

HB267 ENGROSSED



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



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A BILL
TO BE ENTITLED
AN ACT

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



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29 1975.

30 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

33 CHAPTER 3A. ALABAMA NONPROFIT CORPORATION LAW.

34 ARTICLE 1. GENERAL PROVISIONS.

35 DIVISION A. SHORT TITLE AND SAVINGS PROVISIONS.

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

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

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

42 (1) All nonprofit corporations organized hereunder; and

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44 under any act hereby or heretofore repealed, for a purpose or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

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

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



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

59 §10A-3A-1.02. Chapter definitions.

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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141 government.

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

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

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

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

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

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

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

166 (22) INTEREST means:

167 (a) a share;

168 (b) a membership or membership interests; or



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

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

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

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

182 (24) KNOWLEDGE is determined as follows:

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

184 (1) has actual knowledge of it; or

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

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

188 (1) knows of it;

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

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

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

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



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

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

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

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

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

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

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

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

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

222 (25) MEANS denotes an exhaustive definition.

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



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

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

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

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

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

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

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

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



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

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

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

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

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



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

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

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

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

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

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



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

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

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

323 §10A-3A-1.03. Notice.

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

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



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

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

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

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



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

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

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



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393 communication by electronic transmission; and

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

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

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

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

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

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

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

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

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

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



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421 received, or:

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

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

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

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

434 (6) if oral, when communicated.

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

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



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

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

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

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

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

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



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

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

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

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



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505 chapter, the instrument shall be executed as follows:

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

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

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

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

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



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

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

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

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

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

552 (2) The facts may include:

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

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



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561 plan or filing instrument; or

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

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

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

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

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

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

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

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

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



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

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

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

606 (1) the nonprofit corporation's name;

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

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

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



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

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

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

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

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

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

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

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



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645 business in this state.

646 DIVISION B. RATIFICATION OF DEFECTIVE CORPORATE ACTIONS

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

648 In this Division:

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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729 or creation of a membership interest.

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

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

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

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

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

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

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

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

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



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757 as the initial board of directors; and

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

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

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

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



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

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

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

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



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

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

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

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

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



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

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

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

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



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

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

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

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

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

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

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



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

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

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

913 §10A-3A-1.26. Filings.

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



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

926 (1) the name of the nonprofit corporation;

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

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

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

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

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

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

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

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



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

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

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



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

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

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

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

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

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

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



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

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

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

1029 DIVISION C. MISCELLANEOUS.

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

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

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



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

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

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

1058 (b) For purposes of this section:

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

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



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

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

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

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

1083 §10A-3A-1.61. Householding.

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

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

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



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

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

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

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

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

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

1120 (1) the incorporation and internal affairs of the



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1121 foreign nonprofit corporation;

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

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

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

1132 ARTICLE 2. INCORPORATION.

1133 §10A-3A-2.01. Incorporators.

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

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

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

1140 Instead:

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

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

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



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

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

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

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

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

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

1159 (2) provisions not inconsistent with law regarding:

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

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

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

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

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

1173 (vi) the distribution of assets on dissolution;

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

1176 (viii) provisions granting inspection rights to a



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

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

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

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

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

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



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

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

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

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

1224 (e) As used in this section, "related person" means:
1225 (i) the individual's spouse; (ii) a child, stepchild,
1226 grandchild, parent, stepparent, grandparent, sibling,
1227 stepsibling, half sibling, aunt, uncle, niece, or nephew (or
1228 spouse of any such person) of the individual or of the
1229 individual's spouse; (iii) a natural person living in the same
1230 home as the individual; (iv) an entity (other than the
1231 nonprofit corporation or an entity controlled by the nonprofit
1232 corporation) controlled by the individual or any person



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

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

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

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

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

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

1260 (a) After incorporation:



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

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

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

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

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

1280 §10A-3A-2.05. Bylaws.

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

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

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



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

1292 §10A-3A-2.06. Emergency bylaws.

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

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

1302 (2) quorum requirements for the meeting; and

1303 (3) designation of additional or substitute directors.

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

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

1310 (1) binds the nonprofit corporation; and

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

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



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

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

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

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

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



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

1351 ARTICLE 3. PURPOSES AND POWERS.

1352 §10A-3A-3.01. Purposes.

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

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

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

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

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



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

1377 §10A-3A-3.02. General powers.

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

1385 §10A-3A-3.03. Emergency powers.

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

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

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

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

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

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



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

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

1407 (1) binds the nonprofit corporation; and

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

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

1413 §10A-3A-3.04. Lack of power.

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

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

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

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

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

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



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

1433 ARTICLE 4. RECORDS AND REPORTS.

1434 DIVISION A. RECORDS.

1435 §10A-3A-4.01. Corporate records.

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

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

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

1445 (3) its bylaws as currently in effect;

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

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

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

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



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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

1564 (g) This section does not affect:

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



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

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

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

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

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

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

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



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

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

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



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

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

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

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

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

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



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

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

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

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

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

1675 (2) for any commercial purpose; or

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

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



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

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

1691 DIVISION B. FINANCIAL STATEMENTS FOR MEMBERS.

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

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



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

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

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

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

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

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



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

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

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

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

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



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

ARTICLE 6. MEMBERSHIPS AND FINANCIAL PROVISIONS.

DIVISION A. ADMISSION OF MEMBERS.

§10A-3A-6.01. Members.

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

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



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

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

1803 §10A-3A-6.02. Membership status.

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

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

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

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



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

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

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

1830 DIVISION B. RIGHTS AND OBLIGATIONS OF MEMBERS.

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

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

1838 §10A-3A-6.11. Transfers.

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

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

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



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

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

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

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

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



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1877 termination, suspension, or reinstatement of membership.

1878 DIVISION C. RESIGNATION AND TERMINATION.

1879 §10A-3A-6.20. Resignation.

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

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

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

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

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

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

1895 DIVISION D. FINANCIAL PROVISIONS.

1896 §10A-3A-6.40. Distributions.

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

1960 ARTICLE 7. MEMBER MEETINGS.



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1961 DIVISION A. PROCEDURES.

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

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

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

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

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

1985 §10A-3A-7.02. Special meetings.

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



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1989 certificate of incorporation or by the bylaws.

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

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

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



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2017 members.

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

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

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

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

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

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

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



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

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

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

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



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

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



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

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

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

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

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



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

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

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

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

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



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

2164 §10A-3A-7.06. Waiver of notice.

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

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

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

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

2181 §10A-3A-7.07. Record date.

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

2240 (b) .



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

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

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

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

2260 §10A-3A-7.10. Action by ballot.

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

2266 (b) A ballot must:

2267 (1) be in writing;

2268 (2) set forth each proposed action;



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

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

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

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

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

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

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

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

2292 DIVISION B. VOTING.

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

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



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

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



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

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

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



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

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



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

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

2388 §10A-3A-7.22. Proxies.

