the owner's  
245 or member's purpose. The entity may also impose reasonable  
246 restrictions and conditions on access to and use of the  
247 records to be inspected and copied under subsection (b),  
248 including designating information confidential and imposing  
249 nondisclosure and safeguarding, and may further keep  
250 confidential from its owners or members and other persons, for  
251 a period of time as the entity deems reasonable, any  
252 information that the entity reasonably believes to be in the



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253 nature of a trade secret or other information, the disclosure  
254 of which the entity in good faith believes is not in the best  
255 interest of the entity or could damage the entity or its  
256 business or affairs, or that the entity is required by law or  
257 by agreement with a third party to keep confidential. In any  
258 dispute concerning the reasonableness of a restriction under  
259 this subsection, the entity has the burden of proving  
260 reasonableness.

261 (e) The rights of an owner or member to inspect and  
262 copy the records described in subsection (b) may be denied by  
263 the entity if the entity determines that the demanding owner  
264 or member has within two years preceding his, her, or its  
265 demand improperly used any information secured through any  
266 prior examination of the records of the entity.

267 ~~(e) The~~ (f) Except as set forth in this section, the  
268 governing documents of a domestic entity may not unreasonably  
269 restrict an owner's or member's right to information or access  
270 to books and records.

271 ~~(d) Any agent or governing person of a domestic entity~~  
272 ~~who, without reasonable cause, refuses to allow any owner or~~  
273 ~~member or the owner's or member's agent or legal counsel to~~  
274 ~~inspect any books or records of that entity shall be~~  
275 ~~personally liable to the agent or member for a penalty in an~~  
276 ~~amount not to exceed 10 percent of the fair market value of~~  
277 ~~the ownership interest of the owner or member, in addition to~~  
278 ~~any other damages or remedy.~~

279 (g) If an entity does not within a reasonable time  
280 allow an owner or member who complies with the requirements of



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281 this section to inspect and copy the records demanded by the  
282 owner or member, then the demanding owner or member may apply  
283 to the designated court, and if none, the circuit court for  
284 the county in which the entity's principal office is located  
285 in this state, and if none in this state, the circuit court  
286 for the county in which the entity's most recent registered  
287 office is located, for an order to permit inspection and  
288 copying of the records demanded. The court shall dispose of an  
289 application under this subsection on an expedited basis. If  
290 the court orders inspection and copying of the records  
291 demanded under this section, the court may impose reasonable  
292 restrictions on their confidentiality, use, or distribution by  
293 the demanding owner or member, and the court shall also order  
294 the entity to pay the owner's or member's expenses incurred to  
295 obtain the order unless the entity establishes that the entity  
296 refused inspection in good faith because the entity had:

297 (1) a reasonable basis for doubt about the right of the  
298 owner or member to inspect the records demanded; or

299 (2) required reasonable restrictions on the  
300 confidentiality, use, or distribution of the records demanded  
301 to which the demanding owner or member had been unwilling to  
302 agree. If the entity has declined to deliver or make available  
303 the records because the owner or member had been unwilling to  
304 agree to restrictions proposed by the entity on the  
305 confidentiality, use, or distribution of the records, the  
306 entity shall have the burden of demonstrating that the  
307 restrictions proposed by the entity were reasonable.

308 (h) The rights and obligations of an owner or member of



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309 an entity provided in this section shall apply to (1) the  
310 personal representative or other legal representative of the  
311 estate of a deceased owner or member, (2) the legal  
312 representative of an owner or member under legal disability,  
313 and (3) a former owner or member, but only for books and  
314 records pertaining to the period during which the former owner  
315 or member was an owner or member of the entity."

316 "§10A-1-4.14

317 The effect of the following filing instruments may not  
318 be delayed:

319 (1) a reservation of name as provided by Division B of  
320 Article 5;

321 (2) a registration of name as provided by Division C of  
322 Article 5; ~~or~~

323 (3) a certificate of abandonment as provided by Section  
324 10A-1-4.13; ~~i~~

325 (4) a certificate of correction as provided by Division  
326 C of this Article 4; or

327 (5) a certificate of nullification as provided by  
328 Division C of this Article 4."

329 "§10A-1-4.21

330 (a) ~~A Whenever any filing instrument that has been~~  
331 ~~filed with~~ authorized to be delivered to a filing officer that  
332 ~~is an inaccurate record of the event or transaction evidenced~~  
333 ~~in the instrument, that~~ for filing under any provision of this  
334 title has been filed by the filing officer, and contains an  
335 inaccurate or erroneous statement, or that was defectively or  
336 erroneously signed, sealed, acknowledged, or verified, the



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337 filing instrument may be corrected or nullified by ~~filing~~  
338 delivering a certificate of correction or a certificate of  
339 nullification of the instrument, as the case may be, to the  
340 appropriate filing officer for filing. If the filing  
341 instrument is to be corrected, the certificate of correction  
342 shall specify the inaccuracy or defect to be corrected and  
343 shall set forth the portion of the filing instrument in  
344 corrected form. If the filing instrument is to be nullified,  
345 the certificate of nullification shall specify the inaccuracy  
346 or defect with respect to the filing instrument and shall  
347 provide for the nullification of the filing instrument.

348 (b) A certificate of correction and a certificate of  
349 nullification must be signed by the person authorized by this  
350 title to act on behalf of the entity."

351 "§10A-1-4.23

352 (a) The certificate of correction must:

353 (1) state the name of the entity and the unique  
354 identifying number or other designation as assigned by the  
355 Secretary of State, if any;

356 (2) identify the filing instrument to be corrected by  
357 (i) description; and (ii) date of filing ~~with~~ by the filing  
358 officer;

359 (3) identify the inaccuracy, error, or defect to be  
360 corrected; and

361 (4) state in corrected form the portion of the filing  
362 instrument to be corrected.

363 (b) The certificate of nullification must:

364 (1) state the name of the entity and the unique



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365 identifying number or other designation as assigned by the  
366 Secretary of State, if any;

367 (2) identify the filing instrument to be nullified by  
368 (i) description; and (ii) date of filing by the filing  
369 officer;

370 (3) identify the inaccuracy, error, or defect; and

371 (4) state that the filing instrument is to be  
372 nullified."

373 "§10A-1-4.24

374 The certificate of correction and the certificate of  
375 nullification shall be filed with and acted on by the filing  
376 officer delivered to the filing officer for filing as provided  
377 in Section 10A-1-4.02."

378 "§10A-1-4.25

379 (a) After the filing officer files the certificate of  
380 correction or the certificate of nullification, the filing  
381 instrument is considered to have been corrected or nullified,  
382 as the case may be, on the date the filing instrument was  
383 originally filed, except as otherwise provided by subsection  
384 (b).

385 ~~(b) As to a person who acted in reliance on the filing~~  
386 ~~instrument prior to its correction and who is adversely~~  
387 ~~affected by that correction, the filing instrument is~~  
388 ~~considered to have been corrected on the date the certificate~~  
389 ~~of correction is filed.~~

390 ~~(c) An acknowledgment of filing or a similar instrument~~  
391 ~~issued by the filing officer before a filing instrument is~~  
392 ~~corrected, with respect to the effect of filing the original~~



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393 ~~filing instrument, applies to the corrected filing instrument~~  
394 ~~as of the date the corrected filing instrument is considered~~  
395 ~~to have been filed under this section.~~

396 (b) A filing instrument corrected or nullified in  
397 accordance with this Division C shall be effective as of the  
398 effective date of the original filing instrument as determined  
399 under Division B of this Article 4, except as to those persons  
400 relying on the original filing instrument and who are  
401 adversely affected by the correction or nullification after  
402 the effective date of the original filing instrument, the  
403 filing instrument as corrected or nullified shall be effective  
404 on the date the certificate of correction or the certificate  
405 of nullification, as the case may be, is filed."

406 "§10A-1-5.31

407 (a) Each filing entity and each foreign filing entity  
408 with a registration under Article 7, and each general  
409 partnership that has an effective statement of partnership,  
410 statement of not for profit partnership, or statement of  
411 limited liability partnership on file with the Secretary of  
412 State in accordance with Chapter 8A, shall designate and  
413 continuously maintain in this state:

414 (1) a registered agent; and

415 (2) a registered office.

416 (b) A registered agent:

417 (1) is an agent of the entity on which may be served  
418 any process, notice, or demand required or permitted by law to  
419 be served on the entity;

420 (2) may be:



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421 (A) an individual who is a resident of this state; or

422 (B) a domestic entity or a foreign entity that is  
423 registered to transact business in this state;~~and~~

424 (3) must maintain a business office at the same address  
425 as the entity's registered office~~;~~ and

426 (4) may not perform its duties or functions solely  
427 through the use of a virtual office, the retention by the  
428 agent of a mail forwarding service, or both. For purposes of  
429 this subsection (b) (4), "virtual office" means the performance  
430 of duties or functions solely through the internet or solely  
431 through other means of remote communication.

432 (c) The registered office:

433 (1) must be located at a street address in this state  
434 where process may be personally served on the entity's  
435 registered agent;

436 (2) is not required to be a place of business of the  
437 filing entity or foreign filing entity; and

438 (3) may not be solely a mailbox service or a telephone  
439 answering service."

440 "§10A-1-7.01

441 (a) (1) For purposes of this Article 7, the terms  
442 register, registering, and registered include (i) a foreign  
443 entity other than a foreign limited liability partnership  
444 delivering to the Secretary of State for filing an application  
445 for registration and the Secretary of State filing the  
446 application for registration~~;~~ and (ii) a foreign limited  
447 liability partnership delivering to the Secretary of State for  
448 filing a statement of foreign limited liability partnership



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449 and the Secretary of State filing the statement of foreign  
450 limited liability partnership.

451 (2) For purposes of this Article 7, the term  
452 registration includes (i) a filed application for  
453 registration; and (ii) a filed statement of foreign limited  
454 liability partnership.

455 (b) For purposes of this Article 7, the terms transact  
456 business and transacting business shall include conducting a  
457 business, activity, not for profit activity, and any other  
458 activity, whether or not for profit.

459 (c) To transact business in this state, a foreign  
460 entity must register under this chapter if the foreign entity:

461 (1) is a foreign entity, the formation of which, if  
462 formed in this state, would require the filing under Article 3  
463 of a certificate of formation;

464 (2) is a foreign limited liability partnership; or

465 (3) affords limited liability under the law of its  
466 jurisdiction of formation for any owner or member.

467 (d) A foreign entity described by subsection ~~(b)~~ (c)  
468 must maintain the foreign entity's registration while  
469 transacting business in this state.

470 (e) For purposes of this Article 7, a foreign entity  
471 must reserve a name with the Secretary of State in accordance  
472 with Article 5 and when a foreign entity delivers its  
473 application for registration to the Secretary of State for  
474 filing, that foreign entity must attach its name reservation  
475 certificate to its application for registration."

476 "§10A-1-7.11



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477 (a) A foreign entity registered in this state may  
478 withdraw the foreign entity's registration at any time by  
479 filing a certificate of withdrawal as provided in Article 4.

480 (b) A certificate of withdrawal for a foreign entity  
481 described must state:

482 (1) the name of the foreign entity as set forth on its  
483 registration;

484 (2) the type of foreign entity and the foreign entity's  
485 jurisdiction of formation and, in the case of a foreign  
486 limited liability partnership, the jurisdiction which laws  
487 govern the foreign limited liability partnership and its  
488 partnership agreement;

489 (3) the street address and mailing address, if  
490 different, of the principal office of the foreign entity;

491 (4) that the foreign entity no longer is transacting  
492 business in this state;

493 (5) that the foreign entity:

494 (A) revokes the authority of the foreign entity's  
495 registered agent in this state to accept service of process;  
496 and

497 (B) consents that service of process in any action,  
498 suit, or proceeding stating a cause of action arising in this  
499 state during the time the foreign entity was authorized to  
500 transact business in this state may be made on the foreign  
501 entity in accordance with the Alabama Rules of Civil Procedure  
502 and any other notice or demand required or permitted by law to  
503 be served on the foreign entity may be served in a manner  
504 similar to the procedure provided for the service of process



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505 by the Alabama Rules of Civil Procedure;

506 (6) (A) a mailing address to which process may be mailed  
507 pursuant to the applicable service of process procedures of  
508 the Alabama Rules of Civil Procedure and to which any notice  
509 or demand required or permitted by law to be served on the  
510 foreign entity may be mailed; and

511 (B) a commitment by the foreign entity that if the  
512 mailing address stated in the certificate of withdrawal under  
513 paragraph (A) changes, the foreign entity will promptly amend  
514 the certificate of withdrawal to update the address; and

515 (7) that any money due or accrued to the state has been  
516 paid or describes the provisions that have been made for the  
517 payment of that money.

518 (c) A certificate from the Alabama Department of  
519 Revenue that all applicable taxes and fees have been paid must  
520 be filed with the certificate of withdrawal.

521 (d) If the existence or separate existence of a foreign  
522 entity registered in this state terminates, a certificate by  
523 an authorized governmental official of the entity's  
524 jurisdiction of formation that evidences the termination shall  
525 be filed with the Secretary of State.

526 (e) The registration of the foreign entity terminates  
527 when a certificate of withdrawal under this section or a  
528 certificate evidencing termination under subsection (d) is  
529 filed.

530 (f) The certificate of withdrawal of a foreign entity  
531 described in subsection (b), other than a foreign limited  
532 liability partnership, shall be executed by one or more



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533 persons authorized to execute a certificate of withdrawal. A  
534 certificate of withdrawal of a foreign limited liability  
535 partnership shall be executed by one or more partners  
536 authorized to execute a certificate of withdrawal. The  
537 certificate of termination of a foreign entity described in  
538 subsection (d), other than a foreign limited liability  
539 partnership, shall be executed by one or more persons  
540 authorized to execute a certificate of termination. A  
541 certificate of termination of a foreign limited liability  
542 partnership shall be executed by one or more partners  
543 authorized to execute a certificate of termination."

544 "§10A-2A-1.43

545 (a) As used in this chapter, unless otherwise  
546 specified or unless the context otherwise requires, a  
547 "qualified director" is a director who, at the time action is  
548 to be taken under:

549 (1) Section 10A-2A-2.02(b)(6), is not a director (i) to  
550 whom the limitation or elimination of the duty of an officer  
551 to offer potential ~~business~~ corporate opportunities to the  
552 corporation would apply, or (ii) who has a material  
553 relationship with any other person to whom the limitation or  
554 elimination would apply; or

555 (2) Section 10A-2A-8.53 or Section 10A-2A-8.55, (i) is  
556 not a party to the proceeding, (ii) is not a director as to  
557 whom a transaction is a ~~director's~~ conflicting interest  
558 transaction or who sought a disclaimer of the corporation's  
559 interest in a ~~business~~ corporate opportunity under Section  
560 ~~10A-2A-8.60~~ 10A-2A-8.70, which transaction or disclaimer is



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561 challenged, and (iii) does not have a material relationship  
562 with a director described in either clause (i) or clause (ii)  
563 of this subsection (a)(2); or

564 (3) Section 10A-2A-8.60, is not a director (i) as to  
565 whom the ~~contract~~ act or transaction is a ~~director's~~  
566 conflicting interest transaction, (ii) who has a material  
567 relationship with another director as to whom the act or  
568 transaction is a ~~director's~~ conflicting interest transaction,  
569 or (iii) ~~pursues or takes advantage of the business~~  
570 ~~opportunity, directly, or indirectly through or on behalf of~~  
571 ~~another person, or (iv) has a material relationship with a~~  
572 ~~director or officer who pursues or takes advantage of the~~  
573 ~~business opportunity, directly, or indirectly through or on~~  
574 ~~behalf of another person.~~ who has a material relationship with  
575 a stockholder as to whom the act or transaction is a  
576 controlling stockholder transaction or a going private  
577 transaction; or

578 (4) Section 10A-2A-8.70, is not a director who (i)  
579 pursues or takes advantage of a corporate opportunity,  
580 directly or indirectly, through or on behalf of another person  
581 or (ii) has a material relationship with a director or officer  
582 who pursues or takes advantage of a corporate opportunity,  
583 directly or indirectly, through or on behalf of another  
584 person.

585 (b) ~~For purposes of this section:~~

586 ~~(1)~~ As used in this chapter, unless otherwise specified  
587 or unless the context otherwise requires, a "material  
588 relationship" means a familial, financial, professional,



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589 employment, or other relationship that (i) in the case of a  
590 director, would reasonably be expected to impair the  
591 objectivity of the director's judgment when participating in  
592 ~~the action to be taken;~~ and negotiation, authorization, or  
593 approval of the act or transaction at issue and (ii) in the  
594 case of a stockholder, would be material to that stockholder.

595 ~~(2) "material interest" means an actual or potential~~  
596 ~~benefit or detriment (other than one which would devolve on~~  
597 ~~the corporation or the stockholders generally) that would~~  
598 ~~reasonably be expected to impair the objectivity of the~~  
599 ~~director's judgment when participating in the action to be~~  
600 ~~taken.~~

601 (c) The presence of one or more of the following  
602 circumstances shall not automatically prevent a director from  
603 being a qualified director:

604 (1) designation, nomination, or vote in the election of  
605 the director to the current board of directors by any director  
606 who is not a qualified director with respect to the matter (or  
607 by any person that has a ~~material relationship with that~~  
608 director financial interest in an act or transaction), acting  
609 alone or participating with others; or

610 (2) service as a director of another corporation of  
611 which a director who is not a qualified director with respect  
612 to the matter (or any individual who has a material  
613 relationship with that director), is or was also a director."

614 "§10A-2A-2.02

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

616 Instead:



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

618 (1) a corporate name for the corporation that satisfies  
619 the requirements of Article 5 of Chapter 1;

620 (2) the number of shares of stock the corporation is  
621 authorized to issue;

622 (3) the street and mailing addresses of the  
623 corporation's initial registered office, the county within  
624 this state in which the street and mailing address is located,  
625 and the name of the corporation's initial registered agent at  
626 that office as required by Article 5 of Chapter 1; and

627 (4) the name and address of each incorporator.

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

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

631 (2) provisions not inconsistent with law regarding:

632 (i) the purpose or purposes for which the corporation  
633 is organized;

634 (ii) managing the business and regulating the affairs  
635 of the corporation;

636 (iii) defining, limiting, and regulating the powers of  
637 the corporation, its board of directors, and stockholders;

638 (iv) a par value for authorized stock or classes of  
639 stock; or

640 (v) subject to subsection (f), a provision imposing  
641 personal liability for the debts of the corporation on its  
642 stockholders to a specified extent and upon specified  
643 conditions; otherwise, the stockholders of a corporation shall  
644 not be personally liable for the payment of the corporation's



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645 debts, except as they may be liable by reason of their own  
646 conduct or acts;

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

650 (4) a provision eliminating or limiting the liability  
651 of a director or officer to the corporation or its  
652 stockholders for money damages for any action taken, or any  
653 failure to take any action, as a director or officer, except  
654 liability for (i) the amount of a financial benefit received  
655 by a director or officer to which the director or officer is  
656 not entitled; (ii) an intentional infliction of harm on the  
657 corporation or the stockholders; (iii) in the case of a  
658 director, a violation of Section 10A-2A-8.32; (iv) an  
659 intentional violation of criminal law; or (v) in the case of  
660 an officer, any claim by or in the right of the corporation;

661 (5) a provision permitting or making obligatory  
662 indemnification of a director for liability as defined in  
663 Section 10A-2A-8.50 to any person for any action taken, or any  
664 failure to take any action, as a director, except liability  
665 for (i) receipt of a financial benefit to which the director  
666 is not entitled, (ii) an intentional infliction of harm on the  
667 corporation or its stockholders, (iii) a violation of Section  
668 10A-2A-8.32, or (iv) an intentional violation of criminal law;  
669 and

670 (6) a provision limiting or eliminating any duty of a  
671 director or any other person to offer the corporation the  
672 right to have or participate in any, or one or more classes or



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673 categories of, ~~business~~ corporate opportunities, before the  
674 pursuit or taking of the corporate opportunity by the director  
675 or other person; provided that any application of that  
676 provision to an officer or a related person of that officer  
677 (i) also requires approval of that application by the board of  
678 directors, subsequent to the effective date of the provision,  
679 by action of qualified directors taken in compliance with the  
680 same procedures as are set forth in Section 10A-2A-8.60; and  
681 (ii) may be limited by the authorizing action of the board of  
682 directors.