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

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

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

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



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2409 irrevocable and the appointment is coupled with an interest.

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

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

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

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

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

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

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



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

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

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

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

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



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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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



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

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

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

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

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

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

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

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



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

2587 (b) The inspectors must:

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

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

2592 (3) count all votes;

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

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

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



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

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

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

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

2614 (3) any ballots;

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

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

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

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

2630 DIVISION C. VOTING AGREEMENTS.

2631 §10A-3A-7.30. Voting agreements.

2632 (a) Except as provided in the certificate of



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

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

2642 ARTICLE 8. DIRECTORS AND OFFICERS.

2643 DIVISION A. BOARD OF DIRECTORS.

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

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



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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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



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

2806 §10A-3A-8.10. Vacancy on board.

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

2811 (1) the members may fill the vacancy;

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

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

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

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

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

2828 (3) designated in the certificate of incorporation or



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

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

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

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

2840 DIVISION B. MEETINGS AND ACTIONS OF THE BOARD.

2841 §10A-3A-8.20. Meetings.

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

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

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

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



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

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

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

2875 §10A-3A-8.22. Notice of meeting.

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

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



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2885 unless required by the certificate of incorporation or bylaws.

2886 §10A-3A-8.23. Waiver of notice.

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

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

2900 §10A-3A-8.24. Quorum and voting.

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

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

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



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

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

2930

2931 §10A-3A-8.25. Board and advisory committees.

2932 (a) A committee of the board of directors composed
2933 exclusively of one or more directors may be established to
2934 perform functions of the board:

2935 (1) by the certificate of incorporation or bylaws; or

2936 (2) except as restricted by the certificate of
2937 incorporation or bylaws, by the board of directors.

2938 (b) Unless this chapter, the certificate of
2939 incorporation, or the bylaws provide otherwise, the
2940 establishment of a committee and appointment of directors to



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2941 it must be approved by the greater of:

2942 (1) a majority of all the directors in office when the
2943 action is taken; or

2944 (2) the number of directors required by the certificate
2945 of incorporation or bylaws to take action under Section
2946 10A-3A-8.24.

2947 (c) Sections 10A-3A-8.20 through 10A-3A-8.24 apply to
2948 board committees and their members.

2949 (d) A board committee may exercise the powers of the
2950 board of directors under Section 10A-3A-8.01, to the extent
2951 specified by the board of directors or in the certificate of
2952 incorporation or bylaws, except that a board committee may
2953 not:

2954 (1) in the case of a membership nonprofit corporation,
2955 approve or propose to members action that this chapter
2956 requires be approved by members;

2957 (2) remove a director from office;

2958 (3) fill a vacancy on the board of directors; or,
2959 subject to subsection (e), on any committee of the board; or

2960 (4) adopt, amend, or repeal a provision of the
2961 certificate of incorporation or bylaws.

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



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2969 by unanimous action, appoint another director to act in place
2970 of an absent or disqualified member during that member's
2971 absence or disqualification.

2972 (f) The certificate of incorporation, bylaws, or board
2973 of directors may create or authorize the creation of one or
2974 more advisory committees whose members need not be directors.
2975 An advisory committee:

2976 (1) is not a committee of the board; and

2977 (2) may not exercise any of the powers of the board.

2978 DIVISION C. DIRECTORS.

2979 §10A-3A-8.30. Standards of conduct for directors.

2980 Division C of Article 3 of Chapter 1 shall not apply to
2981 this chapter. Instead:

2982 (a) Each member of the board of directors, when
2983 discharging the duties of a director, shall act: (i) in good
2984 faith, and (ii) in a manner the director reasonably believes
2985 to be in the best interests of the nonprofit corporation.

2986 (b) The members of the board of directors or a board
2987 committee, when becoming informed in connection with their
2988 decision-making function or devoting attention to their
2989 oversight function, shall discharge their duties with the care
2990 that a person in a like position would reasonably believe
2991 appropriate under similar circumstances.

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



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2997 decision-making or oversight functions, except that disclosure
2998 is not required to the extent that the director reasonably
2999 believes that doing so would violate a duty imposed under law,
3000 a legally enforceable obligation of confidentiality, or a
3001 professional ethics rule.

3002 (d) In discharging board of directors or board
3003 committee duties, a director who does not have knowledge that
3004 makes reliance unwarranted is entitled to rely on the
3005 performance by any of the persons specified in subsection
3006 (f) (1) or subsection (f) (3) to whom the board of directors may
3007 have delegated, formally or informally by course of conduct,
3008 the authority or duty to perform one or more of the board of
3009 directors' functions that are delegable under applicable law.

3010 (e) In discharging board of directors or board
3011 committee duties, a director who does not have knowledge that
3012 makes reliance unwarranted is entitled to rely on information,
3013 opinions, reports, or statements, including financial
3014 statements and other financial data, prepared or presented by
3015 any of the persons specified in subsection (f).

3016 (f) A director is entitled to rely, in accordance with
3017 subsection (d) or (e), on:

3018 (1) one or more officers, employees, or volunteers of
3019 the nonprofit corporation or one or more persons associated
3020 with the nonprofit corporation, whom the director reasonably
3021 believes to be reliable and competent in the functions
3022 performed or the information, opinions, reports, or statements
3023 provided;

3024 (2) legal counsel, public accountants, or other persons



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3025 retained by the nonprofit corporation as to matters involving
3026 skills or expertise the director reasonably believes are
3027 matters (i) within the particular person's professional or
3028 expert competence, or (ii) as to which the particular person
3029 merits confidence; or

3030 (3) a board committee of which the director is not a
3031 member if the director reasonably believes the committee
3032 merits confidence.

3033 (g) Except as set forth in subsections (a) and (b), a
3034 director, when discharging the duties of a director, has no
3035 duty to any person other than the nonprofit corporation.

3036 §10A-3A-8.31. Standards of liability for directors.

3037 Division C of Article 3 of Chapter 1 shall not apply to
3038 this chapter. Instead:

3039 (a) A director shall not be liable to the nonprofit
3040 corporation or its members for any decision to take or not to
3041 take action, or any failure to take any action, as a director,
3042 unless the party asserting liability in a proceeding
3043 establishes that:

3044 (1) no defense interposed by the director based on: (i)
3045 any provision in the certificate of incorporation authorized
3046 by Section 10A-3A-2.02(b)(4) or by Section 10A-3A-2.02(b)(6),
3047 or (ii) the protection afforded by Section 10A-3A-8.60,
3048 precludes liability; and

3049 (2) the challenged conduct consisted or was the result
3050 of:

3051 (i) action not in good faith; or

3052 (ii) a decision:



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3053 (A) which the director did not reasonably believe to be
3054 in the best interests of the nonprofit corporation, or

3055 (B) as to which the director was not informed to an
3056 extent the director reasonably believed appropriate in the
3057 circumstances; or

3058 (iii) a lack of objectivity due to the director's
3059 familial, financial or business relationship with, or a lack
3060 of independence due to the director's domination or control
3061 by, another person having a material interest in the
3062 challenged conduct:

3063 (A) which relationship or which domination or control
3064 could reasonably be expected to have affected the director's
3065 judgment respecting the challenged conduct in a manner adverse
3066 to the nonprofit corporation, and

3067 (B) after a reasonable expectation to that effect has
3068 been established, the director shall not have established that
3069 the challenged conduct was reasonably believed by the director
3070 to be in the best interests of the nonprofit corporation; or

3071 (iv) a sustained failure of the director to devote
3072 attention to ongoing oversight of the activities and affairs
3073 of the nonprofit corporation, or a failure to devote timely
3074 attention, by making (or causing to be made) appropriate
3075 inquiry, when particular facts and circumstances of
3076 significant concern materialize that would alert a reasonably
3077 attentive director to the need for that inquiry; or

3078 (v) receipt of a financial benefit to which the
3079 director was not entitled or any other breach of the
3080 director's duties to deal fairly with the nonprofit



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3081 corporation and its members that is actionable under
3082 applicable law.

3083 (b) The party seeking to hold the director liable:

3084 (1) for money damages, shall also have the burden of
3085 establishing that:

3086 (i) harm to the nonprofit corporation or its members
3087 has been suffered, and

3088 (ii) the harm suffered was proximately caused by the
3089 director's challenged conduct; or

3090 (2) for other money payment under a legal remedy, such
3091 as compensation for the unauthorized use of corporate assets,
3092 shall also have whatever persuasion burden may be called for
3093 to establish that the payment sought is appropriate in the
3094 circumstances; or

3095 (3) for other money payment under an equitable remedy,
3096 such as profit recovery by or disgorgement to the nonprofit
3097 corporation, shall also have whatever persuasion burden may be
3098 called for to establish that the equitable remedy sought is
3099 appropriate in the circumstances.

3100 (c) Nothing contained in this section shall:

3101 (1) in any instance where fairness is at issue alter
3102 the burden of proving the fact or lack of fairness otherwise
3103 applicable;

3104 (2) alter the fact or lack of liability of a director
3105 under another section of this chapter, such as the provisions
3106 governing the consequences of an unlawful distribution under
3107 Section 10A-3A-8.32 or a transactional interest under Section
3108 10A-3A-8.60;



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3109 (3) affect any rights to which a director may be
3110 entitled under another statute of this state or the United
3111 States; or

3112 (4) affect any rights to which the nonprofit
3113 corporation or a member may be entitled under another statute
3114 of this state or the United States.

3115 §10A-3A-8.32. Directors' liability for unlawful
3116 distributions.

3117 (a) A director who votes for or assents to a
3118 distribution in excess of what may be authorized and made
3119 pursuant to Section 10A-3A-6.40 or Section 10A-3A-11.07 is
3120 personally liable to the nonprofit corporation for the amount
3121 of the distribution that exceeds what could have been
3122 distributed without violating Section 10A-3A-6.40 or Section
3123 10A-3A-11.07 if the party asserting liability establishes that
3124 when taking the action the director did not comply with
3125 Section 10A-3A-8.30.

3126 (b) A director held liable under subsection (a) for an
3127 unlawful distribution is entitled to:

3128 (1) contribution from every other director who could be
3129 held liable under subsection (a) for the unlawful
3130 distribution; and

3131 (2) recoupment from each person of the pro-rata portion
3132 of the amount of the unlawful distribution the person
3133 received, whether or not the person knew the distribution was
3134 made in violation of Section 10A-3A-6.40 or Section
3135 10A-3A-11.07.

3136 (c) A proceeding to enforce:



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3137 (1) the liability of a director under subsection (a) is
3138 barred unless it is commenced within two years after the date
3139 on which the distribution was made; or

3140 (2) contribution or recoupment under subsection (b) is
3141 barred unless it is commenced within one year after the
3142 liability of the claimant has been finally adjudicated under
3143 subsection (a).

3144 §10A-3A-8.33. Loans to or guarantees for directors and
3145 officers.

3146 (a) A nonprofit corporation may not lend money to or
3147 guarantee the obligation of a director or officer of the
3148 nonprofit corporation.

3149 (b) The fact that a loan or guarantee is made in
3150 violation of this section does not affect the borrower's
3151 liability on the loan.

3152 DIVISION D. OFFICERS.

3153 §10A-3A-8.40. Officers.

3154 (a) A nonprofit corporation has the officers described
3155 in its certificate of incorporation or bylaws or appointed by
3156 the board of directors in accordance with the certificate of
3157 incorporation or bylaws.

3158 (b) The board of directors may elect individuals to
3159 fill one or more offices of the nonprofit corporation.

3160 (c) The certificate of incorporation, bylaws, or the
3161 board of directors shall assign to an officer responsibility
3162 for maintaining and authenticating the records of the
3163 nonprofit corporation required to be kept under Section
3164 10A-3A-4.01.



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3165 (d) Unless the certificate of incorporation or bylaws
3166 provide otherwise, the same individual may simultaneously hold
3167 more than one office in a nonprofit corporation.

3168 §10A-3A-8.41. Functions of officers.

3169 Each officer has the authority and shall perform the
3170 functions set forth in the certificate of incorporation or
3171 bylaws or, to the extent consistent with the certificate of
3172 incorporation or bylaws, the functions prescribed by the board
3173 of directors or by direction of an officer authorized by the
3174 board of directors to prescribe the functions of other
3175 officers.

3176 §10A-3A-8.42. Standards of conduct for officers.

3177 Division C of Article 3 of Chapter 1 shall not apply to
3178 this chapter. Instead:

3179 (a) An officer, when performing in that capacity, has
3180 the duty to act:

3181 (1) in good faith;

3182 (2) with the care that a person in a like position
3183 would reasonably exercise under similar circumstances; and

3184 (3) in a manner the officer reasonably believes to be
3185 in the best interests of the nonprofit corporation.

3186 (b) The duty of an officer includes the obligation:

3187 (1) to inform the superior officer to whom, or the
3188 board of directors or the board committee to which, the
3189 officer reports of information about the affairs of the
3190 nonprofit corporation known to the officer, within the scope
3191 of the officer's functions, and known to the officer to be
3192 material to the superior officer, board of directors, or board



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3193 committee; and

3194 (2) to inform the officer's superior officer, or
3195 another appropriate person within the nonprofit corporation,
3196 or the board of directors, or a board committee, of any actual
3197 or probable material violation of law involving the nonprofit
3198 corporation or material breach of duty to the nonprofit
3199 corporation by an officer, employee, or agent of the nonprofit
3200 corporation, that the officer believes has occurred or is
3201 likely to occur.