683 (c) The certificate of incorporation need not set forth  
684 any of the corporate powers enumerated in Sections 10A-1-2.11,  
685 10A-1-2.12, and 10A-1-2.13.

686 (d) Provisions of the certificate of incorporation may  
687 be made dependent upon facts objectively ascertainable outside  
688 the certificate of incorporation in accordance with Section  
689 10A-2A-1.20(c).

690 (e) As used in this section, the term "control" or  
691 "controlled" has the meaning specified in Section 10A-2A-8.60  
692 and the term "related person" means:

693 (i) the individual's spouse;

694 (ii) a child, stepchild, grandchild, parent,  
695 stepparent, grandparent, sibling, stepsibling, half sibling,  
696 aunt, uncle, niece, or nephew (or spouse of any such person)  
697 of the individual or of the individual's spouse;

698 (iii) a natural person living in the same home as the  
699 individual;

700 (iv) an entity (other than the corporation or an entity



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701 controlled by the corporation) controlled by the individual or  
702 any person specified above in this definition;

703 (v) a domestic or foreign:

704 (A) business or nonprofit corporation (other than the  
705 corporation or an entity controlled by the corporation) of  
706 which the individual is a director,

707 (B) unincorporated entity of which the individual is a  
708 general partner or a member of the governing authority, or

709 (C) individual, trust, or estate for whom or of which  
710 the individual is a trustee, guardian, personal  
711 representative, or like fiduciary, or

712 (vi) a person that is, or an entity that is, controlled  
713 by an employer of the individual.

714 (f) The certificate of incorporation may not contain  
715 any provision that would impose liability on a stockholder for  
716 the attorney's fees or expenses of the corporation or any  
717 other party in connection with an internal corporate claim, as  
718 defined in Section 10A-2A-2.07~~(d)~~(c), or in connection with a  
719 claim that a stockholder, acting in its capacity as a  
720 stockholder or in the right of the corporation, has brought in  
721 an action, suit, or proceeding described in Section  
722 10A-2A-2.07(b).

723 (g) The certificate of incorporation is part of a  
724 binding contract between the corporation and the stockholders,  
725 subject to the provisions of this chapter.

726 (h) For purposes of subsection (b)(4) only, unless the  
727 certificate of incorporation otherwise provides, "officer"  
728 means an individual appointed or elected in accordance with



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729 Section 10A-2A-8.40 as (i) president, chief executive officer,  
730 chief operating officer, chief financial officer, chief legal  
731 officer, secretary, controller, treasurer, or chief accounting  
732 officer of the corporation; and (ii) any officer of the  
733 corporation designated by resolution of the board of directors  
734 as an "officer" for purposes of subsection (b) (4). The board  
735 of directors may, from time to time, by resolution determine  
736 that one or more of the officers designated in accordance with  
737 subsection (h) (ii) shall no longer be an officer for purposes  
738 of subsection (b) (4), but no such resolution shall be  
739 effective as to any such officer, or any act or omission of  
740 any such officer, prior to the adoption of the resolution.

741 (i) No provision in the certificate of incorporation  
742 pursuant to subsection (b) (4) shall eliminate or limit the  
743 liability of a director or officer for any act or omission  
744 occurring prior to the date when the provision in the  
745 certificate of incorporation becomes effective. Any amendment,  
746 repeal, or elimination of a provision in the certificate of  
747 incorporation pursuant to subsection (b) (4) shall not affect  
748 its application with respect to an act or omission by a  
749 director or officer occurring before the amendment, repeal, or  
750 elimination unless the provision in the certificate of  
751 incorporation provides otherwise at the time of the act or  
752 omission."

753 "§10A-2A-2.05

754 (a) The incorporators or board of directors of a  
755 corporation shall adopt initial bylaws for the corporation.

756 (b) The bylaws of a corporation may contain any



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757 provision that is not inconsistent with law or the certificate  
758 of incorporation.

759 (c) The bylaws may contain one or ~~both~~ more of the  
760 ~~following provisions:~~ set forth in subsections (c)(1) and  
761 (c)(2) below, provided that no provision so adopted shall  
762 apply to elections for which any record date precedes its  
763 adoption.

764 ~~(1) a requirement that if the corporation solicits~~  
765 ~~proxies or consents with respect to an election of directors,~~  
766 ~~the corporation include in its proxy statement and any form of~~  
767 ~~its proxy or consent, to the extent and subject to any~~  
768 ~~procedures or conditions as are provided in the bylaws, one or~~  
769 ~~more individuals nominated by a stockholder in addition to~~  
770 ~~individuals nominated by the board of directors; and~~

771 ~~(2) a requirement that the corporation reimburse the~~  
772 ~~expenses incurred by a stockholder in soliciting proxies or~~  
773 ~~consents in connection with an election of directors, to the~~  
774 ~~extent and subject to any procedures and conditions as are~~  
775 ~~provided in the bylaws, provided that no provision so adopted~~  
776 ~~shall apply to elections for which any record date precedes~~  
777 ~~its adoption.~~

778 (1) The bylaws may provide that if the corporation  
779 solicits proxies with respect to an election of directors, the  
780 corporation may be required, to the extent and subject to such  
781 procedures or conditions as may be provided in the bylaws, to  
782 include in its proxy solicitation materials (including any  
783 form of proxy it distributes), in addition to individuals  
784 nominated by the board of directors, one or more individuals



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785 nominated by a stockholder. Such procedures or conditions may  
786 include any of the following:

787 (i) a provision requiring a minimum record or  
788 beneficial ownership, or duration of ownership, of shares of  
789 the corporation's capital stock, by the nominating  
790 stockholder, and defining beneficial ownership to take into  
791 account options or other rights in respect of or related to  
792 such stock;

793 (ii) a provision requiring the nominating stockholder  
794 to submit specified information concerning the stockholder and  
795 the stockholder's nominees, including information concerning  
796 ownership by such persons of shares of the corporation's  
797 capital stock, or options or other rights in respect of or  
798 related to such stock;

799 (iii) a provision conditioning eligibility to require  
800 inclusion in the corporation's proxy solicitation materials  
801 upon the number or proportion of directors nominated by  
802 stockholders or whether the stockholder previously sought to  
803 require such inclusion;

804 (iv) a provision precluding nominations by any person  
805 if such person, any nominee of such person, or any affiliate  
806 or associate of such person or nominee, has acquired or  
807 publicly proposed to acquire shares constituting a specified  
808 percentage of the voting power of the corporation's  
809 outstanding voting stock within a specified period before the  
810 election of directors;

811 (v) a provision requiring that the nominating  
812 stockholder undertake to indemnify the corporation in respect



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813 of any loss arising as a result of any false or misleading  
814 information or statement submitted by the nominating  
815 stockholder in connection with a nomination; and

816 (vi) any other lawful condition.

817 (2) The bylaws may provide for the reimbursement by the  
818 corporation of expenses incurred by a stockholder in  
819 soliciting proxies in connection with an election of  
820 directors, subject to such procedures or conditions as the  
821 bylaws may prescribe, including:

822 (i) conditioning eligibility for reimbursement upon the  
823 number or proportion of persons nominated by the stockholder  
824 seeking reimbursement or whether such stockholder previously  
825 sought reimbursement for similar expenses;

826 (ii) limitations on the amount of reimbursement based  
827 upon the proportion of votes cast in favor of one or more of  
828 the persons nominated by the stockholder seeking  
829 reimbursement, or upon the amount spent by the corporation in  
830 soliciting proxies in connection with the election;

831 (iii) limitations concerning elections of directors by  
832 cumulative voting pursuant to Section 10A-2A-7.28; or

833 (iv) any other lawful condition.

834 (d) Notwithstanding Section 10A-2A-10.20(b)(2), the  
835 stockholders in amending, repealing, or adopting a provision  
836 described in subsection (c) may not limit the authority of the  
837 board of directors to amend or repeal any condition or  
838 procedure set forth in or to add any procedure or condition to  
839 a provision to provide for a reasonable, practical, and  
840 orderly process.



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841 (e) The bylaws are part of a binding contract between  
842 the corporation and the stockholders, subject to the  
843 provisions of this chapter."

844 "§10A-2A-2.07

845 (a) The certificate of incorporation or the bylaws may  
846 require, consistent with applicable jurisdictional  
847 requirements, that any or all internal corporate claims shall  
848 be brought exclusively in any specified court or courts of  
849 this state and, if so specified, in any additional courts in  
850 this state or in any other jurisdictions with which the  
851 corporation has a reasonable relationship and no provision of  
852 the certificate of incorporation or the bylaws may prohibit  
853 bringing those claims in the courts of this state or require  
854 those claims to be determined by arbitration.

855 ~~(b) A provision of the certificate of incorporation or~~  
856 ~~bylaws adopted under subsection (a) shall not have the effect~~  
857 ~~of conferring jurisdiction on any court or over any person or~~  
858 ~~claim, and shall not apply if none of the courts specified by~~  
859 ~~that provision has the requisite personal and subject matter~~  
860 ~~jurisdiction. If the court or courts of this state specified~~  
861 ~~in a provision adopted under subsection (a) do not have the~~  
862 ~~requisite personal and subject matter jurisdiction and another~~  
863 ~~court of this state does have jurisdiction, then the internal~~  
864 ~~corporate claim may be brought in the other court of this~~  
865 ~~state, notwithstanding that the other court of this state is~~  
866 ~~not specified in that provision, and in any other court~~  
867 ~~specified in that provision that has the requisite~~  
868 ~~jurisdiction.~~



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869 ~~(c) No provision of the certificate of incorporation or~~  
870 ~~the bylaws may prohibit bringing an internal corporate claim~~  
871 ~~in the courts of this state or require those claims to be~~  
872 ~~determined by arbitration.~~

873 (b) With respect to claims that are not internal  
874 corporate claims, the certificate of incorporation or bylaws  
875 may require stockholders, when acting in their capacity as  
876 stockholders or in the right of the corporation, to bring any  
877 or all such claims only in any specified court or courts of  
878 this state and, if so specified, in any additional courts in  
879 this state or in any other jurisdictions with which the  
880 corporation has a reasonable relationship, if those claims  
881 relate to the business of the corporation, the conduct of its  
882 affairs, or the rights or powers of the corporation or its  
883 stockholders, directors, or officers; provided that such  
884 requirement is consistent with applicable jurisdictional  
885 requirements and allows a stockholder to bring such claims in  
886 at least one court in this state that has jurisdiction over  
887 those claims.

888 ~~(d)~~ (c) "Internal corporate claim" means, for the  
889 purposes of this section, (i) any claim, action, suit, or  
890 proceeding (i) that is based upon a violation of a duty under  
891 the laws of this state by a current or former director,  
892 officer, or stockholder in their capacities as such, (ii) any  
893 that is a derivative action or proceeding brought on behalf of  
894 the corporation, (iii) any action asserting a claim arising  
895 pursuant to any provision of this chapter or the certificate  
896 of incorporation or bylaws, that arises from, is pursuant to,



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897 or seeks to interpret, apply, enforce, or determine the  
898 validity of, any provision of this chapter, the certificate of  
899 incorporation, the bylaws, or any agreement entered into  
900 pursuant to Sections 10A-2A-7.30, 10A-2A-7.31, or 10A-2A-7.32  
901 to which the corporation is a party or a stated beneficiary  
902 thereof, or (iv) ~~any action asserting a claim~~ that is governed  
903 by the internal affairs doctrine that is not included in (i)  
904 through (iii) above.

905 (d) This section does not prohibit any corporation from  
906 consenting, or require any corporation to consent, to any  
907 alternative forum in any instance."

908 "§10A-2A-6.22

909 (a) A purchaser from a corporation of the corporation's  
910 own stock is not liable to the corporation or its creditors  
911 with respect to the stock except to pay the consideration for  
912 which the stock was authorized to be issued or specified in  
913 the subscription agreement.

914 (b) A stockholder is not personally liable for any  
915 liabilities of the corporation (including liabilities arising  
916 from acts of the corporation) except to the extent provided in  
917 a provision of the certificate of incorporation permitted by  
918 Section 10A-2A-2.02.

919 (c) Except for controlling stockholders and control  
920 groups in a controlling stockholder transaction (as defined in  
921 Section 10A-2A-8.60), a stockholder, regardless of the  
922 stockholder's relative beneficial ownership of shares or  
923 relative voting power, may, and shall be entitled to, exercise  
924 or withhold the voting power of such shares in the



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925 stockholder's personal interest and without regard to any  
926 other person or interest.

927 (d) Except as set forth in subsection (e), a  
928 stockholder, in that person's capacity as a stockholder and  
929 regardless of the stockholder's relative beneficial ownership  
930 of shares or relative voting power, shall not have any duty to  
931 the corporation or any other stockholder.

932 (e) A controlling stockholder or a stockholder that is  
933 a member of a control group of a corporation, in such person's  
934 capacity as a stockholder, has the duty to refrain from  
935 exerting undue influence over any director or officer of the  
936 corporation with the purpose and proximate effect of inducing  
937 a breach of fiduciary duty by a director or officer (i) for  
938 which breach the director or officer is liable pursuant to  
939 Section 10A-2A-8.31 and (ii) which breach directly relates to  
940 the negotiation, authorization, or approval by the board of  
941 directors, or a committee thereof, of a controlling  
942 stockholder transaction. The exercise or withholding of voting  
943 power by a controlling stockholder or a control group, or the  
944 indication or implication by a controlling stockholder or  
945 control group as to whether or to what extent voting power may  
946 be exercised or withheld, does not, by itself, constitute or  
947 indicate a breach of the duty imposed on the controlling  
948 stockholder or control group by this subsection.

949 (f) A controlling stockholder and a control group are  
950 presumed to have not breached the duty imposed by subsection  
951 (e) with respect to a controlling stockholder transaction if  
952 the controlling stockholder transaction has been authorized or



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953 approved in accordance with Section 10A-2A-8.60.

954 (g) A stockholder of a corporation is not individually  
955 liable to the corporation or its stockholders or creditors for  
956 any damages as a result of any act or failure to act in such  
957 person's capacity as a stockholder under subsection (e) unless  
958 (i) the stockholder is a controlling stockholder or a member  
959 of a control group, (ii) the presumption established by  
960 subsection (f) has been rebutted, and (iii) it is proven that  
961 the stockholder's act or failure to act constituted a breach  
962 of the stockholder's duty imposed by subsection (e)."

963 "§10A-2A-8.27

964 (a) Whenever this chapter expressly requires the board  
965 of directors to approve or take other action with respect to  
966 any agreement, instrument, plan, or document, such agreement,  
967 instrument, plan, or document may be approved by the board of  
968 directors in final form or in substantially final form.  
969 Substantially final form means that all of the material terms  
970 are set forth in the agreement, instrument, plan, or document,  
971 or are determinable through other information or materials  
972 presented to or known by the board of directors, or are  
973 determinable by a combination thereof, except as otherwise  
974 described in subsection (c).

975 (b) If the board of directors shall have acted to  
976 approve or take other action with respect to an agreement,  
977 instrument, plan, or document that is expressly required by  
978 this chapter to be approved by the board of directors, the  
979 board of directors may, but is not required to, at any time  
980 after providing the approval or taking such other action adopt



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981 a resolution ratifying the agreement, instrument, plan, or  
982 document, and the ratification shall be deemed to be effective  
983 as of the time of the original approval or other action by the  
984 board of directors and to satisfy any requirement under this  
985 chapter that the board of directors approve or take other  
986 action with respect to the agreement, instrument, plan, or  
987 document in a specific manner or sequence.

988 (c) At the time of the approval of any agreement,  
989 instrument, plan, or document by the board of directors, the  
990 agreement, instrument, plan, or document is not required to  
991 contain or have attached thereto any disclosure letter,  
992 disclosure schedules, or similar documents or instruments  
993 contemplated by the agreement, instrument, plan, or document  
994 that modify, supplement, qualify, or make exceptions to  
995 representations, warranties, covenants, or conditions  
996 contained in the agreement, instrument, plan, or document."

997 "§10A-2A-8.60

998 ~~(a) No contract or transaction between a corporation~~  
999 ~~and one or more of its directors or officers, or between a~~  
1000 ~~corporation and any other corporation, partnership,~~  
1001 ~~association, or other entity in which one or more of its~~  
1002 ~~directors or officers, are directors or officers, or have a~~  
1003 ~~financial interest, shall be void or voidable solely for this~~  
1004 ~~reason, or solely because the director or officer is present~~  
1005 ~~at or participates in the meeting of the board of directors or~~  
1006 ~~committee which authorizes the contract or transaction, or~~  
1007 ~~solely because the director's or officer's votes are counted~~  
1008 ~~for that purpose, if:~~



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1009 ~~(1) The material facts as to the director's or~~  
1010 ~~officer's relationship or interest and as to the contract or~~  
1011 ~~transaction are disclosed or are known to the board of~~  
1012 ~~directors or the committee, and the board or committee in good~~  
1013 ~~faith authorizes the contract or transaction by the~~  
1014 ~~affirmative votes of a majority of the qualified directors,~~  
1015 ~~even though the qualified directors be less than a quorum; or~~

1016 ~~(2) The material facts as to the director's or~~  
1017 ~~officer's relationship or interest and as to the contract or~~  
1018 ~~transaction are disclosed or are known to the stockholders~~  
1019 ~~entitled to vote thereon, and the contract or transaction is~~  
1020 ~~specifically approved in good faith by vote of the~~  
1021 ~~stockholders; or~~

1022 ~~(3) The contract or transaction is fair as to the~~  
1023 ~~corporation as of the time it is authorized, approved or~~  
1024 ~~ratified, by the board of directors, a committee, or the~~  
1025 ~~stockholders.~~

1026 ~~(b) Common or interested directors may be counted in~~  
1027 ~~determining the presence of a quorum at a meeting of the board~~  
1028 ~~of directors or of a committee which authorizes the contract~~  
1029 ~~or transaction.~~

1030 (a) As used in this chapter, unless otherwise specified  
1031 or unless the context otherwise requires, the following terms  
1032 shall mean:

1033 (1) CONFLICTING INTEREST TRANSACTION means an act or  
1034 transaction effected or proposed to be effected by the  
1035 corporation (or by an entity controlled by the corporation):

1036 (i) to which, at the relevant time, a director or



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1037 officer is a party;

1038 (ii) respecting which, at the relevant time, the  
1039 director or officer had knowledge and a material financial  
1040 interest known to the director or officer; or

1041 (iii) respecting which, at the relevant time, the  
1042 director or officer knew that a related person was a party or  
1043 had a material financial interest.