3202 (c) In discharging the officer's duties, an officer who
3203 does not have knowledge that makes reliance unwarranted is
3204 entitled to rely on:

3205 (1) the performance of properly delegated
3206 responsibilities by one or more employees, one or more
3207 volunteers of the nonprofit corporation, or one or more other
3208 persons associated with the nonprofit corporation, to whom
3209 that officer has delegated responsibilities and whom the
3210 officer reasonably believes to be reliable and competent in
3211 performing the responsibilities delegated;

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



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3221 officer reasonably believes are matters: (i) within the
3222 particular person's professional or expert competence, or (ii)
3223 as to which the particular person merits confidence; or

3224 (3) volunteers of the nonprofit corporation or one or
3225 more persons associated with the nonprofit corporation.

3226 (d) An officer is not liable to the nonprofit
3227 corporation or its members for any decision to take or not to
3228 take action, or any failure to take any action, as an officer,
3229 if the duties of the office are performed in compliance with
3230 this section. Whether an officer who does not comply with this
3231 section shall have liability will depend in such instance on
3232 applicable law, including those principles of Section
3233 10A-3A-8.31 that have relevance.

3234 §10A-3A-8.43. Resignation and removal of officers.

3235 Division C of Article 3 of Chapter 1 shall not apply to
3236 this chapter. Instead:

3237 (a) An officer may resign at any time by delivering a
3238 written notice to the board of directors, its chair, the
3239 appointing officer, the secretary, or the nonprofit
3240 corporation. A resignation is effective as provided in Section
3241 10A-3A-1.03 unless the notice provides for a delayed
3242 effectiveness, including effectiveness determined upon a
3243 future event or events. If effectiveness of a resignation is
3244 stated to be delayed and the board of directors or the
3245 appointing officer accepts the delay, the board of directors
3246 or the appointing officer may fill the pending vacancy before
3247 the delayed effectiveness, but the new officer may not take
3248 office until the vacancy occurs.



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3249 (b) An officer may be removed at any time with or
3250 without cause by (i) the board of directors; (ii) the
3251 appointing officer, unless the certificate of incorporation,
3252 bylaws, or the board of directors provide otherwise; or (iii)
3253 any other officer if authorized by the certificate of
3254 incorporation, bylaws, or the board of directors.

3255 (c) In this section, "appointing officer" means the
3256 officer (including any successor to that officer) who
3257 appointed the officer resigning or being removed.

3258 §10A-3A-8.44. Contract rights of officers.

3259 (a) The election or appointment of an officer does not
3260 itself create contract rights.

3261 (b) An officer's removal does not affect the officer's
3262 contract rights, if any, with the nonprofit corporation. An
3263 officer's resignation does not affect the nonprofit
3264 corporation's contract rights, if any, with the officer.

3265 DIVISION E. INDEMNIFICATION AND ADVANCEMENT OF
3266 EXPENSES.

3267 §10A-3A-8.50. Division definitions.

3268 In this division:

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



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3277 corporation's request if the individual's duties to the
3278 nonprofit corporation also impose duties on, or otherwise
3279 involve services by, the individual to the plan or to
3280 participants in or beneficiaries of the plan. "Director" or
3281 "officer" includes, unless the context requires otherwise (i)
3282 the estate or personal representative of a director or officer
3283 and (ii) with respect to a director, an individual designated,
3284 elected, or appointed by that or any other name or title.

3285 (2) "LIABILITY" means the obligation to pay a judgment,
3286 settlement, penalty, fine (including an excise tax assessed
3287 with respect to an employee benefit plan), or expenses
3288 incurred with respect to a proceeding.

3289 (3) "NONPROFIT CORPORATION" includes any domestic or
3290 foreign predecessor entity of a nonprofit corporation.

3291 (4) "OFFICIAL CAPACITY" means: (i) when used with
3292 respect to a director, the office of director in a nonprofit
3293 corporation; and (ii) when used with respect to an officer, as
3294 contemplated in Section 10A-3A-8.56, the office in a nonprofit
3295 corporation held by the officer. "Official capacity" does not
3296 include service for any other corporation or foreign
3297 corporation or any joint venture, trust, employee benefit
3298 plan, or other entity.

3299 (5) "PARTY" means an individual who was, is, or is
3300 threatened to be made, a defendant or respondent in a
3301 proceeding.

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



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3305 whether formal or informal.

3306 §10A-3A-8.51. Permissible indemnification.

3307 (a) Except as otherwise provided in this section, a
3308 nonprofit corporation may indemnify an individual who is a
3309 party to a proceeding because the individual is a director
3310 against liability incurred in the proceeding if:

3311 (1) (i) the director conducted himself or herself in
3312 good faith; and

3313 (ii) the director reasonably believed:

3314 (A) in the case of conduct in an official capacity,
3315 that his or her conduct was in the best interests of the
3316 nonprofit corporation; and

3317 (B) in all other cases, that the director's conduct was
3318 at least not opposed to the best interests of the nonprofit
3319 corporation; and

3320 (iii) in the case of any criminal proceeding, the
3321 director had no reasonable cause to believe his or her conduct
3322 was unlawful; or

3323 (2) the director engaged in conduct for which broader
3324 indemnification has been made permissible or obligatory under
3325 a provision of the certificate of incorporation (as authorized
3326 by Section 10A-3A-2.02).

3327 (b) A director's conduct with respect to an employee
3328 benefit plan for a purpose the director reasonably believed to
3329 be in the interests of the participants in, and the
3330 beneficiaries of, the plan is conduct that satisfies the
3331 requirement of subsection (a) (1) (ii) (B).

3332 (c) The termination of a proceeding by judgment, order,



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3333 settlement, or conviction, or upon a plea of nolo contendere
3334 or its equivalent, is not, of itself, determinative that the
3335 director did not meet the relevant standard of conduct
3336 described in this section.

3337 (d) Unless ordered by a court under Section
3338 10A-3A-8.54(a)(3), a nonprofit corporation may not indemnify a
3339 director:

3340 (1) in connection with a proceeding by the nonprofit
3341 corporation, except for expenses incurred in connection with
3342 the proceeding if it is determined that the director has met
3343 the relevant standard of conduct under subsection (a); or

3344 (2) in connection with any proceeding with respect to
3345 conduct for which the director was adjudged liable on the
3346 basis of receiving a financial benefit to which the director
3347 was not entitled, regardless of whether it involved action in
3348 the director's official capacity.

3349 §10A-3A-8.52. Permitted mandatory indemnification.

3350 A nonprofit corporation may provide in its certificate
3351 of incorporation or bylaws that the nonprofit corporation
3352 shall indemnify a director who was wholly successful, on the
3353 merits or otherwise, in the defense of any proceeding to which
3354 the director was a party because the director was a director
3355 of the nonprofit corporation against expenses incurred by the
3356 director in connection with the proceeding.

3357 §10A-3A-8.53. Advance for expenses.

3358 (a) A nonprofit corporation may, before final
3359 disposition of a proceeding, advance funds to pay for or
3360 reimburse expenses incurred in connection with the proceeding



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3361 by an individual who is a party to the proceeding because that
3362 individual is a director if the director delivers to the
3363 nonprofit corporation a signed written undertaking of the
3364 director to repay any funds advanced if (i) the director is
3365 not entitled to mandatory indemnification under Section
3366 10A-3A-8.52 and (ii) it is ultimately determined under Section
3367 10A-3A-8.54 or Section 10A-3A-8.55 that the director is not
3368 entitled to indemnification.

3369 (b) The undertaking required by subsection (a) must be
3370 an unlimited general obligation of the director but need not
3371 be secured and may be accepted without reference to the
3372 financial ability of the director to make repayment.

3373 (c) Authorizations under this section shall be made:

3374 (1) by the board of directors:

3375 (i) if there are two or more qualified directors, by a
3376 majority vote of all the qualified directors (a majority of
3377 whom shall for that purpose constitute a quorum) or by a
3378 majority of the members of a committee consisting solely of
3379 two or more qualified directors appointed by a majority vote
3380 of qualified directors; or

3381 (ii) if there are fewer than two qualified directors,
3382 by the vote necessary for action by the board of directors in
3383 accordance with Section 10A-3A-8.24(c), in which authorization
3384 directors who are not qualified directors may participate; or

3385 (2) by the members, but membership interests owned by
3386 or voted under the control of a director who at the time is
3387 not a qualified director may not be voted on the
3388 authorization.



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3389 §10A-3A-8.54. Court-ordered indemnification and advance
3390 for expenses.

3391 (a) A director who is a party to a proceeding because
3392 he or she is a director may apply for indemnification or an
3393 advance for expenses to the court conducting the proceeding or
3394 to another court of competent jurisdiction. After receipt of
3395 an application and after giving any notice it considers
3396 necessary, the court shall:

3397 (1) order indemnification if the court determines that
3398 the director is entitled to indemnification pursuant to a
3399 provision authorized by Section 10A-3A-8.52;

3400 (2) order indemnification or advance for expenses if
3401 the court determines that the director is entitled to
3402 indemnification or advance for expenses pursuant to a
3403 provision authorized by Section 10A-3A-8.58(a); or

3404 (3) order indemnification or advance for expenses if
3405 the court determines, in view of all the relevant
3406 circumstances, that it is fair and reasonable: (i) to
3407 indemnify the director, or (ii) to advance expenses to the
3408 director, even if, in the case of (i) or (ii), the director
3409 has not met the relevant standard of conduct set forth in
3410 Section 10A-3A-8.51(a), failed to comply with Section
3411 10A-3A-8.53, or was adjudged liable in a proceeding referred
3412 to in Section 10A-3A-8.51(d)(1) or Section 10A-3A-8.51(d)(2),
3413 but if the director was adjudged so liable indemnification
3414 shall be limited to expenses incurred in connection with the
3415 proceeding.

3416 (b) If the court determines that the director is



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3417 entitled to indemnification under subsection (a) (1) or to
3418 indemnification or advance for expenses under subsection
3419 (a) (2), it shall also order the nonprofit corporation to pay
3420 the director's expenses incurred in connection with obtaining
3421 court-ordered indemnification or advance for expenses. If the
3422 court determines that the director is entitled to
3423 indemnification or advance for expenses under subsection
3424 (a) (3), it may also order the nonprofit corporation to pay the
3425 director's expenses to obtain court-ordered indemnification or
3426 advance for expenses.

3427 §10A-3A-8.55. Determination and authorization of
3428 indemnification.

3429 (a) A nonprofit corporation may not indemnify a
3430 director under Section 10A-3A-8.51 unless authorized for a
3431 specific proceeding after a determination has been made that
3432 indemnification is permissible because the director has met
3433 the relevant standard of conduct set forth in Section
3434 10A-3A-8.51.

3435 (b) The determination shall be made:

3436 (1) if there are two or more qualified directors, by
3437 the board of directors by a majority vote of all the qualified
3438 directors (a majority of whom shall for that purpose
3439 constitute a quorum), or by a majority of the members of a
3440 committee of two or more qualified directors appointed by a
3441 majority vote of qualified directors;

3442 (2) by special legal counsel:

3443 (i) selected in the manner prescribed in subsection

3444 (b) (1); or



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3445 (ii) if there are fewer than two qualified directors,
3446 selected by the board of directors (in which selection
3447 directors who are not qualified directors may participate); or

3448 (3) by the members, but membership interests owned by
3449 or voted under the control of a director who at the time is
3450 not a qualified director may not be voted on the
3451 determination.

3452 (c) Authorization of indemnification shall be made in
3453 the same manner as the determination that indemnification is
3454 permissible except that if there are fewer than two qualified
3455 directors, or if the determination is made by special legal
3456 counsel, authorization of indemnification shall be made by
3457 those entitled to select special legal counsel under
3458 subsection (b) (2) (ii).

3459 §10A-3A-8.56. Indemnification of officers.

3460 (a) A nonprofit corporation may indemnify and advance
3461 expenses under this Division E of this Article 8 to an officer
3462 who is a party to a proceeding because he or she is an
3463 officer:

3464 (1) to the same extent as a director; and

3465 (2) if he or she is an officer but not a director, to
3466 such further extent as may be provided by the certificate of
3467 incorporation or the bylaws, or by a resolution adopted or a
3468 contract approved by the board of directors or members except
3469 for

3470 (i) liability in connection with a proceeding by the
3471 nonprofit corporation other than for expenses incurred in
3472 connection with the proceeding, or



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3473 (ii) liability arising out of conduct that constitutes

3474 (A) receipt by the officer of a financial benefit to
3475 which the officer is not entitled,

3476 (B) an intentional infliction of harm on the nonprofit
3477 corporation or the members, or

3478 (C) an intentional violation of criminal law.

3479 (b) Subsection (a)(2) shall apply to an officer who is
3480 also a director if the person is made a party to the
3481 proceeding based on an act or omission solely as an officer.