1044 (2) CONTROL or CONTROLLED BY means (i) having the  
1045 power, directly or indirectly, to elect or remove a majority  
1046 of the members of the board of directors or other governing  
1047 authority of an entity, whether through the ownership of  
1048 voting shares or interests, by contract, or otherwise or (ii)  
1049 being subject to a majority of the risk of loss from the  
1050 entity's activities or entitled to receive a majority of the  
1051 entity's residual returns.

1052 (3) CONTROL GROUP means two or more persons that are  
1053 not controlling stockholders that, by virtue of an agreement,  
1054 arrangement, or understanding between or among those persons,  
1055 constitute a controlling stockholder.

1056 (4) CONTROLLING STOCKHOLDER means any person that,  
1057 together with (i) any related person and (ii) any person that  
1058 controls, is controlled by, or is under common control with  
1059 that person:

1060 (A) owns or controls a majority in voting power of the  
1061 outstanding stock of the corporation entitled to vote  
1062 generally in the election of directors or in the election of  
1063 directors who have a majority in voting power of the votes of  
1064 all directors on the board of directors;



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1065 (B) has the right, by contract or otherwise, to cause  
1066 the election of nominees who are selected at the discretion of  
1067 that person and who constitute either a majority of the  
1068 members of the board of directors or directors entitled to  
1069 cast a majority in voting power of the votes of all directors  
1070 on the board of directors;

1071 (C) has the power functionally equivalent to that of a  
1072 stockholder that owns or controls a majority in voting power  
1073 of the outstanding stock of the corporation entitled to vote  
1074 generally in the election of directors by virtue of ownership  
1075 or control of at least one-third in voting power of the  
1076 outstanding stock of the corporation entitled to vote  
1077 generally in the election of directors or in the election of  
1078 directors who have a majority in voting power of the votes of  
1079 all directors on the board of directors and the power to  
1080 exercise managerial authority over the business and affairs of  
1081 the corporation; or

1082 (D) owns or controls a majority in voting power of the  
1083 outstanding stock of the corporation entitled to vote  
1084 generally when the board of directors has been eliminated  
1085 under Section 10A-2A-7.32.

1086 (5) CONTROLLING STOCKHOLDER TRANSACTION means an act or  
1087 transaction between the corporation or one or more of its  
1088 subsidiaries, on the one hand, and a controlling stockholder  
1089 or a control group, on the other hand, or an act or  
1090 transaction from which a controlling stockholder or a control  
1091 group receives a material financial or other benefit not  
1092 shared with the corporation's stockholders generally; provided



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1093 that a merger under Section 10A-2A-11.05 is not a controlling  
1094 stockholder transaction.

1095 (6) DISINTERESTED STOCKHOLDER means any stockholder  
1096 that does not have a material financial interest in the act or  
1097 transaction at issue or, if applicable, a material  
1098 relationship with the controlling stockholder or other member  
1099 of the control group, or any other person that has a material  
1100 financial interest in the act or transaction.

1101 (7) FAIR TO THE CORPORATION means the act or  
1102 transaction at issue, as a whole, is beneficial to the  
1103 corporation or its stockholders in their capacity as  
1104 stockholders, given the consideration paid to or received by  
1105 the corporation or its stockholders or other benefit conferred  
1106 on the corporation or its stockholders and taking into  
1107 appropriate account whether the act or transaction meets both  
1108 of the following: (i) it is fair in terms of the director's,  
1109 officer's, controlling stockholder's, or control group's  
1110 dealings with the corporation, as the case may be; and (ii) it  
1111 is comparable to what might have been obtainable in an arm's  
1112 length transaction available to the corporation.

1113 (8) GOING PRIVATE TRANSACTION means, other than a  
1114 merger under Section 10A-2A-11.05:

1115 (i) for a corporation with a class of equity securities  
1116 subject to Section 12(g) or Section 15(d) of the Securities  
1117 Exchange Act of 1934 [15 U.S.C. § 781(g) or § 78o(d)] or  
1118 listed on a national securities exchange, a "Rule 13e-3  
1119 transaction" (as defined in 17 CFR § 240.13e-3(a)(3) or any  
1120 successor provision); and



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1121 (ii) for any other corporation to which subsection  
1122 (a) (8) (i) does not apply, a transaction that (A) is a  
1123 controlling stockholder transaction, including a merger,  
1124 recapitalization, stock purchase, amendment to the certificate  
1125 of incorporation, tender or exchange offer, stock exchange, or  
1126 conversion and (B) pursuant to which all or substantially all  
1127 of the shares of the corporation's capital stock held by the  
1128 disinterested stockholders (but not those of the controlling  
1129 stockholder or control group) are cancelled, converted,  
1130 purchased, or otherwise acquired or cease to be outstanding in  
1131 exchange for cash or property other than the stock or an  
1132 eligible interest in the surviving organization.

1133 (9) MATERIAL FINANCIAL INTEREST means a nonspeculative  
1134 financial interest in an act or transaction, other than one  
1135 that would devolve on the corporation or the stockholders  
1136 generally, that (i) in the case of a director or officer,  
1137 would reasonably be expected to impair the objectivity of the  
1138 director's or officer's judgment when participating in the  
1139 negotiation, authorization, or approval of the act or  
1140 transaction at issue or (ii) in the case of a stockholder or  
1141 any other person (other than a director or officer), would be  
1142 material to such stockholder or such other person.

1143 (10) MATERIAL RELATIONSHIP has the meaning set forth in  
1144 Section 10A-2A-1.43.

1145 (11) QUALIFIED DIRECTOR has the meaning set forth in  
1146 Section 10A-2A-1.43.

1147 (12) RELATED PERSON has the meaning set forth in  
1148 Section 10A-2A-2.02.



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1149           (13) RELEVANT TIME means (i) the time at which a  
1150 directors' action respecting the act or transaction is taken  
1151 in compliance with subsection (c) or (ii) if the act or  
1152 transaction is not brought before the board of directors (or a  
1153 committee thereof) for action under subsection (c), at the  
1154 time the corporation (or an entity controlled by the  
1155 corporation) becomes legally obligated to consummate the act  
1156 or transaction.

1157           (14) REQUIRED DISCLOSURE means disclosure of (i) the  
1158 existence and nature of the director's or officer's  
1159 conflicting interest and (ii) all facts known to the director  
1160 or officer respecting the subject matter of the act or  
1161 transaction that a qualified director would reasonably believe  
1162 to be material in deciding whether to proceed with the act or  
1163 transaction.

1164           (b) (1) An act or transaction effected or proposed to be  
1165 effected by a corporation (or by an entity controlled by the  
1166 corporation) may not be the subject of equitable relief, or  
1167 give rise to an award of damages or other sanctions against a  
1168 director or officer of the corporation, on the grounds that  
1169 the director or officer has an interest respecting the act or  
1170 transaction, if the act or transaction is not a conflicting  
1171 interest transaction.

1172           (2) Except for a controlling stockholder transaction  
1173 under subsection (e), a conflicting interest transaction may  
1174 not be the subject of equitable relief, or give rise to an  
1175 award of damages or other sanctions against a director or  
1176 officer of the corporation, in a proceeding by a stockholder



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1177 or by or in the right of the corporation, on the grounds that  
1178 the director or officer has an interest respecting the  
1179 conflicting interest transaction, if:

1180 (i) the directors' action respecting the act or  
1181 transaction was taken in compliance with subsection (c) at any  
1182 time; or

1183 (ii) the stockholders' action respecting the act or  
1184 transaction was taken in compliance with subsection (d) at any  
1185 time; or

1186 (iii) the act or transaction is at the relevant time  
1187 fair to the corporation.

1188 (c) (1) Directors' action respecting a conflicting  
1189 interest transaction is effective for purposes of subsection  
1190 (b) (2) (i) if the conflicting interest transaction has been  
1191 authorized, after required disclosure by the conflicted  
1192 director or officer of information not already known by the  
1193 qualified directors, or after modified disclosure in  
1194 compliance with subsection (c) (2), by (A) the affirmative vote  
1195 of a majority (but no fewer than two) of the qualified  
1196 directors who voted on the conflicting interest transaction or  
1197 (B) the affirmative vote of a majority of the members of a  
1198 board committee that is composed of only qualified directors  
1199 (but no fewer than two). Directors' action respecting a  
1200 conflicting interest transaction is effective even though the  
1201 conflicted director or officer is present at or participates  
1202 in the meeting of the board or committee which authorizes the  
1203 act or transaction or was involved in the initiation,  
1204 negotiation, or approval of the act or transaction.



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1205 (2) Notwithstanding subsection (c)(1), when a  
1206 transaction is a conflicting interest transaction only because  
1207 a related person described in clause (v) or (vi) of the  
1208 definition of "related person" in Section 10A-2A-2.02 is a  
1209 party to or has a material financial interest in the  
1210 conflicting interest transaction, the conflicted director or  
1211 officer is not obligated to make required disclosure to the  
1212 extent that the director or officer reasonably believes that  
1213 doing so would violate a duty imposed under law, a legally  
1214 enforceable obligation of confidentiality, or a professional  
1215 ethics rule, provided that the conflicted director or officer  
1216 discloses to the qualified directors voting on the conflicting  
1217 interest transaction:

1218 (i) all information required to be disclosed that is  
1219 not so violative;

1220 (ii) the existence and nature of the director's or  
1221 officer's conflicting interest; and

1222 (iii) the nature of the conflicted director's or  
1223 officer's duty not to disclose the confidential information.

1224 (3) A majority (but no fewer than two) of all the  
1225 qualified directors on the board of directors, or on the board  
1226 committee, constitutes a quorum for purposes of action that  
1227 complies with this section.

1228 (4) Where directors' action under this subsection (c)  
1229 does not satisfy a quorum or voting requirement applicable to  
1230 the authorization of the conflicting interest transaction by  
1231 reason of the certificate of incorporation, the bylaws, or  
1232 another provision of this chapter, independent action to



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1233 satisfy those authorization requirements shall be taken by the  
1234 board of directors or a board committee, in which action  
1235 directors who are not qualified directors may participate.

1236 (5) Where directors' action under this subsection (c)  
1237 is taken without a meeting in accordance with Section  
1238 10A-2A-8.21, the action is effective even though a conflicted  
1239 director signs a consent to that action.

1240 (d) (1) Stockholders' action respecting a conflicting  
1241 interest transaction is effective for purposes of subsection  
1242 (b) (2) (ii) if a majority of the votes cast by the holders of  
1243 all qualified shares are in favor of the conflicting interest  
1244 transaction after (i) notice to stockholders describing the  
1245 action to be taken respecting the conflicting interest  
1246 transaction, (ii) provision to the corporation of the  
1247 information referred to in subsection (d) (2), and (iii)  
1248 communication to the stockholders entitled to vote on the  
1249 conflicting interest transaction of the information that is  
1250 the subject of required disclosure, to the extent the  
1251 information is not already known by them. In the case of  
1252 stockholders' action at a meeting, the stockholders entitled  
1253 to vote shall be determined as of the record date for notice  
1254 of the meeting.

1255 (2) A director or officer who has a conflicting  
1256 interest respecting the conflicting interest transaction  
1257 shall, before the stockholders' vote, inform the secretary or  
1258 other officer or agent of the corporation authorized to  
1259 tabulate votes, in writing, of the number of shares that the  
1260 director or officer knows are not qualified shares under



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1261 subsection (c), and the identity of the holders of those  
1262 shares.

1263 (3) For purposes of this section: (i) "holder" means  
1264 and "held by" refers to shares held by a record stockholder, a  
1265 beneficial stockholder, and an unrestricted voting trust  
1266 beneficial owner and (ii) "qualified shares" means all shares  
1267 entitled to be voted with respect to the conflicting interest  
1268 transaction except for shares that the secretary or other  
1269 officer or agent of the corporation authorized to tabulate  
1270 votes either knows, or under subsection (b) is notified, are  
1271 held by (A) a director or officer who has a conflicting  
1272 interest respecting the conflicting interest transaction or  
1273 (B) a related person of the director or officer (excluding a  
1274 person described in clause (vi) of the definition of a related  
1275 person in Section 10A-2A-2.02).

1276 (4) A majority of the votes entitled to be cast by the  
1277 holders of all qualified shares constitutes a quorum for  
1278 purposes of compliance with this section. Subject to the  
1279 provisions of subsection (e), stockholders' action that  
1280 otherwise complies with this section is not affected by the  
1281 presence of holders, or by the voting, of shares that are not  
1282 qualified shares.

1283 (5) If a stockholders' vote does not comply with  
1284 subsection (d) (1) solely because of a director's or officer's  
1285 failure to comply with subsection (d) (2), and if the director  
1286 or officer establishes that the failure was not intended to  
1287 influence and did not in fact determine the outcome of the  
1288 vote, then the action by the stockholders respecting the



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1289 conflicting interest transaction shall be given effect.

1290 (6) Where stockholders' action under this section does  
1291 not satisfy a quorum or voting requirement applicable to the  
1292 authorization of the conflicting interest transaction by  
1293 reason of the certificate of incorporation, the bylaws, or  
1294 another provision of this chapter, independent action to  
1295 satisfy those authorization requirements shall be taken by the  
1296 stockholders, in which action shares that are not qualified  
1297 shares may participate.

1298 (7) Where stockholders' action under this subsection  
1299 (d) is taken without a meeting in accordance with Section  
1300 10A-2A-7.04, the action is effective even though stockholders  
1301 holding shares that are not qualified shares sign a consent to  
1302 that action.

1303 (e) (1) An act or transaction effected or proposed to be  
1304 effected by the corporation (or by an entity controlled by the  
1305 corporation) may not be the subject of equitable relief, or  
1306 give rise to an award of damages or other sanctions against a  
1307 stockholder of the corporation, on the grounds that the  
1308 stockholder has an interest respecting the act or transaction,  
1309 if the act or transaction is not a controlling stockholder  
1310 transaction.

1311 (2) A controlling stockholder transaction (other than a  
1312 going private transaction) may not be the subject of equitable  
1313 relief, or give rise to an award of damages or other  
1314 sanctions, against a director or officer of the corporation or  
1315 any controlling stockholder or member of a control group, by  
1316 reason of a claim based on a breach of fiduciary duty by a



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1317 director or officer, or a duty (as described in Section  
1318 10A-2A-6.22) of a controlling stockholder or member of a  
1319 control group, if:

1320 (i) the material facts as to the controlling  
1321 stockholder transaction (including the controlling  
1322 stockholder's or control group's interest therein) are  
1323 disclosed or are known to all members of the board of  
1324 directors or a committee of the board of directors to which  
1325 the board of directors has expressly delegated the authority  
1326 to negotiate (or oversee the negotiation of) and to reject the  
1327 controlling stockholder transaction, and the controlling  
1328 stockholder transaction is approved (or recommended for  
1329 approval) by the affirmative vote of a majority (but no fewer  
1330 than two) of the qualified directors who voted on the  
1331 controlling stockholder transaction; or

1332 (ii) the controlling stockholder transaction is  
1333 conditioned, by its terms, as in effect at the time it is  
1334 submitted to stockholders for their approval or ratification,  
1335 on the approval of or ratification by disinterested  
1336 stockholders, and the controlling stockholder transaction is  
1337 approved or ratified by an informed, uncoerced, affirmative  
1338 vote of a majority of the votes cast by the disinterested  
1339 stockholders; or

1340 (iii) the controlling stockholder transaction is at the  
1341 relevant time fair to the corporation.

1342 (3) A controlling stockholder transaction constituting  
1343 a going private transaction may not be the subject of  
1344 equitable relief, or give rise to an award of damages or other



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1345 sanctions, against a director or officer of the corporation or  
1346 any controlling stockholder or member of a control group by  
1347 reason of a claim based on breach of fiduciary duty by a  
1348 director or officer or a duty (described in Section  
1349 10A-2A-6.22) of a controlling stockholder or member of a  
1350 control group, if:

1351 (i) the controlling stockholder transaction is approved  
1352 (or recommended for approval) in accordance with subsection  
1353 (e) (2) (i) and approved in accordance with subsection  
1354 (e) (2) (ii); or

1355 (ii) the controlling stockholder transaction is at the  
1356 relevant time fair to the corporation.

1357 (4) No person shall be deemed a controlling stockholder  
1358 unless that person satisfies the criteria in subsection  
1359 (a) (4). No two or more persons that are not controlling  
1360 stockholders shall be a control group unless they satisfy the  
1361 criteria in subsection (a) (3).

1362 (f) For purposes of this section, if a corporation has  
1363 eliminated its board of directors under Section 10A-2A-7.32,  
1364 each stockholder of that corporation shall be deemed to be a  
1365 director, in addition to their capacity as a stockholder."

1366 "§10A-2A-14.10

1367 (a) The circuit court for the county in which the  
1368 corporation's principal office is located in this state, and  
1369 if none in this state, the circuit court for the county in  
1370 which the corporation's most recent registered office is  
1371 located may dissolve a corporation:

1372 (1) in a proceeding by the Attorney General if it is



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1373 established that:

1374 (i) the corporation obtained its certificate of  
1375 incorporation through fraud; or

1376 (ii) the corporation has continued to exceed or abuse  
1377 the authority conferred upon it by law;

1378 (2) in a proceeding by a stockholder if it is  
1379 established that:

1380 (i) the directors are deadlocked in the management of  
1381 the corporate affairs, the stockholders are unable to break  
1382 the deadlock, and irreparable injury to the corporation is  
1383 threatened or being suffered, or the business and affairs of  
1384 the corporation can no longer be conducted to the advantage of  
1385 the stockholders generally, because of the deadlock;

1386 (ii) the directors or those in control of the  
1387 corporation have acted, are acting, or will act in a manner  
1388 that is illegal, ~~oppressive,~~ or fraudulent;

1389 (iii) the stockholders are deadlocked in voting power  
1390 and have failed, for a period that includes at least two  
1391 consecutive annual meeting dates, to elect successors to  
1392 directors whose terms have expired; or

1393 (iv) the corporate assets are being misapplied or  
1394 wasted;

1395 (3) in a proceeding by a creditor if it is established  
1396 that:

1397 (i) the creditor's claim has been reduced to judgment,  
1398 the execution on the judgment returned unsatisfied, and the  
1399 corporation is insolvent; or

1400 (ii) the corporation has admitted in writing that the



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1401 creditor's claim is due and owing and the corporation is  
1402 insolvent;

1403 (4) in a proceeding by the corporation to have its  
1404 voluntary dissolution continued under court supervision; or

1405 (5) in a proceeding by a stockholder if the corporation  
1406 has abandoned its business and has failed within a reasonable  
1407 time to liquidate and distribute its assets and dissolve.

1408 (b) Subsection (a)(2) shall not apply in the case of a  
1409 corporation that, on the date of the filing of the proceeding,  
1410 has a class or series of stock which is:

1411 (1) a covered security under Section 18(b)(1)(A) or (B)  
1412 of the Securities Act of 1933; or

1413 (2) not a covered security, but is held by at least  
1414 2,000 stockholders.

1415 (c) In subsection (a), "stockholder" means a record  
1416 stockholder, a beneficial stockholder, and an unrestricted  
1417 voting trust beneficial owner, and in subsection (b),  
1418 "stockholder" means a record stockholder, a beneficial  
1419 stockholder, and a voting trust beneficial owner."