3482 (c) An officer who is not a director is entitled to
3483 indemnification under Section 10A-3A-8.52 if the certificate
3484 of incorporation or bylaws of the nonprofit corporation allows
3485 for such indemnification, and may apply to a court under
3486 Section 10A-3A-8.54 for indemnification or an advance for
3487 expenses, in each case to the same extent to which a director
3488 may be entitled to indemnification or advance for expenses
3489 under those sections, unless otherwise provided in the
3490 certificate of incorporation or bylaws.

3491 §10A-3A-8.57. Insurance.

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



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3501 arising from the individual's status as a director or officer,
3502 regardless of whether the nonprofit corporation would have
3503 power to indemnify or advance expenses to the individual
3504 against the same liability under this Division E of this
3505 Article 8.

3506 §10A-3A-8.58. Variation by corporate action;
3507 application of division.

3508 (a) A nonprofit corporation may, by a provision in its
3509 certificate of incorporation, bylaws, or in a resolution
3510 adopted or a contract approved by the board of directors or
3511 members, obligate itself in advance of the act or omission
3512 giving rise to a proceeding to provide indemnification in
3513 accordance with Section 10A-3A-8.51 or advance funds to pay
3514 for or reimburse expenses in accordance with Section
3515 10A-3A-8.53. Any obligatory provision shall be deemed to
3516 satisfy the requirements for authorization referred to in
3517 Section 10A-3A-8.53(c) and in Section 10A-3A-8.55(c). Any
3518 provision that obligates the nonprofit corporation to provide
3519 indemnification to the fullest extent permitted by law shall
3520 be deemed to obligate the nonprofit corporation to advance
3521 funds to pay for or reimburse expenses in accordance with
3522 Section 10A-3A-8.53 to the fullest extent permitted by law,
3523 unless the provision expressly provides otherwise.

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



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3529 bylaws, or a resolution of the board of directors or members,
3530 adopted after the occurrence of the act or omission, unless,
3531 in the case of a right created under subsection (a), the
3532 provision creating the right and in effect at the time of the
3533 act or omission explicitly authorizes elimination or
3534 impairment after the act or omission has occurred.

3535 (c) Any provision pursuant to subsection (a) shall not
3536 obligate the nonprofit corporation to indemnify or advance
3537 expenses to a director of a predecessor of the nonprofit
3538 corporation, pertaining to conduct with respect to the
3539 predecessor, unless otherwise expressly provided. Any
3540 provision for indemnification or advance for expenses in the
3541 certificate of incorporation, bylaws, or a resolution of the
3542 board of directors or other similar governing authority of a
3543 predecessor of the nonprofit corporation in a merger or in a
3544 contract to which the predecessor is a party, existing at the
3545 time the merger takes effect, shall be governed by Section
3546 10A-3A-12.06(a)(4).

3547 (d) Subject to subsection (b), a nonprofit corporation
3548 may, by a provision in its certificate of incorporation, limit
3549 any of the rights to indemnification or advance for expenses
3550 created by or pursuant to this Division E of this Article 8.

3551 (e) This Division E of this Article 8 does not limit a
3552 nonprofit corporation's power to pay or reimburse expenses
3553 incurred by a director or an officer in connection with
3554 appearing as a witness in a proceeding at a time when the
3555 director or officer is not a party.

3556 (f) This Division E of this Article 8 does not limit a



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3557 nonprofit corporation's power to indemnify, advance expenses
3558 to or provide or maintain insurance on behalf of an employee,
3559 agent, or volunteer.

3560 §10A-3A-8.59. Exclusivity of division.

3561 A nonprofit corporation may provide indemnification or
3562 advance expenses to a director or an officer only as permitted
3563 by this Division E of this Article 8.

3564 DIVISION F. CONFLICTING INTEREST TRANSACTIONS.

3565 §10A-3A-8.60. Interested directors; quorum.

3566 (a) No contract or transaction between a nonprofit
3567 corporation and one or more of its directors or officers, or
3568 between a nonprofit corporation and any other corporation,
3569 partnership, association, or other entity in which one or more
3570 of its directors or officers, are directors or officers, or
3571 have a financial interest, shall be void or voidable solely
3572 for this reason, or solely because the director or officer is
3573 present at or participates in the meeting of the board of
3574 directors or committee which authorizes the contract or
3575 transaction, or solely because the director's or officer's
3576 votes are counted for that purpose, if:

3577 (1) The material facts as to the director's or
3578 officer's relationship or interest and as to the contract or
3579 transaction are disclosed or are known to the board of
3580 directors or the committee of a nonmembership nonprofit
3581 corporation, and the board or committee in good faith
3582 authorizes the contract or transaction by the affirmative
3583 votes of a majority of the qualified directors, even though
3584 the qualified directors be less than a quorum; or



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3585 (2) The material facts as to the director's or
3586 officer's relationship or interest and as to the contract or
3587 transaction are disclosed or are known to (i) the members in a
3588 membership nonprofit corporation entitled to vote thereon or
3589 (ii) the qualified directors of the board of directors in a
3590 membership nonprofit corporation, and the contract or
3591 transaction is specifically approved in good faith by vote of
3592 the members in a membership nonprofit corporation or the
3593 qualified directors of the board of directors in a membership
3594 nonprofit corporation; or

3595 (3) The contract or transaction is fair as to the
3596 nonprofit corporation as of the time it is authorized,
3597 approved or ratified, by the board of directors, a committee,
3598 or the members.

3599 (b) Common or interested directors may be counted in
3600 determining the presence of a quorum at a meeting of the board
3601 of directors or of a committee which authorizes the contract
3602 or transaction.

3603 ARTICLE 9. AMENDMENT OF CERTIFICATE OF INCORPORATION
3604 AND BYLAWS.

3605 DIVISION A. AMENDMENT OF CERTIFICATE OF INCORPORATION.

3606 §10A-3A-9.00. Applicability of Division B of Article 3
3607 of Chapter 1.

3608 Division B of Article 3 of Chapter 1 shall not apply to
3609 this chapter.

3610 §10A-3A-9.01. Authority to amend.

3611 (a) A nonprofit corporation may amend its certificate
3612 of incorporation at any time to add or change a provision that



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3613 is required or permitted in the certificate of incorporation
3614 as of the effective date of the amendment or to delete a
3615 provision that is not required to be contained in the
3616 certificate of incorporation. Whether a provision is required
3617 or permitted in the certificate of incorporation is determined
3618 as of the effective date of the amendment.

3619 (b) Neither (i) a member of a membership nonprofit
3620 corporation nor (ii) a person having rights under the
3621 certificate of incorporation, has a vested property right
3622 resulting from any provision in the certificate of
3623 incorporation, including provisions relating to management,
3624 control, purpose, or duration of the nonprofit corporation.

3625 §10A-3A-9.02. Amendment of certificate of incorporation
3626 of membership nonprofit corporation before admission of
3627 members.