1420 "§10A-2A-16.02

1421 Subject to subsections (i) and (j) of this section:

1422 (a) A stockholder of a corporation is entitled to  
1423 inspect and copy, during regular business hours at the  
1424 corporation's principal office, any of the records of the  
1425 corporation described in Section 10A-2A-16.01(a), excluding  
1426 minutes of meetings of, and records of actions taken without a  
1427 meeting by, the corporation's board of directors and board  
1428 committees established under Section 10A-2A-8.25, if the



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1429 stockholder gives the corporation a signed written notice of  
1430 the stockholder's demand at least five business days before  
1431 the date on which the stockholder wishes to inspect and copy  
1432 and the demand provides the information required in subsection  
1433 (h) if the stockholder is not a record stockholder as defined  
1434 in clause (i) of the definition of record stockholder in  
1435 Section 10A-2A-1.40.

1436 (b) A stockholder of a corporation is entitled to  
1437 inspect and copy, during regular business hours at a  
1438 reasonable location specified by the corporation, any of the  
1439 following records of the corporation if the stockholder meets  
1440 the requirements of subsection (c) and gives the corporation a  
1441 signed written notice of the stockholder's demand at least  
1442 five business days before the date on which the stockholder  
1443 wishes to inspect and copy:

1444 (1) the financial statements of the corporation  
1445 maintained in accordance with Section 10A-2A-16.01(b);  
1446 provided, however, that the corporation may deliver or make  
1447 available the financial statements to the requesting  
1448 stockholder by posting them on the corporation's website or by  
1449 other generally recognized means. If financial statements have  
1450 been prepared for the corporation on the basis of generally  
1451 accepted accounting principles for that specified period, the  
1452 corporation shall deliver or make available those financial  
1453 statements to the requesting stockholder. If the annual  
1454 financial statements to be delivered or made available to the  
1455 requesting stockholder are audited or otherwise reported upon  
1456 by a public accountant, the report shall also be delivered or



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1457 made available to the requesting stockholder. The corporation  
1458 may also fulfill its responsibilities under this section by  
1459 delivering the specified financial statements, or otherwise  
1460 making them available, in any manner permitted by the  
1461 applicable rules and regulations of the United States  
1462 Securities and Exchange Commission;

1463 (2) the accounting records of the corporation  
1464 maintained in accordance with Section 10A-2A-16.01(c) that  
1465 permitted the preparation of the financial statements  
1466 maintained in accordance with Section 10A-2A-16.01(b);

1467 (3) excerpts from minutes of any meeting of, or records  
1468 of any actions taken without a meeting by, the corporation's  
1469 board of directors and board committees maintained in  
1470 accordance with Section 10A-2A-16.01(a); and

1471 (4) the record of stockholders maintained in accordance  
1472 with Section 10A-2A-16.01(d); provided however, the  
1473 corporation may withhold the record of stockholders maintained  
1474 in accordance with Section 10A-2A-16.01(d) if the demanding  
1475 stockholder of the corporation has, without the consent of the  
1476 corporation, within two years preceding the stockholder's  
1477 demand sold or offered for sale any list of the stockholders  
1478 of the corporation or has aided or abetted any person in  
1479 selling or offering to sell any list of the stockholders of  
1480 the corporation.

1481 (c) (1) A stockholder may inspect and copy the records  
1482 described in subsection (b) only if:

1483 ~~(1)~~ (i) the stockholder has delivered to the corporation  
1484 a signed written notice of the stockholder's demand at least



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1485 five business days before the date on which the stockholder  
1486 wishes to inspect and copy;

1487 (ii) the stockholder's demand provides the information  
1488 required in subsection (h) if the stockholder is not a record  
1489 stockholder as defined in clause (i) of the definition of  
1490 record stockholder in Section 10A-2A-1.40;

1491 (iii) the stockholder's demand is made in good faith  
1492 and for a proper purpose;

1493 ~~(2)~~ (iv) the stockholder's demand describes with  
1494 reasonable particularity the stockholder's purpose and the  
1495 records the stockholder desires to inspect; and

1496 ~~(3)~~ (v) the records are directly connected with related  
1497 to the stockholder's purpose.

1498 (2) For purposes of this subsection (c), a proper  
1499 purpose shall mean a purpose directly related to the  
1500 stockholder's interest as a stockholder; provided, however,  
1501 that a demand shall not be for a proper purpose if the  
1502 corporation reasonably determines that the demand is in  
1503 connection with:

1504 (i) an active or pending derivative proceeding in the  
1505 right of the corporation under Division D of Article 7 of this  
1506 chapter that is or is expected to be instituted or maintained  
1507 by the stockholder or the stockholder's affiliate; or

1508 (ii) an active or pending civil lawsuit to which the  
1509 corporation, or its affiliate, and the stockholder, or the  
1510 stockholder's affiliate, are, or are expected to be,  
1511 adversarial named parties.

1512 ~~(d)~~ ~~(1)~~ The corporation may redact portions of the



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1513 records to be inspected and copied under subsections (a) and  
1514 (b) to the extent the portions so redacted are not directly  
1515 related to the stockholder's purpose. The corporation may also  
1516 impose reasonable restrictions and conditions on access to and  
1517 use of the records to be inspected and copied under  
1518 subsections (a) and (b), including designating information  
1519 confidential and imposing nondisclosure and safeguarding, and  
1520 may further keep confidential from its stockholders and other  
1521 persons, for a period of time as the corporation deems  
1522 reasonable any information that the corporation reasonably  
1523 believes to be in the nature of a trade secret or other  
1524 information the disclosure of which the corporation in good  
1525 faith believes is not in the best interest of the corporation  
1526 or could damage the corporation or its business or affairs, or  
1527 that the corporation is required by law or by agreement with a  
1528 third party to keep confidential. In any dispute concerning  
1529 the reasonableness of a restriction under this subsection, the  
1530 corporation has the burden of proving reasonableness.

1531 ~~(2) If a stockholder is entitled to inspect and copy~~  
1532 ~~the records described in subsection (a) or having met the~~  
1533 ~~requirements of subsection (c) is entitled to inspect and copy~~  
1534 ~~the records described in subsection (b), and an officer of the~~  
1535 ~~corporation with the authority to bind the corporation who, or~~  
1536 ~~a corporation which, without reasonable cause, refuses to~~  
1537 ~~allow that stockholder to inspect and copy those records shall~~  
1538 ~~be liable to that stockholder for a penalty of an amount not~~  
1539 ~~to exceed 10 percent of the value of the shares of stock owned~~  
1540 ~~by that stockholder, in addition to any other damages or~~



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1541 ~~remedy afforded that stockholder by law. It shall be a defense~~  
1542 ~~to an action brought to collect the penalty specified in this~~  
1543 ~~section that the stockholder suing therefor has previously~~  
1544 ~~sold or offered for sale any list of stockholders of the~~  
1545 ~~corporation, or any other corporation or knowingly has aided~~  
1546 ~~or abetted any person in procuring any list of stockholders,~~  
1547 ~~or improperly has used any information secured through any~~  
1548 ~~prior inspection of those records of the corporation, or was~~  
1549 ~~not acting in good faith or for a proper purpose in making~~  
1550 ~~this demand.~~

1551 (e) For any meeting of stockholders for which the  
1552 record date for determining stockholders entitled to vote at  
1553 the meeting is different than the record date for notice of  
1554 the meeting, any person who becomes a stockholder subsequent  
1555 to the record date for notice of the meeting and is entitled  
1556 to vote at the meeting is entitled to obtain from the  
1557 corporation upon request the notice and any other information  
1558 provided by the corporation to stockholders in connection with  
1559 the meeting, unless the corporation has made that information  
1560 generally available to stockholders by posting it on its  
1561 website or by other generally recognized means. Failure of a  
1562 corporation to provide that information does not affect the  
1563 validity of action taken at the meeting.

1564 (f) The right of inspection granted by this section may  
1565 not be abolished or limited by a corporation's certificate of  
1566 incorporation or bylaws, but the right of inspection granted  
1567 by this section may be limited to the extent permitted under  
1568 Section 10A-2A-7.32.



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1569 (g) This section does not affect~~+~~  
1570 ~~(1)~~ the right of a stockholder to inspect records under  
1571 Section 10A-2A-7.20 or, if the stockholder is in litigation  
1572 with the corporation, to the same extent as any other  
1573 litigant~~; or.~~

1574 ~~(2) the power of a court, independently of this~~  
1575 ~~chapter, to compel the production of corporate records for~~  
1576 ~~examination and to impose reasonable restrictions as provided~~  
1577 ~~in Section 10A-2A-16.04(c), provided that, in the case of~~  
1578 ~~production of records described in subsection (b) of this~~  
1579 ~~section at the request of a stockholder, the stockholder has~~  
1580 ~~met the requirements of subsection (c).~~

1581 (h) For purposes of this section, "stockholder" means a  
1582 record stockholder, a beneficial stockholder, and an  
1583 unrestricted voting trust beneficial owner. If a stockholder  
1584 is not a record stockholder as defined in clause (i) of the  
1585 definition of record stockholder in Section 10A-2A-1.40, the  
1586 demand described in subsections (a) and (b) shall state the  
1587 person's status as a beneficial stockholder or an unrestricted  
1588 voting trust beneficial owner, be accompanied by documentary  
1589 evidence thereof, and state that such documentary evidence is  
1590 a true and correct copy of what it purports to be.

1591 (i) The right of a stockholder to inspect and copy the  
1592 records described in subsections (a) and (b) may be denied by  
1593 the corporation if the corporation determines that the  
1594 demanding stockholder has within two years preceding his, her,  
1595 or its demand improperly used any information secured through  
1596 any prior examination of the records of the corporation.



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1597           (j) The right to inspect and copy the records described  
1598 in subsections (a) and (b) shall not be available for any  
1599 stockholder of a corporation that has been subject to the  
1600 filing requirements pursuant to Section 13 or Section 15(d) of  
1601 the Securities Exchange Act of 1934, as amended, 15 U.S.C. §§  
1602 78m or 78o(d) for at least the preceding 12 months and the  
1603 corporation has filed with the Securities and Exchange  
1604 Commission all reports required to be filed thereunder;  
1605 provided, however, the corporation shall provide the  
1606 requesting stockholder with the information regarding the  
1607 stockholders of the corporation as may be required by the  
1608 Securities Exchange Act of 1934, as amended, and the rules and  
1609 regulations thereunder."

1610           "§10A-2A-16.03

1611           If a stockholder is entitled to inspection and copying  
1612 rights under Section 10A-2A-16.02:

1613           (a) A stockholder may appoint an agent or attorney to  
1614 exercise the stockholder's inspection and copying rights under  
1615 Section 10A-2A-16.02. In that case, the demand shall be  
1616 accompanied by a power of attorney or other writing which  
1617 authorizes the agent or attorney to so act on behalf of the  
1618 stockholder.

1619           (b) The corporation may, if reasonable, satisfy the  
1620 right of a stockholder to copy records under Section  
1621 10A-2A-16.02 by furnishing to the stockholder copies by  
1622 photocopy or other means chosen by the corporation, including  
1623 furnishing copies through an electronic transmission.

1624           (c) The corporation may comply at its expense with a



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1625 stockholder's demand to inspect the record of stockholders  
1626 under Section 10A-2A-16.02(b)(4) by providing the stockholder  
1627 with a list of stockholders that was compiled no earlier than  
1628 the date of the stockholder's demand.

1629 (d) The corporation may impose a reasonable charge to  
1630 cover the costs of providing copies of documents to the  
1631 stockholder, which may be based on an estimate of those  
1632 costs."

1633 "§10A-2A-16.04

1634 If a stockholder is entitled to inspection and copying  
1635 rights under Section 10A-2A-16.02:

1636 (a) If a corporation does not allow a stockholder who  
1637 complies with Section 10A-2A-16.02(a) to inspect and copy any  
1638 records required by that section to be available for  
1639 inspection, the designated court, and if none, the circuit  
1640 court for the county in which the corporation's principal  
1641 office is located in this state, and if none in this state,  
1642 the circuit court for the county in which the corporation's  
1643 most recent registered office is located may summarily order  
1644 inspection and copying of the records demanded at the  
1645 corporation's expense upon application of the stockholder.

1646 (b) If a corporation does not within a reasonable time  
1647 allow a stockholder who complies with Section 10A-2A-16.02(b)  
1648 to inspect and copy the records required by that section, the  
1649 stockholder who complies with Section 10A-2A-16.02(c) may  
1650 apply to the designated court, and if none, the circuit court  
1651 for the county in which the corporation's principal office is  
1652 located in this state, and if none in this state, the circuit



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1653 court for the county in which the corporation's most recent  
1654 registered office is located for an order to permit inspection  
1655 and copying of the records demanded. The court shall dispose  
1656 of an application under this subsection on an expedited basis.

1657 (c) If the court orders inspection and copying of the  
1658 records demanded under Section 10A-2A-16.02(b), it may impose  
1659 reasonable restrictions on their confidentiality, use, or  
1660 distribution by the demanding stockholder and it shall also  
1661 order the corporation to pay the stockholder's expenses  
1662 incurred to obtain the order unless the corporation  
1663 establishes that it refused inspection in good faith because  
1664 the corporation had:

1665 (1) a reasonable basis for doubt about the right of the  
1666 stockholder to inspect the records demanded; or

1667 (2) required reasonable restrictions on the  
1668 confidentiality, use, or distribution of the records demanded  
1669 to which the demanding stockholder had been unwilling to  
1670 agree. If the corporation has declined to deliver or make  
1671 available the records because the stockholder had been  
1672 unwilling to agree to restrictions proposed by the corporation  
1673 on the confidentiality, use, or distribution of the records,  
1674 the corporation shall have the burden of demonstrating that  
1675 the restrictions proposed by the corporation were reasonable."

1676 "§10A-3A-1.60

1677 (a) As used in this chapter, unless otherwise  
1678 specified or unless the context otherwise requires, "qualified  
1679 director" is a director who, at the time action is to be taken  
1680 under:



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1681 (1) Section 10A-3A-2.02(b)(6), is not a director (i) to  
1682 whom the limitation or elimination of the duty of an officer  
1683 to offer potential ~~business~~ corporate opportunities to the  
1684 nonprofit corporation would apply, or (ii) who has a material  
1685 relationship with any other person to whom the limitation or  
1686 elimination would apply;

1687 (2) Section 10A-3A-8.53 or Section 10A-3A-8.55, (i) is  
1688 not a party to the proceeding, (ii) is not a director as to  
1689 whom a transaction is a ~~director's~~ conflicting interest  
1690 transaction or who sought a disclaimer of the nonprofit  
1691 corporation's interest in a ~~business~~ corporate opportunity  
1692 under Section ~~10A-2A-8.60~~ 10A-3A-8.70, which transaction or  
1693 disclaimer is challenged, and (iii) does not have a material  
1694 relationship with a director described in either clause (i) or  
1695 clause (ii) of this subsection (a)(2); ~~or~~

1696 (3) ~~Section 10A-2A-8.60~~ Sections 10A-3A-8.61 or  
1697 10A-3A-8.62, is not a director (i) as to whom the ~~contract~~ act  
1698 or transaction is a ~~director's~~ conflicting interest  
1699 transaction, (ii) who has a material relationship with another  
1700 director as to whom the act or transaction is a ~~director's~~  
1701 conflicting interest transaction, or (iii) who ~~pursues or~~  
1702 ~~takes advantage of the business opportunity, directly, or~~  
1703 ~~indirectly through or on behalf of another person, or (iv) has~~  
1704 a material relationship with a controlling person that has a  
1705 material financial interest in the act or transaction; or

1706 (4) Section 10A-3A-8.70, is not a director who (i)  
1707 pursues or takes advantage of a corporate opportunity,  
1708 directly, or indirectly through or on behalf of another person



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1709 or (ii) has a material relationship with a director or officer  
1710 who pursues or takes advantage of ~~the business~~ a corporate  
1711 opportunity, directly, or indirectly through or on behalf of  
1712 another person.

1713 (b) ~~For purposes of this section:~~

1714 ~~(1) "MATERIAL RELATIONSHIP"~~ As used in this chapter,  
1715 unless otherwise specified or unless the context otherwise  
1716 requires, a "material relationship" means a familial,  
1717 financial, professional, employment, or other relationship  
1718 that would reasonably be expected to impair the objectivity of  
1719 the director's judgment when participating in the ~~action to be~~  
1720 ~~taken;~~ and negotiation, authorization, or approval of the act  
1721 or transaction at issue.

1722 ~~(2) "MATERIAL INTEREST" means an actual or potential~~  
1723 ~~benefit or detriment (other than one which would devolve on~~  
1724 ~~the nonprofit corporation or the members generally) that would~~  
1725 ~~reasonably be expected to impair the objectivity of the~~  
1726 ~~director's judgment when participating in the action to be~~  
1727 ~~taken.~~

1728 (c) The presence of one or more of the following  
1729 circumstances shall not automatically prevent a director from  
1730 being a qualified director:

1731 (1) designation, nomination, or vote in the election of  
1732 the director to the current board of directors by any director  
1733 who is not a qualified director with respect to the matter (or  
1734 by any person that has a ~~material relationship with that~~  
1735 director financial interest in an act or transaction), acting  
1736 alone or participating with others; or



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1737 (2) service as a director of another nonprofit  
1738 corporation of which a director who is not a qualified  
1739 director with respect to the matter (or any individual who has  
1740 a material relationship with that director), is or was also a  
1741 director."

1742 "§10A-3A-2.02

1743 Section 10A-1-3.05 shall not apply to this chapter.

1744 Instead:

1745 (a) The certificate of incorporation must set forth:

1746 (1) a name for the nonprofit corporation that satisfies  
1747 the requirements of Article 5 of Chapter 1;

1748 (2) the street and mailing address of the nonprofit  
1749 corporation's initial registered office, the county within  
1750 this state in which the street and mailing address is located,  
1751 and the name of the nonprofit corporation's initial registered  
1752 agent at that office as required by Article 5 of Chapter 1;

1753 (3) that the nonprofit corporation is incorporated  
1754 under this chapter;

1755 (4) the name and address of each incorporator; and

1756 (5) (i) if the nonprofit corporation will have members,  
1757 a statement to that effect; or

1758 (ii) if the nonprofit corporation will not have  
1759 members, a statement to that effect.