3628 Subject to Section 10A-3A-9.30, if a membership
3629 nonprofit corporation has not yet admitted any members, the
3630 board of directors, or its incorporators if it has no board of
3631 directors, may adopt one or more amendments to the membership
3632 nonprofit corporation's certificate of incorporation.

3633 §10A-3A-9.03. Amendment of certificate of incorporation
3634 of membership nonprofit corporation after members have been
3635 admitted.

3636 If a membership nonprofit corporation has admitted any
3637 members, an amendment to the certificate of incorporation
3638 shall be adopted in the following manner:

3639 (a) The proposed amendment shall first be adopted by
3640 the board of directors.



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3641 (b) Except as provided in subsection (g) and Sections
3642 10A-3A-9.07 and 10A-3A-9.08, the amendment shall then be
3643 approved by the members entitled to vote on the amendment. In
3644 submitting the proposed amendment to the members for approval,
3645 the board of directors shall recommend that the members
3646 approve the amendment, unless the board of directors makes a
3647 determination that because of conflicts of interest or other
3648 special circumstances it should not make such a
3649 recommendation, in which case the board of directors must
3650 inform the members of the basis for that determination.

3651 (c) The board of directors may set conditions for the
3652 approval of the amendment by the members or the effectiveness
3653 of the amendment.

3654 (d) If the amendment is required to be approved by the
3655 members, and the approval is to be given at a meeting, the
3656 membership nonprofit corporation shall notify each member
3657 entitled to vote on the amendment of the meeting of members at
3658 which the amendment is to be submitted for approval. The
3659 notice must state that the purpose, or one of the purposes, of
3660 the meeting is to consider the amendment. The notice must
3661 contain or be accompanied by a copy of the amendment.

3662 (e) Unless the certificate of incorporation, or the
3663 board of directors acting pursuant to subsection (c), requires
3664 a greater vote or a greater quorum, approval of the amendment
3665 requires the approval of the members at a meeting at which a
3666 quorum consisting of a majority of the votes entitled to be
3667 cast on the amendment exists, and, if any class of members is
3668 entitled to vote as a separate group on the amendment, except



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3669 as provided in Section 10A-3A-9.04(d), the approval of each
3670 separate voting group at a meeting at which a quorum of the
3671 voting group exists consisting of a majority of the votes
3672 entitled to be cast on the amendment by that voting group.

3673 (f) In addition to the adoption and approval of an
3674 amendment by the board of directors and members as required by
3675 this section, an amendment must also be approved by a person
3676 or group of persons, if any, whose approval is required by the
3677 certificate of incorporation in accordance with Section
3678 10A-3A-9.30.

3679 (g) Unless the certificate of incorporation provides
3680 otherwise, the board of directors of a membership nonprofit
3681 corporation may adopt amendments to the membership nonprofit
3682 corporation's certificate of incorporation without approval of
3683 the members to:

3684 (1) extend the duration of the membership nonprofit
3685 corporation if it was incorporated at a time when limited
3686 duration was required by law;

3687 (2) delete the names and addresses of the incorporators
3688 or initial directors;

3689 (3) delete the name and address of the initial
3690 registered agent or registered office, if a statement of
3691 change is on file with the Secretary of State;

3692 (4) delete a class of members from the certificate of
3693 incorporation when there are no members in that class; or

3694 (5) change the membership nonprofit corporation name,
3695 provided that the name complies with Article 5 of Chapter 1.

3696 §10A-3A-9.04. Voting on amendments by voting groups.



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3697 Except as provided in the certificate of incorporation
3698 or bylaws:

3699 (a) If a membership nonprofit corporation has more than
3700 one class of members, the members of each class are entitled
3701 to vote as a separate voting group (if member voting is
3702 otherwise required by this chapter) on a proposed amendment to
3703 the certificate of incorporation if the amendment would:

3704 (1) effect an exchange or reclassification of all or
3705 part of the memberships of the class into memberships of
3706 another class;

3707 (2) effect an exchange or reclassification, or create
3708 the right of exchange, of all or part of the memberships of
3709 another class into memberships of the class;

3710 (3) change the rights, preferences, or limitations of
3711 all or part of the memberships of the class;

3712 (4) change the rights, preferences, or limitations of
3713 all or part of the memberships of the class by changing the
3714 rights, preferences, or limitations of another class;

3715 (5) create a new class of memberships having rights or
3716 preferences that are prior or superior to the other
3717 memberships;

3718 (6) increase or decrease the number of memberships
3719 authorized for the class;

3720 (7) increase or decrease the number of memberships
3721 authorized for another class; or

3722 (8) authorize a new class of memberships.

3723 (b) If a class of members will be divided into two or
3724 more classes by an amendment to the certificate of



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3725 incorporation, the amendment must be approved by a majority of
3726 the members of each class that will be created.

3727 (c) If a proposed amendment would affect less than all
3728 of the members of a class in one or more of the ways described
3729 in subsection (a), the members so affected are entitled to
3730 vote as a separate voting group on the proposed amendment.

3731 (d) If a proposed amendment that entitles the holders
3732 of two or more classes of memberships to vote as separate
3733 voting groups under this section would affect those two or
3734 more classes in the same or a substantially similar way, the
3735 holders of the memberships of all the classes so affected
3736 shall vote together as a single voting group on the proposed
3737 amendment, unless added as a condition by the board of
3738 directors pursuant to Section 10A-3A-9.03(c).

3739 §10A-3A-9.05. Amendment of certificate of incorporation
3740 of nonmembership nonprofit corporation.

3741 Except as otherwise provided in the certificate of
3742 incorporation:

3743 (1) the board of directors of a nonmembership nonprofit
3744 corporation may adopt amendments to the nonmembership
3745 nonprofit corporation's certificate of incorporation; and

3746 (2) an amendment adopted by the board of directors
3747 under this section must also be approved by that person or
3748 group of persons, if any, whose approval is required by the
3749 certificate of incorporation in accordance with Section
3750 10A-3A-9.30.

3751 §10A-3A-9.06. Certificate of amendment.