1760 (b) The certificate of incorporation may set forth:

1761 (1) the names and addresses of the individuals who are  
1762 to serve as the initial directors;

1763 (2) provisions not inconsistent with law regarding:

1764 (i) the purpose or purposes for which the nonprofit



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1765 corporation is organized;

1766 (ii) managing the activities and regulating the affairs  
1767 of the nonprofit corporation;

1768 (iii) defining, limiting, and regulating the powers of  
1769 the nonprofit corporation, its board of directors, and the  
1770 members;

1771 (iv) the characteristics, qualifications, rights,  
1772 limitations, and obligations attaching to each or any class of  
1773 members;

1774 (v) ~~subject to Section 10A-3A-4.20,~~ limiting a member's  
1775 right to inspect and copy the records of the nonprofit  
1776 corporation under Section 10A-3A-4.02 (b);

1777 (vi) the distribution of assets on dissolution;

1778 (vii) provisions for the election, appointment, or  
1779 designation of directors;

1780 (viii) provisions granting inspection rights to a  
1781 person or group of persons under Section 10A-3A-4.07; and

1782 (ix) provisions specifying a person or group of persons  
1783 whose approval is required under Sections 10A-3A-9.30,  
1784 10A-3A-10.04, 10A-3A-11.04, 10A-3A-12.08, or 10A-3A-13.08;

1785 (3) any provision that under this chapter is permitted  
1786 to be set forth in the certificate of incorporation or  
1787 required or permitted to be set forth in the bylaws;

1788 (4) a provision eliminating or limiting the liability  
1789 of a director or officer to a nonprofit corporation or its  
1790 members for money damages for any action taken, or any failure  
1791 to take any action, as a director or officer, except liability  
1792 for (i) the amount of a financial benefit received by a



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1793 director or officer to which the director or officer is not  
1794 entitled, (ii) an intentional infliction of harm on the  
1795 nonprofit corporation or its members, (iii) in the case of a  
1796 director, a violation of Section 10A-3A-8.32, (iv) an  
1797 intentional violation of criminal law, or (v) in the case of  
1798 an officer, any claim by or in the right of the nonprofit  
1799 corporation;

1800 (5) a provision permitting or making obligatory  
1801 indemnification of a director for liability as defined in  
1802 Section 10A-3A-8.50 to any person for any action taken, or any  
1803 failure to take any action, as a director, except liability  
1804 for (i) receipt of a financial benefit to which the director  
1805 is not entitled, (ii) an intentional infliction of harm on the  
1806 nonprofit corporation or its members, (iii) a violation of  
1807 Section 10A-3A-8.32, or (iv) an intentional violation of  
1808 criminal law;

1809 (6) a provision limiting or eliminating any duty of a  
1810 director or any other person to offer the nonprofit  
1811 corporation the right to have or participate in any, or one or  
1812 more classes or categories of, corporate opportunities, before  
1813 the pursuit or taking of the corporate opportunity by the  
1814 director or other person; provided that the application of  
1815 that provision to an officer or a related person of that  
1816 officer (i) also requires approval of that application by the  
1817 board of directors, subsequent to the effective date of the  
1818 provision, by action of the disinterested or qualified  
1819 directors taken in compliance with the same procedures as are  
1820 set forth in Section ~~10A-3A-8.60~~, 10A-3A-8.70; and (ii) may be



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1821 limited by the authorizing action of the board of directors;  
1822 and

1823 (7) provisions required if the nonprofit corporation is  
1824 to be exempt from taxation under federal, state, or local law.

1825 (c) The certificate of incorporation need not set forth  
1826 any of the corporate powers enumerated in Sections 10A-1-2.11,  
1827 10A-1-2.12, and 10A-1-2.13.

1828 (d) Provisions of the certificate of incorporation may  
1829 be made dependent upon facts objectively ascertainable outside  
1830 the certificate of incorporation in accordance with Section  
1831 10A-3A-1.04.

1832 (e) As used in this section, the term "control" or  
1833 "controlled" has the meaning specified in Section 10A-3A-8.60  
1834 and the term "related person" means:-

1835 (i) the individual's spouse;-

1836 (ii) a child, stepchild, grandchild, parent,  
1837 stepparent, grandparent, sibling, stepsibling, half sibling,  
1838 aunt, uncle, niece, or nephew (or spouse of any such person)  
1839 of the individual or of the individual's spouse;-

1840 (iii) a natural person living in the same home as the  
1841 individual; (iv) an entity (other than the nonprofit  
1842 corporation or an entity controlled by the nonprofit  
1843 corporation) controlled by the individual or any person  
1844 specified above in this definition;-

1845 (v) a domestic or foreign:-

1846 (A) business or nonprofit corporation (other than the  
1847 nonprofit corporation or an entity controlled by the nonprofit  
1848 corporation) of which the individual is a director,-



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1849 (B) unincorporated entity of which the individual is a  
1850 general partner or a member of the governing authority, or

1851 (C) individual, trust, or estate for whom or of which  
1852 the individual is a trustee, guardian, personal  
1853 representative, or like fiduciary; or

1854 (vi) a person that is, or an entity that is, controlled  
1855 by, an employer of the individual.

1856 (f) The certificate of incorporation may not contain  
1857 any provision that would impose liability on a member or a  
1858 director for the attorney's fees or expenses of the nonprofit  
1859 corporation or any other party in connection with an internal  
1860 corporate claim, as defined in Section ~~10A-3A-2.07(d)~~  
1861 10A-3A-2.07(c), or in connection with a claim that a member,  
1862 director, or a person or group of persons specified in the  
1863 certificate of incorporation, acting in that person's capacity  
1864 as a member, director, or person or group of persons specified  
1865 in the certificate of incorporation, has brought in an action,  
1866 suit, or proceeding described in Section 10A-3A-2.07(b).

1867 (g) The certificate of incorporation is a part of a  
1868 binding contract between the nonprofit corporation and (i) the  
1869 members in a membership nonprofit corporation; and (ii) the  
1870 directors in a nonmembership nonprofit corporation, subject to  
1871 the provisions of this chapter.

1872 (h) For purposes of subsection (b)(4) only, unless the  
1873 certificate of incorporation otherwise provides, "officer"  
1874 means an individual appointed or elected in accordance with  
1875 Section 10A-3A-8.40 as (i) president, chief executive officer,  
1876 chief operating officer, chief financial officer, chief legal



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1877 officer, secretary, controller, treasurer, or chief accounting  
1878 officer of the nonprofit corporation and (ii) any officer of  
1879 the nonprofit corporation designated by resolution of the  
1880 board of directors as an "officer" for purposes of subsection  
1881 (b) (4). The board of directors may from time to time by  
1882 resolution determine that one or more of the officers  
1883 designated in accordance with subsection (h) (ii) shall no  
1884 longer be an "officer" for purposes of subsection (b) (4), but  
1885 no such resolution shall be effective as to any such officer,  
1886 or any act or omission of any such officer, prior to the  
1887 adoption of such resolution.

1888 (i) No provision in the certificate of incorporation  
1889 pursuant to subsection (b) (4) shall eliminate or limit the  
1890 liability of a director or officer for any act or omission  
1891 occurring prior to the date when the provision in the  
1892 certificate of incorporation becomes effective. Any amendment,  
1893 repeal, or elimination of a provision in the certificate of  
1894 incorporation pursuant to subsection (b) (4) shall not affect  
1895 its application with respect to an act or omission by a  
1896 director or officer occurring before the amendment, repeal, or  
1897 elimination unless the provision in the certificate of  
1898 incorporation provides otherwise at the time of the act or  
1899 omission."

1900 "§10A-3A-2.07

1901 (a) The certificate of incorporation or the bylaws may  
1902 require, consistent with applicable jurisdictional  
1903 requirements, that any or all internal corporate claims shall  
1904 be brought exclusively in any specified court or courts of



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1905 this state and, if so specified, in any additional courts in  
1906 this state or in any other jurisdictions with which the  
1907 nonprofit corporation has a reasonable relationship and no  
1908 provision of the certificate of incorporation or the bylaws  
1909 may prohibit bringing those claims in the courts of this state  
1910 or require those claims to be determined by arbitration.

1911 ~~(b) A provision of the certificate of incorporation or~~  
1912 ~~bylaws adopted under subsection (a) shall not have the effect~~  
1913 ~~of conferring jurisdiction on any court or over any person or~~  
1914 ~~claim, and shall not apply if none of the courts specified by~~  
1915 ~~that provision has the requisite personal and subject matter~~  
1916 ~~jurisdiction. If the court or courts of this state specified~~  
1917 ~~in a provision adopted under subsection (a) do not have the~~  
1918 ~~requisite personal and subject matter jurisdiction and another~~  
1919 ~~court of this state does have jurisdiction, then the internal~~  
1920 ~~corporate claim may be brought in the other court of this~~  
1921 ~~state, notwithstanding that the other court of this state is~~  
1922 ~~not specified in that provision, and in any other court~~  
1923 ~~specified in that provision that has the requisite~~  
1924 ~~jurisdiction.~~

1925 ~~(c) No provision of the certificate of incorporation or~~  
1926 ~~the bylaws may prohibit bringing an internal corporate claim~~  
1927 ~~in the courts of this state or require those claims to be~~  
1928 ~~determined by arbitration.~~

1929 (b) With respect to claims that are not internal  
1930 corporate claims, the certificate of incorporation or bylaws  
1931 may require members, directors, officers, and the person or  
1932 group of persons specified in the certificate of



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1933 incorporation, when acting in that person's capacity as a  
1934 member, director, officer, or person or group of persons  
1935 specified in the certificate of incorporation, to bring any or  
1936 all such claims only in any specified court or courts of this  
1937 state and, if so specified, in any additional courts in this  
1938 state or in any other jurisdictions with which the nonprofit  
1939 corporation has a reasonable relationship, if those claims  
1940 relate to the business and affairs of the nonprofit  
1941 corporation, the conduct of its affairs, or the rights or  
1942 powers of the nonprofit corporation or its members, directors,  
1943 officers, or person or persons specified in the certificate of  
1944 incorporation; provided that such requirement is consistent  
1945 with applicable jurisdictional requirements and allows a  
1946 member, director, officer, and person or group of persons  
1947 specified in the certificate of incorporation to bring such  
1948 claims in at least one court in this state that has  
1949 jurisdiction over those claims.

1950       ~~(d)~~(c) "Internal corporate claim" means, for the  
1951 purposes of this section, ~~(i)~~ any claim, action, suit, or  
1952 proceeding (i) that is based upon a violation of a duty under  
1953 the laws of this state by a current or former director,  
1954 officer, or member in their capacities as such, ~~(ii)~~ any  
1955 action asserting a claim arising pursuant to any provision of  
1956 this chapter or the certificate of incorporation or bylaws,  
1957 that arises from, is pursuant to, or seeks to interpret,  
1958 apply, enforce, or determine the validity of, any provision of  
1959 this chapter, the certificate of incorporation, the bylaws, or  
1960 any agreement entered into pursuant to Section 10A-3A-7.30 to



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1961 which the nonprofit corporation is a party or a stated  
1962 beneficiary thereof, or (iii) ~~any action asserting a claim~~  
1963 that is governed by the internal affairs doctrine that is not  
1964 included in (i) through (ii) above.

1965 (d) This section does not prohibit any nonprofit  
1966 corporation from consenting, or require any nonprofit  
1967 corporation to consent, to any alternative forum in any  
1968 instance."

1969 "§10A-3A-4.02

1970 Subject to subsection (h):

1971 (a) A member of a membership nonprofit corporation is  
1972 entitled to inspect and copy, during regular business hours at  
1973 the membership nonprofit corporation's principal office, any  
1974 of the records of the membership nonprofit corporation  
1975 described in Section 10A-3A-4.01(a), excluding minutes of  
1976 meetings of, and records of actions taken without a meeting  
1977 by, the membership nonprofit corporation's board of directors  
1978 and board committees established under Section 10A-3A-8.25, if  
1979 the member gives the membership nonprofit corporation a signed  
1980 written notice of the member's demand at least five business  
1981 days before the date on which the member wishes to inspect and  
1982 copy.

1983 (b) A member of a membership nonprofit corporation is  
1984 entitled to inspect and copy, during regular business hours at  
1985 a reasonable location specified by the membership nonprofit  
1986 corporation, any of the following records of the membership  
1987 nonprofit corporation if the member meets the requirements of  
1988 subsection (c) and gives the membership nonprofit corporation



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1989 a signed written notice of the member's demand at least five  
1990 business days before the date on which the member wishes to  
1991 inspect and copy:

1992 (1) the financial statements of the membership  
1993 nonprofit corporation maintained in accordance with Section  
1994 10A-3A-4.01(b); provided, however, that the membership  
1995 nonprofit corporation may deliver or make available the  
1996 financial statements to the requesting member by posting them  
1997 on the membership nonprofit corporation's website or by other  
1998 generally recognized means. If financial statements have been  
1999 prepared for the membership nonprofit corporation on the basis  
2000 of generally accepted accounting principles for that specified  
2001 period, the membership nonprofit corporation shall deliver or  
2002 make available those financial statements to the requesting  
2003 member. If the annual financial statements to be delivered or  
2004 made available to the requesting member are audited or  
2005 otherwise reported upon by a public accountant, the report  
2006 shall also be delivered or made available to the requesting  
2007 member.

2008 (2) the accounting records of the membership nonprofit  
2009 corporation maintained in accordance with Section  
2010 10A-3A-4.01(c) that permitted the preparation of the financial  
2011 statements maintained in accordance with Section  
2012 10A-3A-4.01(b); and

2013 (3) excerpts from minutes of any meeting of, or records  
2014 of any actions taken without a meeting by, the board of  
2015 directors and board committees maintained in accordance with  
2016 Section 10A-3A-4.01(a); and



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2017 (4) subject to Section 10A-3A-4.06, the record of  
2018 members maintained in accordance with Section 10A-3A-4.01(d);  
2019 provided however, the membership nonprofit corporation may  
2020 withhold the record of members maintained in accordance with  
2021 Section 10A-3A-4.01(d) if the demanding member of the  
2022 membership nonprofit corporation has used, or has aided or  
2023 abetted any person to use, the record of members in violation  
2024 of Section 10A-3A-4.06.

2025 (c) (1) A member may inspect and copy the records  
2026 described in subsection (b) only if:

2027 ~~(1)~~ (i) the member has delivered to the membership  
2028 nonprofit corporation a signed written notice of the member's  
2029 demand at least five business days before the date on which  
2030 the member wishes to inspect and copy;

2031 (ii) the member's demand is made in good faith and for  
2032 a proper purpose;

2033 ~~(2)~~ (iii) the member's demand describes with reasonable  
2034 particularity the member's purpose and the records the member  
2035 desires to inspect; and

2036 ~~(3)~~ (iv) the records are directly ~~connected with~~ related  
2037 to the member's purpose.

2038 (2) For purposes of this subsection (c), a proper  
2039 purpose shall mean a purpose directly related to the member's  
2040 interest as a member; provided, however, that a demand shall  
2041 not be for a proper purpose if the membership nonprofit  
2042 corporation reasonably determines that the demand is in  
2043 connection with an active or pending civil lawsuit to which  
2044 the membership nonprofit corporation, or its affiliate, and



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2045 the member, or the member's affiliate, are, or are expected to  
2046 be, adversarial named parties.

2047 (d) The membership nonprofit corporation may redact  
2048 portions of the records to be inspected and copied under  
2049 subsections (a) and (b) to the extent the portions so redacted  
2050 are not directly related to the member's purpose. The  
2051 membership nonprofit corporation may also impose reasonable  
2052 restrictions and conditions on access to and use of the  
2053 records to be inspected and copied under subsections (a) and  
2054 (b), including designating information confidential and  
2055 imposing nondisclosure and safeguarding, and may further keep  
2056 confidential from its members and other persons, for a period  
2057 of time as the membership nonprofit corporation deems  
2058 reasonable any information that the membership nonprofit  
2059 corporation reasonably believes to be in the nature of a trade  
2060 secret or other information the disclosure of which the  
2061 membership nonprofit corporation in good faith believes is not  
2062 in the best interest of the membership nonprofit corporation  
2063 or could damage the membership nonprofit corporation or its  
2064 activities or affairs, or that the membership nonprofit  
2065 corporation is required by law or by agreement with a third  
2066 party to keep confidential. In any dispute concerning the  
2067 reasonableness of a restriction under this subsection, the  
2068 membership nonprofit corporation has the burden of proving  
2069 reasonableness.

2070 (e) For any meeting of members for which the record  
2071 date for determining members entitled to vote at the meeting  
2072 is different than the record date for notice of the meeting,



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2073 any person who becomes a member subsequent to the record date  
2074 for notice of the meeting and is entitled to vote at the  
2075 meeting is entitled to obtain from the membership nonprofit  
2076 corporation upon request the notice and any other information  
2077 provided by the membership nonprofit corporation to members in  
2078 connection with the meeting, unless the membership nonprofit  
2079 corporation has made that information generally available to  
2080 members by posting it on ~~its~~ the membership nonprofit  
2081 corporation's website or by other generally recognized means.  
2082 Failure of a membership nonprofit corporation to provide that  
2083 information does not affect the validity of action taken at  
2084 the meeting.

2085 (f) ~~Subject to Section 10A-3A-4.20, the~~ The right of  
2086 inspection granted by subsection (b) may be limited by a  
2087 membership nonprofit corporation's certificate of  
2088 incorporation.

2089 (g) This section does not affect:

2090 ~~(1)~~ the right of a member to inspect records under  
2091 Section 10A-3A-7.20 or, if the member is in litigation with  
2092 the membership nonprofit corporation, to the same extent as  
2093 any other litigant; ~~or.~~

2094 ~~(2) the power of a court, independently of this~~  
2095 ~~chapter, to compel the production of corporate records for~~  
2096 ~~examination and to impose reasonable restrictions as provided~~  
2097 ~~in Section 10A-3A-4.04(c), provided that, in the case of~~  
2098 ~~production of records described in subsection (b) of this~~  
2099 ~~section at the request of the member, the member has met the~~  
2100 ~~requirements of subsection (c) of this section.~~



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2101 (h) The right of a member to inspect and copy the  
2102 records described in subsections (a) and (b) may be denied by  
2103 the membership nonprofit corporation if the membership  
2104 nonprofit corporation determines that the demanding member has  
2105 within two years preceding his, her, or its demand improperly  
2106 used any information secured through any prior examination of  
2107 the records of the membership nonprofit corporation."

2108 "§10A-3A-4.03

2109 If a member is entitled to inspection and copying  
2110 rights under Section 10A-3A-4.02:

2111 (a) A member may appoint an agent or attorney to  
2112 exercise the member's inspection and copying rights under  
2113 Section 10A-3A-4.02. In that case, the demand shall be  
2114 accompanied by a power of attorney or other writing which  
2115 authorizes the agent or attorney to so act on behalf of the  
2116 member.

2117 (b) The membership nonprofit corporation may, if  
2118 reasonable, satisfy the right of a member to copy records  
2119 under Section 10A-3A-4.02 by furnishing to the member copies  
2120 by photocopy or other means as are chosen by the membership  
2121 nonprofit corporation, including furnishing copies through  
2122 electronic transmission.

2123 (c) The membership nonprofit corporation may comply at  
2124 its expense with a member's demand to inspect the record of  
2125 members under Section 10A-3A-4.02(b)(4) by providing the  
2126 member with a list of members that was compiled no earlier  
2127 than the date of the member's demand.

2128 (d) The membership nonprofit corporation may impose a



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2129 reasonable charge to cover the costs of providing copies of  
2130 documents to the member, which may be based on an estimate of  
2131 those ~~cost~~ costs."

2132 "§10A-3A-4.04

2133 If a member is entitled to inspection and copying  
2134 rights under Section 10A-3A-4.02:

2135 (a) If a membership nonprofit corporation does not  
2136 allow a member who complies with Section 10A-3A-4.02(a) to  
2137 inspect and copy any records required by that section to be  
2138 available for inspection, the designated court, and if none,  
2139 the circuit court for the county in which the membership  
2140 nonprofit corporation's principal office is located in this  
2141 state, and if none in this state, the circuit court for the  
2142 county in which the membership nonprofit corporation's most  
2143 recent registered office is located may summarily order  
2144 inspection and copying of the records demanded at the  
2145 membership nonprofit corporation's expense upon application of  
2146 the member.

2147 (b) If a membership nonprofit corporation does not  
2148 within a reasonable time allow a member who complies with  
2149 Section 10A-3A-4.02(b) to inspect and copy the records as  
2150 required by that section, the member who complies with Section  
2151 10A-3A-4.02(c) may apply to the designated court, and if none,  
2152 the circuit court for the county in which the membership  
2153 nonprofit corporation's principal office is located in this  
2154 state, and if none in this state, the circuit court for the  
2155 county in which the membership nonprofit corporation's most  
2156 recent registered office is located for an order to permit



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2157 inspection and copying of the records demanded. The court  
2158 shall dispose of an application under this subsection on an  
2159 expedited basis.

2160 (c) If the court orders inspection and copying of the  
2161 records demanded under Section 10A-3A-4.02(b), it may impose  
2162 reasonable restrictions on their confidentiality, use, or  
2163 distribution by the demanding member and ~~it~~ the court shall  
2164 also order the membership nonprofit corporation to pay the  
2165 member's expenses incurred to obtain the order unless the  
2166 membership nonprofit corporation establishes that it refused  
2167 inspection in good faith because the membership nonprofit  
2168 corporation had:

2169 (1) a reasonable basis for doubt about the right of the  
2170 member to inspect the records demanded; or

2171 (2) required reasonable restrictions on the  
2172 confidentiality, use, or distribution of the records demanded  
2173 to which the demanding member had been unwilling to agree. If  
2174 the membership nonprofit corporation has declined to deliver  
2175 or make available the records because the member had been  
2176 unwilling to agree to restrictions proposed by the membership  
2177 nonprofit corporation on the confidentiality, use, or  
2178 distribution of the records, the membership nonprofit  
2179 corporation shall have the burden of demonstrating that the  
2180 restrictions proposed by the membership nonprofit corporation  
2181 were reasonable."

2182 "§10A-3A-8.26

2183 (a) Whenever this chapter expressly requires the board  
2184 of directors to approve or take other action with respect to



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2185 any agreement, instrument, plan, or document, such agreement,  
2186 instrument, plan, or document may be approved by the board of  
2187 directors in final form or in substantially final form.  
2188 Substantially final form means that all of the material terms  
2189 are set forth in the agreement, instrument, plan, or document,  
2190 or are determinable through other information or materials  
2191 presented to or known by the board of directors, or are  
2192 determinable by a combination thereof, except as otherwise  
2193 described in subsection (c).

2194 (b) If the board of directors shall have acted to  
2195 approve or take other action with respect to an agreement,  
2196 instrument, plan, or document that is expressly required by  
2197 this chapter to be approved by the board of directors, the  
2198 board of directors may, but is not required to, at any time  
2199 after providing the approval or taking such other action adopt  
2200 a resolution ratifying the agreement, instrument, plan, or  
2201 document, and the ratification shall be deemed to be effective  
2202 as of the time of the original approval or other action by the  
2203 board of directors and to satisfy any requirement under this  
2204 chapter that the board of directors approve or take other  
2205 action with respect to the agreement, instrument, plan, or  
2206 document in a specific manner or sequence.

2207 (c) At the time of the approval of any agreement,  
2208 instrument, plan, or document by the board of directors, the  
2209 agreement, instrument, plan, or document is not required to  
2210 contain or have attached thereto any disclosure letter,  
2211 disclosure schedules, or similar documents or instruments  
2212 contemplated by the agreement, instrument, plan, or document



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2213 that modify, supplement, qualify, or make exceptions to  
2214 representations, warranties, covenants, or conditions  
2215 contained in the agreement, instrument, plan, or document."

2216 "§10A-3A-8.60

2217 ~~(a) No contract or transaction between a nonprofit~~  
2218 ~~corporation and one or more of its directors or officers, or~~  
2219 ~~between a nonprofit corporation and any other corporation,~~  
2220 ~~partnership, association, or other entity in which one or more~~  
2221 ~~of its directors or officers, are directors or officers, or~~  
2222 ~~have a financial interest, shall be void or voidable solely~~  
2223 ~~for this reason, or solely because the director or officer is~~  
2224 ~~present at or participates in the meeting of the board of~~  
2225 ~~directors or committee which authorizes the contract or~~  
2226 ~~transaction, or solely because the director's or officer's~~  
2227 ~~votes are counted for that purpose, if:~~

2228 ~~(1) The material facts as to the director's or~~  
2229 ~~officer's relationship or interest and as to the contract or~~  
2230 ~~transaction are disclosed or are known to the board of~~  
2231 ~~directors or the committee of a nonmembership nonprofit~~  
2232 ~~corporation, and the board or committee in good faith~~  
2233 ~~authorizes the contract or transaction by the affirmative~~  
2234 ~~votes of a majority of the qualified directors, even though~~  
2235 ~~the qualified directors be less than a quorum; or~~

2236 ~~(2) The material facts as to the director's or~~  
2237 ~~officer's relationship or interest and as to the contract or~~  
2238 ~~transaction are disclosed or are known to (i) the members in a~~  
2239 ~~membership nonprofit corporation entitled to vote thereon or~~  
2240 ~~(ii) the qualified directors of the board of directors in a~~



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2241 ~~membership nonprofit corporation, and the contract or~~  
2242 ~~transaction is specifically approved in good faith by vote of~~  
2243 ~~the members in a membership nonprofit corporation or the~~  
2244 ~~qualified directors of the board of directors in a membership~~  
2245 ~~nonprofit corporation; or~~

2246 ~~(3) The contract or transaction is fair as to the~~  
2247 ~~nonprofit corporation as of the time it is authorized,~~  
2248 ~~approved or ratified, by the board of directors, a committee,~~  
2249 ~~or the members.~~

2250 ~~(b) Common or interested directors may be counted in~~  
2251 ~~determining the presence of a quorum at a meeting of the board~~  
2252 ~~of directors or of a committee which authorizes the contract~~  
2253 ~~or transaction.~~

2254 As used in this chapter, unless otherwise specified or  
2255 unless the context otherwise requires, the following terms  
2256 shall mean:

2257 (a) CONFLICTING INTEREST TRANSACTION means an act or  
2258 transaction effected or proposed to be effected by the  
2259 nonprofit corporation (or by an entity controlled by the  
2260 nonprofit corporation):

2261 (1) to which, at the relevant time, a director or  
2262 officer is a party;

2263 (2) respecting which, at the relevant time, the  
2264 director or officer had knowledge and a material financial  
2265 interest known to the director or officer; or

2266 (3) respecting which, at the relevant time, the  
2267 director or officer knew that a related person was a party or  
2268 had a material financial interest.



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2269           (b) CONTROL or CONTROLLED BY means (i) having the  
2270 power, directly or indirectly, to elect or remove a majority  
2271 of the members of the board of directors or other governing  
2272 authority of an entity, whether through the ownership of  
2273 voting shares or interests, by contract, or otherwise or (ii)  
2274 being subject to a majority of the risk of loss from the  
2275 entity's activities or entitled to receive a majority of the  
2276 entity's residual returns.

2277           (c) CONTROL GROUP means two or more persons that, by  
2278 virtue of an agreement, arrangement, or understanding between  
2279 or among those persons, constitute a controlling person.

2280           (d) CONTROLLING PERSON means any person that, together  
2281 with (i) any related person; and (ii) any person that  
2282 controls, is controlled by, or is under common control with  
2283 that person:

2284           (1) With respect to a membership nonprofit corporation:

2285           (i) owns or controls a majority in voting power of the  
2286 outstanding membership interests entitled to vote generally in  
2287 the election of directors or in the election of directors who  
2288 have a majority in voting power of the votes of all directors  
2289 on the board of directors;

2290           (ii) has the right, by contract or otherwise, to cause  
2291 the election of nominees who are selected at the discretion of  
2292 that person and who constitute either a majority of the  
2293 members of the board of directors of a membership nonprofit  
2294 corporation or directors entitled to cast a majority in voting  
2295 power of the votes of all directors on the board of directors  
2296 of a membership nonprofit corporation;



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2297 (iii) has the power functionally equivalent to that of  
2298 a member that owns or controls a majority in voting power of  
2299 the outstanding membership interests entitled to vote  
2300 generally in the election of directors by virtue of ownership  
2301 or control of at least one-third in voting power of the  
2302 outstanding membership interests entitled to vote generally in  
2303 the election of directors or in the election of directors who  
2304 have a majority in voting power of the votes of all directors  
2305 on the board of directors and the power to exercise managerial  
2306 authority over the business and affairs of the membership  
2307 nonprofit corporation; or

2308 (iv) either (A) has the power and authority to exercise  
2309 and perform certain corporate powers, activities and affairs  
2310 pursuant to a provision in the certificate of incorporation  
2311 permitted by Section 10A-3A-8.01 or (B) has the right to  
2312 approve certain matters as permitted by Section  
2313 10A-3A-2.02(b) (2) (ix).

2314 (2) With respect to a nonmembership nonprofit  
2315 corporation:

2316 (i) has the right, by contract or otherwise, to cause  
2317 the election of nominees who are selected at the discretion of  
2318 that person and who constitute either a majority of the  
2319 members of the board of directors of a nonmembership nonprofit  
2320 corporation or directors entitled to cast a majority in voting  
2321 power of the votes of all directors on the board of directors  
2322 of a nonmembership nonprofit corporation; or

2323 (ii) either (A) has the power and authority to exercise  
2324 and perform certain corporate powers, activities, and affairs



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2325 pursuant to a provision in the certificate of incorporation  
2326 permitted by Section 10A-3A-8.01 or (B) has the right to  
2327 approve certain matters as permitted by Section  
2328 10A-3A-2.02(b) (2) (ix).

2329 (e) CONTROLLING PERSON TRANSACTION means an act or  
2330 transaction between the nonprofit corporation or one or more  
2331 of its subsidiaries, on the one hand, and a controlling person  
2332 or a control group, on the other hand, or an act or  
2333 transaction from which a controlling person or a control group  
2334 receives a material financial interest.

2335 (f) DISINTERESTED PERSON means any member or other  
2336 person that does not have a material financial interest in the  
2337 act or transaction at issue or, if applicable, a material  
2338 relationship with the controlling person or other member of  
2339 the control group, or any other person that has a material  
2340 financial interest in the act or transaction.

2341 (g) FAIR TO THE NONPROFIT CORPORATION means the act or  
2342 transaction at issue, as a whole, is beneficial to the  
2343 nonprofit corporation or its members, if any, in their  
2344 capacity as members, given the consideration paid to or  
2345 received by the nonprofit corporation or its members or other  
2346 benefit conferred on the nonprofit corporation or its members,  
2347 if any, and taking into appropriate account whether the act or  
2348 transaction meets both of the following: (i) it is fair in  
2349 terms of the director's, officer's, controlling person's, or  
2350 control group's dealings with the nonprofit corporation, as  
2351 the case may be; and (ii) it is comparable to what might have  
2352 been obtainable in an arm's length transaction available to



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2353 the nonprofit corporation.

2354 (h) MATERIAL FINANCIAL INTEREST means a nonspeculative  
2355 financial interest in an act or transaction, other than one  
2356 that would devolve on the nonprofit corporation or the members  
2357 generally, that would reasonably be expected to impair the  
2358 objectivity of the director's or officer's judgment when  
2359 participating in the negotiation, authorization, or approval  
2360 of the act or transaction at issue.

2361 (i) MATERIAL RELATIONSHIP has the meaning set forth in  
2362 Section 10A-3A-1.60.

2363 (j) QUALIFIED DIRECTOR has the meaning set forth in  
2364 Section 10A-3A-1.60.

2365 (k) RELATED PERSON has the meaning set forth in Section  
2366 10A-3A-2.02.

2367 (l) RELEVANT TIME means (i) the time at which  
2368 directors' action respecting the act or transaction is taken  
2369 in compliance with Sections 10A-3A-8.61(c) or 10A-3A-8.62(c)  
2370 or (ii) if the act or transaction is not brought before the  
2371 board of directors (or a committee) for action under Section  
2372 10A-3A-8.61(d), at the time the nonprofit corporation (or an  
2373 entity controlled by the nonprofit corporation) becomes  
2374 legally obligated to consummate the act or transaction.

2375 (m) REQUIRED DISCLOSURE means disclosure of (i) the  
2376 existence and nature of the director's or officer's  
2377 conflicting interest and (ii) all facts known to the director  
2378 or officer respecting the subject matter of the act or  
2379 transaction that a qualified director would reasonably believe  
2380 to be material in deciding whether to proceed with the act or



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2381 transaction."

2382 "§10A-5A-4.09

2383 ~~Notwithstanding Sections 10A-1-3.32 and 10A-1-3.33:~~

2384 (a) Each limited liability company shall maintain the  
2385 following records:

2386 (1) A current list of the full name and last known  
2387 business or residence street address of each member.

2388 (2) A copy of the filed certificate of formation and  
2389 all amendments thereto, together with executed copies of any  
2390 powers of attorney pursuant to which any documents have been  
2391 executed.

2392 (3) Copies of the limited liability company's federal,  
2393 state, and local income tax returns and reports, if any, for  
2394 the three most recent years.

2395 (4) Copies of the then effective limited liability  
2396 company agreement including any amendments thereto.

2397 (5) Copies of any financial statements of the limited  
2398 liability company for the three most recent years.

2399 (b) Subject to subsection (g), a member may demand (i)  
2400 on 10 days' notice made in a writing received by the limited  
2401 liability company, the records set forth in subsection (a)  
2402 above, and (ii) on 30 days' notice made in writing received by  
2403 the limited liability company, any other books and records of  
2404 the limited liability company, wherever situated, ~~are subject~~  
2405 to inspection and copying to inspect and copy for any proper  
2406 purpose by ~~any~~ the demanding member ~~or the member's agent or~~  
2407 attorney during regular business hours. ~~Subject to subsection~~  
2408 (g), any person with the authority to bind the limited



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2409 ~~liability company under Section 10A-5A-3.02 and any person~~  
2410 ~~with the authority to direct and oversee the activities and~~  
2411 ~~affairs of a limited liability company who, without reasonable~~  
2412 ~~cause, refuses to allow any member or the member's agent or~~  
2413 ~~attorney to inspect or copy any books or records of the~~  
2414 ~~limited liability company for any proper purpose shall be~~  
2415 ~~personally liable to the member for a penalty in an amount not~~  
2416 ~~to exceed 10 percent of the fair market value of the~~  
2417 ~~transferable interest of the member, in addition to any other~~  
2418 ~~damages or remedy.~~

2419 (c) Subject to subsection (g), on 30 days' notice made  
2420 in a writing received by a limited liability company, a  
2421 dissociated member may inspect and copy, during regular  
2422 business hours, at a reasonable location specified by the  
2423 limited liability company, any record maintained by the  
2424 limited liability company, to the extent the information  
2425 pertains to the period during which the person was a member,  
2426 was material to the person's rights and duties under the  
2427 limited liability company agreement or this chapter when the  
2428 person was a member, and the person seeks the information in  
2429 good faith and for a proper purpose.

2430 (d) A limited liability company may charge a person  
2431 that makes a demand under this section the reasonable costs of  
2432 labor and material for copying.

2433 (e) A member or dissociated member may exercise rights  
2434 under this section through an agent or attorney, or in the  
2435 case of an individual under legal disability, a legal  
2436 representative. Any restriction or condition imposed by the



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2437 limited liability company agreement or under subsection (g)  
2438 applies both to the agent, attorney, or legal representative  
2439 and to the member or dissociated member. If the demanding  
2440 person's agent or attorney is to inspect and copy the books  
2441 and records of the limited liability company, the demand shall  
2442 be accompanied by a power of attorney or other writing which  
2443 authorizes the attorney or other agent to so act on behalf of  
2444 the demanding person.

2445 (f) The rights under this section do not extend to a  
2446 transferee.

2447 (g) (1) In addition to any restriction or condition  
2448 stated in its limited liability company agreement, a limited  
2449 liability company, as a matter within the ordinary course of  
2450 its activities and affairs, may:

2451 ~~a.~~ (A) impose reasonable restrictions and conditions on  
2452 access to and use of information to be furnished under this  
2453 section, including designating information confidential and  
2454 imposing nondisclosure and safeguarding obligations on the  
2455 recipient; ~~and~~

2456 ~~b.~~ (B) keep confidential from the members and any other  
2457 persons, for such period of time as the limited liability  
2458 company deems reasonable, any information that the limited  
2459 liability company reasonably believes to be in the nature of  
2460 trade secrets or other information the disclosure of which the  
2461 limited liability company in good faith believes is not in the  
2462 best interest of the limited liability company or could damage  
2463 the limited liability company or its activities and affairs,  
2464 or that the limited liability company is required by law or by



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2465 agreement with a third party to keep confidential~~;~~ and

2466 (C) redact portions of the records to be inspected and  
2467 copied to the extent the portions so redacted are not directly  
2468 related to the member's or other person's purpose.

2469 (2) In any dispute concerning the reasonableness of a  
2470 restriction under this subsection, the limited liability  
2471 company has the burden of proving reasonableness.

2472 (h) The rights under this section may be denied by the  
2473 limited liability company if the limited liability company  
2474 determines that the demanding person has within two years  
2475 preceding his, her, or its demand improperly used any  
2476 information secured through any prior examination of the  
2477 records of the limited liability company.

2478 (i) For purposes of this section, a proper purpose  
2479 shall mean a purpose directly related to the member or  
2480 dissociated member's interest as a member or dissociated  
2481 member, as the case may be; provided, however, that a demand  
2482 shall not be for a proper purpose if the limited liability  
2483 company reasonably determines that the demand is in connection  
2484 with:

2485 (1) an active or pending derivative proceeding in the  
2486 right of the limited liability company under Article 9 of this  
2487 chapter that is or is expected to be instituted or maintained  
2488 by the member or the member's affiliate; or

2489 (2) an active or pending civil lawsuit to which the  
2490 limited liability company, or its affiliate, and the member or  
2491 dissociated member, or the affiliate thereof, are, or are  
2492 expected to be, adversarial named parties.



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2493           (j) If a limited liability company does not within a  
2494 reasonable time allow a person who complies with the  
2495 requirements of this section to inspect and copy the records  
2496 required by this section, the person who complies with this  
2497 section may apply to the designated court, and if none, the  
2498 circuit court for the county in which the limited liability  
2499 company's principal office is located in this state, and if  
2500 none in this state, the circuit court for the county in which  
2501 the limited liability company's most recent registered office  
2502 is located for an order to permit inspection and copying of  
2503 the records demanded. The court shall dispose of an  
2504 application under this subsection on an expedited basis. If  
2505 the court orders inspection and copying of the records  
2506 demanded under this section, it may impose reasonable  
2507 restrictions on their confidentiality, use, or distribution by  
2508 the demanding person and the court shall also order the  
2509 limited liability company to pay the demanding person's  
2510 expenses incurred to obtain the order unless the limited  
2511 liability company establishes that the limited liability  
2512 company refused inspection in good faith because the limited  
2513 liability company had:

2514           (1) a reasonable basis for doubt about the right of the  
2515 demanding person to inspect the records demanded; or

2516           (2) required reasonable restrictions on the  
2517 confidentiality, use, or distribution of the records demanded  
2518 to which the demanding person had been unwilling to agree. If  
2519 the limited liability company has declined to deliver or make  
2520 available the records because the demanding person had been



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2521 unwilling to agree to restrictions proposed by the limited  
2522 liability company on the confidentiality, use, or distribution  
2523 of the records, the limited liability company shall have the  
2524 burden of demonstrating that the restrictions proposed by the  
2525 limited liability company were reasonable."

2526 "§10A-8A-4.10

2527 (a) Subject to subsection (f), a partner, without  
2528 having any particular purpose for seeking the information, may  
2529 inspect and copy during regular hours at a reasonable location  
2530 specified by the partnership, required information and any  
2531 other records maintained by the partnership regarding the  
2532 partnership's business or not for profit activity and  
2533 financial condition.

2534 (b) Subject to subsection (f), each partner and the  
2535 partnership shall furnish to a partner:

2536 (1) without demand, any information concerning the  
2537 partnership's business or not for profit activity reasonably  
2538 required for the proper exercise of the partner's rights and  
2539 duties under the partnership agreement or this chapter; and

2540 (2) on demand, any other information concerning the  
2541 partnership's business or not for profit activity, except to  
2542 the extent the demand or the information demanded is  
2543 unreasonable or otherwise improper under the circumstances.

2544 (c) Subject to subsections (e) and (f), on 10 days'  
2545 demand made in a writing received by the partnership, a person  
2546 dissociated as a partner may have access to the information  
2547 and records described in subsection (a) at the location  
2548 specified in subsection (a) if:



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2549 (1) the information or writing pertains to the period  
2550 during which the person was a partner;

2551 (2) the person seeks the information or record in good  
2552 faith; and

2553 (3) it is determined that:

2554 (i) the person seeks the information for a purpose  
2555 reasonably related to the person's interest as a partner;

2556 (ii) the person's demand describes with reasonable  
2557 particularity the information sought and the purpose for  
2558 seeking the information; and

2559 (iii) the information sought is directly connected to  
2560 the person's purpose.

2561 (d) Within 10 days after receiving a demand pursuant to  
2562 subsection (c), the partnership in a writing shall inform the  
2563 person that made the demand:

2564 (1) what information the partnership will provide in  
2565 response to the demand;

2566 (2) when and where the partnership will provide the  
2567 information;

2568 (3) if the partnership declines to provide any demanded  
2569 information, the partnership's reasons for declining; and

2570 (4) what, if any, restrictions will be imposed pursuant  
2571 to the partnership agreement or subsection (f).

2572 (e) If a partner dies, Section 10A-8A-5.04 applies.

2573 (f) In addition to any restriction or condition stated  
2574 in its partnership agreement, a partnership, as to a matter  
2575 within the ordinary course of its business or not for profit  
2576 activity, may:



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2577 (1) impose reasonable restrictions and conditions on  
2578 access to and use of information to be furnished under this  
2579 section, including designating information confidential and  
2580 imposing nondisclosure and safeguarding obligations on the  
2581 recipient;~~and~~

2582 (2) keep confidential from the partners and any other  
2583 person, for such period of time as the partnership deems  
2584 reasonable, any information that the partnership reasonably  
2585 believes to be in the nature of trade secrets or other  
2586 information the disclosure of which the partnership in good  
2587 faith believes is not in the best interest of the partnership  
2588 or could damage the partnership or its business or not for  
2589 profit activity, or that the partnership is required by law or  
2590 by agreement with a third party to keep confidential~~;~~and

2591 (3) redact portions of the records to be inspected and  
2592 copied to the extent the portions so redacted are not directly  
2593 related to the partner's or other person's purpose.

2594 In any dispute concerning the reasonableness of a  
2595 restriction under this subsection, the partnership has the  
2596 burden of proving reasonableness.

2597 (g) A partnership may charge a person that makes a  
2598 demand under this section reasonable costs of copying, limited  
2599 to the costs of labor and material.

2600 (h) A partner or person dissociated as a partner may  
2601 exercise the rights under this section through an attorney or  
2602 other agent. Any restriction imposed under subsection (f) or  
2603 by the partnership agreement applies both to the attorney or  
2604 other agent and to the partner or person dissociated as a



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2605 partner. If the demanding person's agent or attorney is to  
2606 inspect and copy the books and records of the partnership, the  
2607 demand shall be accompanied by a power of attorney or other  
2608 writing which authorizes the agent or attorney to so act on  
2609 behalf of the demanding person.

2610 (i) The rights under this section do not extend to a  
2611 person as transferee, but the rights under subsection (c) of a  
2612 person dissociated as a partner may be exercised by the legal  
2613 representative of an individual who dissociated as a partner  
2614 under Section 10A-8A-6.01(6).

2615 ~~(j) Any partner who, without reasonable cause, refuses~~  
2616 ~~to allow any partner or person dissociated as a partner, or~~  
2617 ~~his or her agent or attorney to inspect or copy any records of~~  
2618 ~~the partnership to which such partner or person dissociated as~~  
2619 ~~a partner is entitled under this section, shall be personally~~  
2620 ~~liable to the partner or person dissociated as a partner for a~~  
2621 ~~penalty in an amount not to exceed 10 percent of the fair~~  
2622 ~~market value of the transferable interest of the partner or~~  
2623 ~~person dissociated as a partner, in addition to any other~~  
2624 ~~damages or remedy.~~

2625 (j) The rights under this section may be denied by the  
2626 partnership if the partnership determines that the demanding  
2627 person has within two years preceding his, her, or its demand  
2628 improperly used any information secured through any prior  
2629 examination of the records of the partnership.

2630 (k) If a partnership does not within a reasonable time  
2631 allow a person who complies with the requirements of this  
2632 section to inspect and copy the records required by this



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2633 section, the person who complies with this section may apply  
2634 to the designated court, and if none, the circuit court for  
2635 the county in which the partnership's principal office is  
2636 located in this state, and if none in this state, the circuit  
2637 court for the county in which the partnership's most recent  
2638 registered office is located for an order to permit inspection  
2639 and copying of the records demanded. The court shall dispose  
2640 of an application under this subsection on an expedited basis.  
2641 If the court orders inspection and copying of the records  
2642 demanded under this section, it may impose reasonable  
2643 restrictions on their confidentiality, use, or distribution by  
2644 the demanding person and the court shall also order the  
2645 partnership to pay the demanding person's expenses incurred to  
2646 obtain the order unless the partnership establishes that the  
2647 partnership refused inspection in good faith because the  
2648 partnership had:

2649 (1) a reasonable basis for doubt about the right of the  
2650 demanding person to inspect the records demanded; or

2651 (2) required reasonable restrictions on the  
2652 confidentiality, use, or distribution of the records demanded  
2653 to which the demanding person had been unwilling to agree. If  
2654 the partnership has declined to deliver or make available the  
2655 records because the demanding person had been unwilling to  
2656 agree to restrictions proposed by the partnership on the  
2657 confidentiality, use, or distribution of the records, the  
2658 partnership shall have the burden of demonstrating that the  
2659 restrictions proposed by the partnership were reasonable."

2660 "§10A-8A-5.02



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2661 (a) A transfer, in whole or in part, of a partner's  
2662 transferable interest:

2663 (1) is permissible;

2664 (2) does not by itself cause the partner's  
2665 dissociation;

2666 (3) does not by itself cause a dissolution and winding  
2667 up of the partnership; and

2668 (4) subject to Section ~~10A-8A-5.05~~ 10A-8A-5.04, does  
2669 not entitle the transferee to:

2670 (A) participate in the management or conduct of the  
2671 partnership's business or not for profit activity; or

2672 (B) except as otherwise provided in subsection (d),  
2673 have access to required information, records, or other  
2674 information concerning the partnership's business or not for  
2675 profit activity.

2676 (b) A transferee has a right:

2677 (1) to receive, in accordance with the transfer,  
2678 distributions to which the transferor would otherwise be  
2679 entitled;

2680 (2) to receive upon the dissolution and winding up of  
2681 the partnership, in accordance with the transfer, the net  
2682 amount otherwise distributable to the transferor; and

2683 (3) to seek under Section 10A-8A-8.01(5) a judicial  
2684 determination that it is equitable to wind up the partnership  
2685 business or not for profit activity.

2686 (c) A transferable interest may be evidenced by a  
2687 certificate of transferable interest issued by the  
2688 partnership. A partnership agreement may provide for the



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2689 transfer of the transferable interest represented by the  
2690 certificate and make other provisions with respect to the  
2691 certificate. No certificate of transferable interest shall be  
2692 issued in bearer form.

2693 (d) In a dissolution and winding up, a transferee is  
2694 entitled to an account of the partnership's transactions only  
2695 from the date of dissolution.

2696 (e) Except as otherwise provided in Sections  
2697 10A-8A-6.01(4), 10A-8A-6.01(11), and 10A-8A-6.01(12), when a  
2698 partner transfers a transferable interest, the transferor  
2699 retains the rights of a partner other than the right to  
2700 distributions transferred and retains all duties and  
2701 obligations of a partner.

2702 (f) A partnership need not give effect to a  
2703 transferee's rights under this section until the partnership  
2704 has notice of the transfer.

2705 (g) When a partner transfers a transferable interest to  
2706 a person that is admitted as a partner with respect to the  
2707 transferred interest, the transferee is liable for the  
2708 partner's obligations under Sections 10A-8A-4.04 and  
2709 10A-8A-4.09 to the extent that the obligations are known to  
2710 the transferee when the transferee voluntarily accepts  
2711 admission as a partner.

2712 (h) Notwithstanding anything in Title 43 to the  
2713 contrary, a partnership agreement may provide that a  
2714 transferable interest may or shall be transferred in whole or  
2715 in part, with or without consideration, to one or more persons  
2716 at the death of the holder of the transferable interest. Any



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2717 transferable interest transferred pursuant to this subsection  
2718 shall be subject to any outstanding charging order under  
2719 Section 10A-8A-5.03. This subsection does not limit the rights  
2720 of creditors of holders of transferable interests against  
2721 transferees under this chapter or other laws of this state."

2722 "§10A-9A-3.04

2723 ~~Notwithstanding the provisions of Sections 10A-1-3.32~~  
2724 ~~and 10A-1-3.33:~~

2725 (a) Subject to subsection (g), on 10 days' demand, made  
2726 in a writing received by the limited partnership, a limited  
2727 partner may, for a proper purpose, inspect and copy ~~required~~  
2728 the information required to be maintained under Section  
2729 10A-9A-1.11 during regular business hours and at a reasonable  
2730 location specified by the limited partnership. ~~The limited~~  
2731 ~~partner need not have any particular purpose for seeking the~~  
2732 ~~information.~~

2733 (b) Subject to subsection (g), during regular business  
2734 hours and at a reasonable location specified by the limited  
2735 partnership, a limited partner may, for a proper purpose,  
2736 obtain from the limited partnership and inspect and copy true  
2737 and full information regarding the state of the activities and  
2738 affairs and financial condition of the limited partnership and  
2739 other information regarding the activities and affairs of the  
2740 limited partnership ~~as is just and reasonable~~ if:

2741 (1) the limited partner seeks the information for a  
2742 proper purpose ~~reasonably~~ directly related to the partner's  
2743 interest as a limited partner;

2744 (2) the limited partner makes a demand in a writing



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2745 received by the limited partnership, describing with  
2746 reasonable particularity the information sought and the stated  
2747 purpose for seeking the information; and

2748 (3) the information sought is directly connected to the  
2749 limited partner's stated purpose.

2750 (c) Within 10 days after receiving a demand pursuant to  
2751 subsection (b), the limited partnership in a writing shall  
2752 inform the limited partner that made the demand:

2753 (1) what information the limited partnership will  
2754 provide in response to the demand;

2755 (2) when and where the limited partnership will provide  
2756 the information;

2757 (3) if the limited partnership declines to provide any  
2758 demanded information, the limited partnership's reasons for  
2759 declining; and

2760 (4) what, if any, restrictions will be imposed pursuant  
2761 to the partnership agreement or subsection (g).

2762 (d) Subject to subsections (f) and (g), a person  
2763 dissociated as a limited partner may, for a proper purpose,  
2764 inspect and copy ~~required~~ the information required to be  
2765 maintained under Section 10A-9A-1.11 during regular business  
2766 hours and at a reasonable location specified by the limited  
2767 partnership if:

2768 (1) the required information pertains to the period  
2769 during which the person was a limited partner;

2770 (2) the person seeks the required information in good  
2771 faith and for a proper purpose; and

2772 (3) the person meets the requirements of subsection



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2773 (b) .

2774 (e) The limited partnership shall respond to a demand  
2775 made pursuant to subsection (d) in the same manner as provided  
2776 in subsection (c) .

2777 (f) If a limited partner dies, Section 10A-9A-7.04  
2778 applies.

2779 (g) In addition to any restriction or condition stated  
2780 in its limited partnership agreement, a limited partnership,  
2781 as a matter within the ordinary course of its activities and  
2782 affairs, may:

2783 (1) impose reasonable restrictions and conditions on  
2784 access to and use of information to be furnished under this  
2785 section, including designating information confidential and  
2786 imposing nondisclosure and safeguarding obligations on the  
2787 recipient;~~and~~

2788 (2) keep confidential from the partners and any other  
2789 person, for such period of time as the limited partnership  
2790 deems reasonable, any information that the limited partnership  
2791 reasonably believes to be in the nature of trade secrets or  
2792 other information that disclosure of which the limited  
2793 partnership in good faith believes is not in the best interest  
2794 of the limited partnership or could damage the limited  
2795 partnership or its activities and affairs, or that the limited  
2796 partnership is required by law or by agreement with a third  
2797 party to keep confidential~~;~~ and

2798 (3) redact portions of the records to be inspected and  
2799 copied to the extent the portions so redacted are not directly  
2800 related to the limited partner's or other person's purpose.



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2801           In a dispute concerning the reasonableness of a  
2802 restriction under this subsection, the limited partnership has  
2803 the burden of proving reasonableness. ~~Any general partner, or~~  
2804 ~~any agent, officer or employee of a general partner or any~~  
2805 ~~agent of a limited partnership, who, without reasonable cause,~~  
2806 ~~refuses to allow any limited partner or the limited partner's~~  
2807 ~~agent or attorney to inspect or copy any information of the~~  
2808 ~~limited partnership to which such limited partner is entitled~~  
2809 ~~under subsection (a) or (b) shall be personally liable to the~~  
2810 ~~limited partner for a penalty in an amount not to exceed ten~~  
2811 ~~percent of the fair market value of the limited partnership~~  
2812 ~~interest of the limited partner in addition to any other~~  
2813 ~~damages or remedy.~~

2814           (h) A limited partnership may charge a person that  
2815 makes a demand under this section the reasonable costs of  
2816 copying, limited to the costs of labor and material.

2817           (i) A limited partner or person dissociated as a  
2818 limited partner may exercise the rights under this section  
2819 through an attorney or other agent. Any restriction imposed  
2820 under subsection (g) or by the partnership agreement applies  
2821 both to the attorney or other agent and to the limited partner  
2822 or person dissociated as a limited partner. If the demanding  
2823 person's agent or attorney is to inspect and copy the books  
2824 and records of the limited partnership, the demand shall be  
2825 accompanied by a power of attorney or other writing which  
2826 authorizes the agent or attorney to so act on behalf of the  
2827 demanding person.

2828           (j) The rights stated in this section do not extend to



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2829 a person as transferee, but may be exercised by the legal  
2830 representative of an individual under legal disability who is  
2831 a limited partner or person dissociated as a limited partner.

2832 (k) The rights under this section may be denied by the  
2833 limited partnership if the limited partnership determines that  
2834 the demanding person has within two years preceding his, her,  
2835 or its demand improperly used any information secured through  
2836 any prior examination of the records of the limited  
2837 partnership.

2838 (l) For purposes of this section, a proper purpose  
2839 shall mean a purpose directly related to the limited partner  
2840 or dissociated limited partner's interest as a limited partner  
2841 or dissociated limited partner, as the case may be; provided,  
2842 however, that a demand shall not be for a proper purpose if  
2843 the limited partnership reasonably determines that the demand  
2844 is in connection with:

2845 (1) an active or pending derivative proceeding in the  
2846 right of the limited partnership under Article 9 of this  
2847 chapter that is or is expected to be instituted or maintained  
2848 by the limited partner or the limited partner's affiliate; or

2849 (2) an active or pending civil lawsuit to which the  
2850 limited partnership, or its affiliate, and the limited partner  
2851 or dissociated limited partner, or the affiliate thereof, are,  
2852 or are expected to be, adversarial named parties.

2853 (m) If a limited partnership does not within a  
2854 reasonable time allow a person who complies with the  
2855 requirements of this section to inspect and copy the records  
2856 required by this section, the person who complies with this



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2857 section may apply to the designated court, and if none, the  
2858 circuit court for the county in which the limited  
2859 partnership's principal office is located in this state, and  
2860 if none in this state, the circuit court for the county in  
2861 which the limited partnership's most recent registered office  
2862 is located for an order to permit inspection and copying of  
2863 the records demanded. The court shall dispose of an  
2864 application under this subsection on an expedited basis. If  
2865 the court orders inspection and copying of the records  
2866 demanded under this section, it may impose reasonable  
2867 restrictions on their confidentiality, use, or distribution by  
2868 the demanding person and the court shall also order the  
2869 limited partnership to pay the demanding person's expenses  
2870 incurred to obtain the order unless the limited partnership  
2871 establishes that the limited partnership refused inspection in  
2872 good faith because the limited partnership had:

2873 (1) a reasonable basis for doubt about the right of the  
2874 demanding person to inspect the records demanded; or

2875 (2) required reasonable restrictions on the  
2876 confidentiality, use, or distribution of the records demanded  
2877 to which the demanding person had been unwilling to agree. If  
2878 the limited partnership has declined to deliver or make  
2879 available the records because the demanding person had been  
2880 unwilling to agree to restrictions proposed by the limited  
2881 partnership on the confidentiality, use, or distribution of  
2882 the records, the limited partnership shall have the burden of  
2883 demonstrating that the restrictions proposed by the limited  
2884 partnership were reasonable."



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2885           "§10A-17-1.02

2886           In this chapter:

2887           (1) ~~"Member"~~ MEMBER means a person who, under the rules  
2888 or practices of a nonprofit association, may participate in  
2889 the selection of persons authorized to manage the affairs of  
2890 the nonprofit association or in the development of policy of  
2891 the nonprofit association.

2892           (2) ~~"Nonprofit association"~~ NONPROFIT ASSOCIATION means  
2893 an unincorporated organization consisting of two or more  
2894 members joined by mutual consent as an association for a  
2895 stated common, nonprofit purpose, but does not include a  
2896 limited liability company, general partnership, or limited  
2897 partnership. In addition, joint tenancy, tenancy in common, or  
2898 tenancy by the entirety does not by itself establish a  
2899 nonprofit association, even if the co-owners share use of the  
2900 property for a nonprofit purpose.

2901           (3) ~~"Nonprofit purpose"~~ NONPROFIT PURPOSE shall be any  
2902 purpose for which a nonprofit corporation could be organized  
2903 under the Alabama Nonprofit Corporation ~~Act~~ Law, as amended,  
2904 and where no part of income or profit is distributable to its  
2905 members, directors, and officers."

2906           Section 2. Division G, consisting of Section  
2907 10A-2A-8.70, is added to Article 8 of Chapter 2A of Title 10A  
2908 of the Code of Alabama 1975, to read as follows:

2909           Division G Corporate Opportunities.

2910           §10A-2A-8.70 Corporate opportunities.

2911           (a) If a director or officer pursues or takes advantage  
2912 of a corporate opportunity directly, or indirectly through or



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2913 on behalf of another person, that action may not be the  
2914 subject of equitable relief, or give rise to an award of  
2915 damages or other sanctions against the director, officer, or  
2916 other person, in a proceeding by or in the right of the  
2917 corporation on the ground that the corporate opportunity  
2918 should have first been offered to the corporation, if (1)  
2919 before the director, officer, or other person becomes legally  
2920 obligated respecting the corporate opportunity the director or  
2921 officer brings it to the attention of the corporation and  
2922 either: (i) action by qualified directors disclaiming the  
2923 corporation's interest in the corporate opportunity is taken  
2924 in compliance with the same procedures as are set forth in  
2925 Section 10A-2A-8.60(c) or (ii) stockholders' action  
2926 disclaiming the corporation's interest in the corporate  
2927 opportunity is taken in compliance with the procedures set  
2928 forth in Section 10A-2A-8.60(d), in either case as if the  
2929 decision being made concerned a conflicting interest  
2930 transaction, except that, rather than making "required  
2931 disclosure" as defined in Section 10A-2A-8.60(a), the director  
2932 or officer shall have made prior disclosure to those acting on  
2933 behalf of the corporation of all material facts concerning the  
2934 corporate opportunity known to the director or officer; or (2)  
2935 the duty to offer the corporation the corporate opportunity  
2936 has been limited or eliminated pursuant to a provision of the  
2937 certificate of incorporation adopted (and where required, made  
2938 effective by action of qualified directors) in accordance with  
2939 Section 10A-2A-2.02(b)(6).

2940 (b) In any proceeding seeking equitable relief or other



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2941 remedies based upon an alleged improper pursuit or taking  
2942 advantage of a corporate opportunity by a director or officer  
2943 directly, or indirectly through or on behalf of another  
2944 person, the fact that the director or officer did not employ  
2945 the procedure described in subsection (a)(1)(i) or (ii) before  
2946 pursuing or taking advantage of the corporate opportunity  
2947 shall not create an implication that the corporate opportunity  
2948 should have been first presented to the corporation or alter  
2949 the burden of proof otherwise applicable to establish that the  
2950 director or officer breached a duty to the corporation in the  
2951 circumstances.

2952 Section 3. Sections 10A-3A-6.14, 10A-3A-8.61, and  
2953 10A-3A-8.62 are added to the Code of Alabama 1975, to read as  
2954 follows:

2955 §10A-3A-6.14 No derivative actions in nonprofit  
2956 corporations.

2957 A person shall not have any right to commence or  
2958 maintain a derivative action in the right of a nonprofit  
2959 corporation to enforce a right of the nonprofit corporation.

2960 §10A-3A-8.61 Acts or transactions involving a  
2961 membership nonprofit corporation.

2962 (a) An act or transaction effected or proposed to be  
2963 effected by a membership nonprofit corporation (or by an  
2964 entity controlled by the membership nonprofit corporation) may  
2965 not be the subject of equitable relief, or give rise to an  
2966 award of damages or other sanctions against a director or  
2967 officer of the membership nonprofit corporation, on the  
2968 grounds that the director or officer has an interest



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2969 respecting the act or transaction, if the act or transaction  
2970 is not a conflicting interest transaction.

2971 (b) A conflicting interest transaction may not be the  
2972 subject of equitable relief, or give rise to an award of  
2973 damages or other sanctions against a director or officer of  
2974 the membership nonprofit corporation, in a proceeding by a  
2975 member, on the grounds that the director or officer has an  
2976 interest respecting the conflicting interest transaction, if:

2977 (1) the directors' action respecting the act or  
2978 transaction was taken in compliance with subsection (c) at any  
2979 time; or

2980 (2) the members' action respecting the act or  
2981 transaction was taken in compliance with subsection (d) at any  
2982 time; or

2983 (3) the act or transaction is at the relevant time fair  
2984 to the membership nonprofit corporation.

2985 (c) (1) Directors' action respecting a conflicting  
2986 interest transaction is effective for purposes of subsection  
2987 (b) (1) if the conflicting interest transaction has been  
2988 authorized, after required disclosure by the conflicted  
2989 director or officer of information not already known by the  
2990 qualified directors, or after modified disclosure in  
2991 compliance with subsection (c) (2), by (A) the affirmative vote  
2992 of a majority (but no fewer than two) of the qualified  
2993 directors who voted on the conflicting interest transaction or  
2994 (B) the affirmative vote of a majority of the members of a  
2995 board committee that is composed of only qualified directors  
2996 (but no fewer than two). Directors' action respecting a



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2997 conflicting interest transaction is effective even though the  
2998 conflicted director or officer is present at or participates  
2999 in the meeting of the board or committee which authorizes the  
3000 act or transaction or was involved in the initiation,  
3001 negotiation, or approval of the act or transaction.

3002 (2) Notwithstanding subsection (c)(1), when a  
3003 transaction is a conflicting interest transaction only because  
3004 a related person described in clause (v) or (vi) of the  
3005 definition of "related person" in Section 10A-3A-2.02 is a  
3006 party to or has a material financial interest in the  
3007 conflicting interest transaction, the conflicted director or  
3008 officer is not obligated to make required disclosure to the  
3009 extent that the director or officer reasonably believes that  
3010 doing so would violate a duty imposed under law, a legally  
3011 enforceable obligation of confidentiality, or a professional  
3012 ethics rule, provided that the conflicted director or officer  
3013 discloses to the qualified directors voting on the conflicting  
3014 interest transaction:

3015 (i) all information required to be disclosed that is  
3016 not so violative;

3017 (ii) the existence and nature of the director's or  
3018 officer's conflicting interest; and

3019 (iii) the nature of the conflicted director's or  
3020 officer's duty not to disclose the confidential information.

3021 (3) A majority (but no fewer than two) of all the  
3022 qualified directors on the board of directors, or on the board  
3023 committee, constitutes a quorum for purposes of action that  
3024 complies with this section.



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3025 (4) Where directors' action under this subsection (c)  
3026 does not satisfy a quorum or voting requirement applicable to  
3027 the authorization of the conflicting interest transaction by  
3028 reason of the certificate of incorporation, bylaws, or another  
3029 provision of this chapter, independent action to satisfy those  
3030 authorization requirements shall be taken by the board of  
3031 directors or a board committee, in which action directors who  
3032 are not qualified directors may participate.

3033 (5) Where directors' action under this subsection (c)  
3034 is taken without a meeting in accordance with Section  
3035 10A-3A-8.21, the action is effective even though a conflicted  
3036 director signs a consent to that action.

3037 (d) (1) Members' action respecting a conflicting  
3038 interest transaction is effective for purposes of subsection  
3039 (b) (2) if a majority of the votes cast by the holders of all  
3040 qualified membership interests are in favor of the conflicting  
3041 interest transaction after (i) notice to members describing  
3042 the action to be taken respecting the conflicting interest  
3043 transaction; (ii) provision to the membership nonprofit  
3044 corporation of the information referred to in subsection  
3045 (d) (2); and (iii) communication to the members entitled to  
3046 vote on the conflicting interest transaction of the  
3047 information that is the subject of required disclosure, to the  
3048 extent the information is not already known by them. In the  
3049 case of members' action at a meeting, the members entitled to  
3050 vote shall be determined as of the record date for notice of  
3051 the meeting.

3052 (2) A director or officer who has a conflicting



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3053 interest respecting the conflicting interest transaction  
3054 shall, before the members' vote, inform the secretary or other  
3055 officer or agent of the membership nonprofit corporation  
3056 authorized to tabulate votes, in writing, of the number of  
3057 membership interests that the director or officer knows are  
3058 not qualified membership interests under subsection (d)(3),  
3059 and the identity of the holders of those membership interests.

3060 (3) For purposes of this section: (i) "holder" means  
3061 and "held by" refers to membership interests held by a member;  
3062 and (ii) "qualified membership interests" means all membership  
3063 interests entitled to be voted with respect to the conflicting  
3064 interest transaction except for membership interests that the  
3065 secretary or other officer or agent of the membership  
3066 nonprofit corporation authorized to tabulate votes either  
3067 knows, or under subsection (d)(2) is notified, are held by (A)  
3068 a director or officer who has a conflicting interest  
3069 respecting the conflicting interest transaction or (B) a  
3070 related person of the director or officer (excluding a person  
3071 described in clause (vi) of the definition of "related person"  
3072 in Section 10A-3A-2.02).

3073 (4) A majority of the votes entitled to be cast by the  
3074 holders of all qualified membership interests constitutes a  
3075 quorum for purposes of compliance with this section. Members'  
3076 action that otherwise complies with this section is not  
3077 affected by the presence of holders, or by the voting, of  
3078 membership interests that are not qualified membership  
3079 interests.

3080 (5) If a members' vote does not comply with subsection



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3081 (d) (1) solely because of a director's or officer's failure to  
3082 comply with subsection (d) (2), and if the director or officer  
3083 establishes that the failure was not intended to influence and  
3084 did not in fact determine the outcome of the vote, then the  
3085 action by the members respecting the conflicting interest  
3086 transaction shall be given effect.

3087 (6) Where members' action under this section does not  
3088 satisfy a quorum or voting requirement applicable to the  
3089 authorization of the conflicting interest transaction by  
3090 reason of the certificate of incorporation, the bylaws, or  
3091 another provision of this chapter, independent action to  
3092 satisfy those authorization requirements shall be taken by the  
3093 members, in which action membership interests that are not  
3094 qualified membership interests may participate.

3095 (7) Where members' action under this subsection (d) is  
3096 taken without a meeting in accordance with Section  
3097 10A-3A-7.04, the action is effective even though members  
3098 holding membership interests that are not qualified membership  
3099 interests sign a consent to that action.

3100 (e) Notwithstanding subsections (c) and (d), if a  
3101 controlling person has the power and authority to approve the  
3102 conflicting interest transaction pursuant to a provision in  
3103 the certificate of incorporation permitted by Section  
3104 10A-3A-8.01, the conflicting interest transaction shall be  
3105 approved by that controlling person.

3106 (f) An act or transaction effected or proposed to be  
3107 effected by a membership nonprofit corporation (or by an  
3108 entity controlled by the membership nonprofit corporation) may



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3109 not be the subject of equitable relief, or give rise to an  
3110 award of damages or other sanctions against a controlling  
3111 person or a member of a control group of the membership  
3112 nonprofit corporation, on the grounds that the controlling  
3113 person or member of a control group has an interest respecting  
3114 the act or transaction, if the act or transaction is not a  
3115 controlling person transaction.

3116 (g) A controlling person transaction may not be the  
3117 subject of equitable relief, or give rise to an award of  
3118 damages or other sanctions, against a director or officer of  
3119 the membership nonprofit corporation or any controlling person  
3120 or member of a control group, by reason of a claim based on a  
3121 breach of duty by a director, officer, controlling person, or  
3122 member of a control group, if:

3123 (1) the controlling person transaction is approved in  
3124 accordance with the provisions of the certificate of  
3125 incorporation, bylaws, rules, regulations, policies, or  
3126 agreements among the members and the membership nonprofit  
3127 corporation; or

3128 (2) the controlling person transaction is at the  
3129 relevant time fair to the membership nonprofit corporation.

3130 §10A-3A-8.62 Acts or transactions involving a  
3131 nonmembership nonprofit corporation.

3132 (a) An act or transaction effected or proposed to be  
3133 effected by a nonmembership nonprofit corporation (or by an  
3134 entity controlled by the nonmembership nonprofit corporation)  
3135 may not be the subject of equitable relief, or give rise to an  
3136 award of damages or other sanctions against a director or



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3137 officer of the nonmembership nonprofit corporation, on the  
3138 grounds that the director or officer has an interest  
3139 respecting the act or transaction, if the act or transaction  
3140 is not a conflicting interest transaction.

3141 (b) A conflicting interest transaction may not be the  
3142 subject of equitable relief, or give rise to an award of  
3143 damages or other sanctions against a director or officer of  
3144 the nonmembership nonprofit corporation, on the grounds that  
3145 the director or officer has an interest respecting the  
3146 conflicting interest transaction, if:

3147 (1) the directors' action respecting the act or  
3148 transaction was taken in compliance with subsection (c) at any  
3149 time; or

3150 (2) the act or transaction is at the relevant time fair  
3151 to the nonmembership nonprofit corporation.

3152 (c) (1) Directors' action respecting a conflicting  
3153 interest transaction is effective for purposes of subsection  
3154 (b) (1) if the conflicting interest transaction has been  
3155 authorized, after required disclosure by the conflicted  
3156 director or officer of information not already known by the  
3157 qualified directors, or after modified disclosure in  
3158 compliance with subsection (c) (2), by (A) the affirmative vote  
3159 of a majority (but no fewer than two) of the qualified  
3160 directors who voted on the conflicting interest transaction or  
3161 (B) the affirmative vote of a majority of the members of a  
3162 board committee that is composed of only qualified directors  
3163 (but no fewer than two). Directors' action respecting a  
3164 conflicting interest transaction is effective even though the



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3165 conflicted director or officer is present at or participates  
3166 in the meeting of the board or committee which authorizes the  
3167 act or transaction or was involved in the initiation,  
3168 negotiation, or approval of the act or transaction.

3169 (2) Notwithstanding subsection (c)(1), when a  
3170 transaction is a conflicting interest transaction only because  
3171 a related person described in clause (v) or (vi) of the  
3172 definition of "related person" in Section 10A-3A-2.02 is a  
3173 party to or has a material financial interest in the  
3174 conflicting interest transaction, the conflicted director or  
3175 officer is not obligated to make required disclosure to the  
3176 extent that the director or officer reasonably believes that  
3177 doing so would violate a duty imposed under law, a legally  
3178 enforceable obligation of confidentiality, or a professional  
3179 ethics rule, provided that the conflicted director or officer  
3180 discloses to the qualified directors voting on the conflicting  
3181 interest transaction:

3182 (i) all information required to be disclosed that is  
3183 not so violative;

3184 (ii) the existence and nature of the director's or  
3185 officer's conflicting interest; and

3186 (iii) the nature of the conflicted director's or  
3187 officer's duty not to disclose the confidential information.

3188 (3) A majority (but no fewer than two) of all the  
3189 qualified directors on the board of directors, or on the board  
3190 committee, constitutes a quorum for purposes of action that  
3191 complies with this section.

3192 (4) Where directors' action under this subsection (c)



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3193 does not satisfy a quorum or voting requirement applicable to  
3194 the authorization of the conflicting interest transaction by  
3195 reason of the certificate of incorporation, the bylaws, or  
3196 another provision of this chapter, independent action to  
3197 satisfy those authorization requirements shall be taken by the  
3198 board of directors or a board committee, in which action  
3199 directors who are not qualified directors may participate.

3200 (5) Where directors' action under this subsection (c)  
3201 is taken without a meeting in accordance with Section  
3202 10A-3A-8.21, the action is effective even though a conflicted  
3203 director signs a consent to that action.

3204 (d) Notwithstanding subsection (c), if a controlling  
3205 person has the power and authority to approve the conflicting  
3206 interest transaction pursuant to a provision in the  
3207 certificate of incorporation permitted by Section 10A-3A-8.01,  
3208 the conflicting interest transaction shall be approved by that  
3209 controlling person.

3210 (e) An act or transaction effected or proposed to be  
3211 effected by a nonmembership nonprofit corporation (or by an  
3212 entity controlled by the nonmembership nonprofit corporation)  
3213 may not be the subject of equitable relief, or give rise to an  
3214 award of damages or other sanctions against a controlling  
3215 person or a member of a control group of the nonmembership  
3216 nonprofit corporation, on the grounds that the controlling  
3217 person or member of a control group has an interest respecting  
3218 the act or transaction, if the act or transaction is not a  
3219 controlling person transaction.

3220 (f) A controlling person transaction may not be the



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3221 subject of equitable relief, or give rise to an award of  
3222 damages or other sanctions, against a director or officer of  
3223 the nonmembership nonprofit corporation or any controlling  
3224 person or member of a control group, by reason of a claim  
3225 based on a breach of duty by a director, officer, controlling  
3226 person, or member of a control group, if:

3227 (1) the controlling person transaction is approved in  
3228 accordance with the provisions of the certificate of  
3229 incorporation, bylaws, rules, regulations, or policies of the  
3230 nonmembership nonprofit corporation; or

3231 (2) the controlling person transaction is at the  
3232 relevant time fair to the nonmembership nonprofit corporation.

3233 Section 4. Division G, consisting of Section  
3234 10A-3A-8.70, is added to Article 8 of Chapter 3A of Title 10A  
3235 of the Code of Alabama 1975, to read as follows:

3236 Division G Corporate Opportunities.

3237 §10A-3A-8.70 Corporate opportunities.

3238 (a) If a director or officer pursues or takes advantage  
3239 of a corporate opportunity directly, or indirectly through or  
3240 on behalf of another person, that action may not be the  
3241 subject of equitable relief, or give rise to an award of  
3242 damages or other sanctions against the director, officer, or  
3243 other person on the grounds that the corporate opportunity  
3244 should have first been offered to the nonprofit corporation,  
3245 if (1) before the director, officer, or other person becomes  
3246 legally obligated respecting the corporate opportunity the  
3247 director or officer brings it to the attention of the  
3248 nonprofit corporation and either: (i) action by qualified



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3249 directors disclaiming the nonprofit corporation's interest in  
3250 the corporate opportunity is taken in compliance with the same  
3251 procedures as are set forth in Section 10A-3A-8.61(c) or  
3252 Section 10A-3A-8.62(c); (ii) with respect to a membership  
3253 nonprofit corporation, members' action disclaiming the  
3254 membership nonprofit corporation's interest in the corporate  
3255 opportunity is taken in compliance with the procedures set  
3256 forth in Section 10A-3A-8.61(d); or (iii) if a controlling  
3257 person has the power and authority to disclaim the nonprofit  
3258 corporation's interest in the corporate opportunity pursuant  
3259 to a provision in the certificate of incorporation permitted  
3260 by Section 10A-3A-8.01, action disclaiming the nonprofit  
3261 corporation's interest in the corporate opportunity is taken  
3262 by that controlling person, in each case as if the decision  
3263 being made concerned a conflicting interest transaction,  
3264 except that, rather than making "required disclosure" as  
3265 defined in Section 10A-3A-8.60, the director or officer shall  
3266 have made prior disclosure to those acting on behalf of the  
3267 nonprofit corporation of all material facts concerning the  
3268 corporate opportunity known to the director or officer; or (2)  
3269 the duty to offer the nonprofit corporation the corporate  
3270 opportunity has been limited or eliminated pursuant to a  
3271 provision of the certificate of incorporation adopted (and  
3272 where required, made effective by action of qualified  
3273 directors) in accordance with Section 10A-3A-2.02(b)(6).

3274 (b) In any proceeding seeking equitable relief or other  
3275 remedies based upon an alleged improper pursuit or taking  
3276 advantage of a corporate opportunity by a director or officer



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3277 directly, or indirectly through or on behalf of another  
3278 person, the fact that the director or officer did not employ  
3279 the procedure described in subsection (a)(1) before pursuing  
3280 or taking advantage of the corporate opportunity shall not  
3281 create an implication that the corporate opportunity should  
3282 have been first presented to the nonprofit corporation or  
3283 alter the burden of proof otherwise applicable to establish  
3284 that the director or officer breached a duty to the nonprofit  
3285 corporation in the circumstances.

3286           Section 5. Sections 10A-2A-16.10 and 10A-3A-4.20, Code  
3287 of Alabama 1975, providing for financial statements for  
3288 stockholders and members respectively, are repealed. The  
3289 provisions of Section 10A-2A-16.10 are incorporated into  
3290 Sections 10A-2A-16.02, 10A-2A-16.03, and 10A-2A-16.04, Code of  
3291 Alabama 1975, and the provisions of Section 10A-3A-4.20 are  
3292 incorporated into Sections 10A-3A-4.02, 10A-3A-4.03, and  
3293 10A-3A-4.04, Code of Alabama 1975.

3294           Section 6. No amendment made by this act shall apply to  
3295 or affect any civil action or proceeding completed or pending  
3296 on or before August 1, 2026.

3297           Section 7. This act shall become effective on August 1,  
3298 2026.



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House of Representatives

Read for the first time and referred .....15-Jan-26  
to the House of Representatives  
committee on Judiciary  
  
Read for the second time and placed .....19-Mar-26  
on the calendar:  
1 amendment  
  
Read for the third time and passed .....31-Mar-26  
as amended  
Yeas 103  
Nays 0  
Abstains 0

John Treadwell  
Clerk