3752 (a) After an amendment to the certificate of



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3753 incorporation has been adopted and approved in the manner
3754 required by this chapter, the certificate of incorporation,
3755 and bylaws, the nonprofit corporation must deliver to the
3756 Secretary of State, for filing, a certificate of amendment,
3757 which must set forth:

3758 (1) the name of the nonprofit corporation;

3759 (2) the text of each amendment adopted or the
3760 information required by Section 10A-3A-1.04(c)(5);

3761 (3) if an amendment provides for an exchange,
3762 reclassification, or cancellation of memberships, provisions
3763 for implementing the amendment if not contained in the
3764 amendment itself (which may be made dependent upon facts
3765 objectively ascertainable outside the articles of amendment in
3766 accordance with Section 10A-3A-1.04(c)(5));

3767 (4) the date of each amendment's adoption;

3768 (5) a statement that the amendment was adopted:

3769 (i) in accordance with Sections 10A-3A-9.02, if the
3770 nonprofit corporation is a membership nonprofit corporation
3771 which has not yet admitted one or more members;

3772 (ii) in accordance with Sections 10A-3A-9.03 and
3773 10A-3A-9.04, if the nonprofit corporation is a membership
3774 nonprofit corporation which has admitted one or more members;

3775 (iii) in accordance with Section 10A-3A-9.05, if the
3776 nonprofit corporation is a nonmembership nonprofit
3777 corporation; or

3778 (iv) in accordance with Section 10A-3A-1.04(c)(5);

3779 (6) a statement that the amendment was adopted in
3780 accordance with Section 10A-9A-9.30, if applicable; and



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3781 (7) the unique identifying number or other designation
3782 as assigned by the Secretary of State.

3783 (b) A certificate of amendment shall take effect at the
3784 effective date and time determined in accordance with Article
3785 4 of Chapter 1.

3786 §10A-3A-9.07. Restated certificate of incorporation.

3787 (a) A membership nonprofit corporation's board of
3788 directors may restate its certificate of incorporation at any
3789 time, without member approval, to consolidate all amendments
3790 into a single document. A nonmembership nonprofit
3791 corporation's board of directors may restate its certificate
3792 of incorporation at any time to consolidate all amendments
3793 into a single document.

3794 (b) If the restated certificate of incorporation
3795 includes one or more new amendments, the amendments must be
3796 adopted and approved as provided in (i) Sections 10A-3A-9.03
3797 and 10A-3A-9.04 or (ii) Section 10A-3A-9.05.

3798 (c) A nonprofit corporation that restates its
3799 certificate of incorporation shall deliver to the Secretary of
3800 State for filing a certificate of restatement setting forth:

3801 (1) the name of the nonprofit corporation;

3802 (2) the text of the restated certificate of
3803 incorporation;

3804 (3) a statement that the restated certificate of
3805 incorporation consolidates all amendments into a single
3806 document;

3807 (4) if a new amendment is included in the restated
3808 certificate of incorporation, the statements required under



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3809 Section 10A-3A-9.06 with respect to the new amendment; and

3810 (5) the unique identifying number or other designation
3811 as assigned by the Secretary of State.

3812 (d) The duly adopted restated certificate of
3813 incorporation supersedes the original certificate of
3814 incorporation and all amendments to the certificate of
3815 incorporation.

3816 §10A-3A-9.08. Amendment pursuant to reorganization.

3817 (a) A nonprofit corporation's certificate of
3818 incorporation may be amended without action by the board of
3819 directors, the members, if any, or a person or group of
3820 persons, if any, whose approval is required by the certificate
3821 of incorporation in accordance with Section 10A-3A-9.30, to
3822 carry out a plan of reorganization ordered or decreed by a
3823 court of competent jurisdiction under the authority of a law
3824 of the United States if the certificate of incorporation after
3825 the amendment only contains provisions required or permitted
3826 by Section 10A-3A-2.02.

3827 (b) The individual or individuals designated by the
3828 court shall deliver to the Secretary of State for filing a
3829 certificate of amendment setting forth:

3830 (1) the name of the nonprofit corporation;

3831 (2) the text of each amendment approved by the court;

3832 (3) the date of the court's order or decree approving
3833 the certificate of amendment;

3834 (4) the title of the reorganization proceeding in which
3835 the order or decree was entered;

3836 (5) a statement that the court had jurisdiction of the



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3837 proceeding under federal statute; and

3838 (6) the unique identifying number or other designation
3839 as assigned by the Secretary of State.

3840 (c) This section does not apply after entry of a final
3841 decree in the reorganization proceeding even though the court
3842 retains jurisdiction of the proceeding for limited purposes
3843 unrelated to consummation of the reorganization plan.

3844 §10A-3A-9.09. Effect of amendment to certificate of
3845 incorporation.

3846 (a) An amendment to the certificate of incorporation
3847 does not affect:

3848 (1) a cause of action existing against or in favor of
3849 the nonprofit corporation;

3850 (2) a proceeding to which the nonprofit corporation is
3851 a party; or

3852 (3) the existing rights of persons other than (i)
3853 members of the nonprofit corporation, if any, or (ii) a person
3854 or group of persons, if any, specified in the certificate of
3855 incorporation as having approval rights under Section
3856 10A-3A-9.30.

3857 (b) An amendment changing a nonprofit corporation's
3858 name does not affect a proceeding brought by or against the
3859 nonprofit corporation in its former name.

3860 §10A-3A-9.10. Effect of restatement of certificate of
3861 incorporation.

3862 (a) A restated certificate of incorporation takes
3863 effect when the filing of the restated certificate of
3864 incorporation takes effect as provided by Article 4 of Chapter



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3865 1.

3866 (b) On the date and time the restated certificate of
3867 incorporation takes effect, the original certificate of
3868 incorporation and each prior amendment or restatement of the
3869 certificate of incorporation is superseded and the restated
3870 certificate of incorporation is the effective certificate of
3871 incorporation.

3872 (c) Section 10A-3A-9.09 applies to an amendment
3873 effected by a restated certificate of incorporation.

3874 DIVISION B. AMENDMENT OF BYLAWS.

3875 §10A-3A-9.20. Authority to amend.

3876 (a) The members of a membership nonprofit corporation
3877 may amend or repeal the membership nonprofit corporation's
3878 bylaws except as provided in the certificate of incorporation
3879 or bylaws.

3880 (b) The board of directors of a membership nonprofit
3881 corporation or nonmembership nonprofit corporation may amend
3882 or repeal the nonprofit corporation's bylaws, except as
3883 provided in the certificate of incorporation, bylaws, Section
3884 10A-3A-9.21, or Section 10A-3A-9.22.

3885 (c) Neither (i) a member of a membership nonprofit
3886 corporation nor (ii) a person or group of persons having
3887 rights under the certificate of incorporation, has a vested
3888 property right resulting from any provision in the bylaws,
3889 including provisions relating to management, control, or
3890 purpose of the nonprofit corporation.

3891 §10A-3A-9.21. Bylaw increasing quorum or voting
3892 requirement for directors or requiring a meeting place in a



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3893 membership nonprofit corporation.

3894 In a membership nonprofit corporation:

3895 (a) A bylaw that increases a quorum or voting
3896 requirement for the board of directors or that requires a
3897 meeting of the members to be held at a place may be amended or
3898 repealed:

3899 (1) if originally adopted by the members, only by the
3900 members, unless the bylaw otherwise provides;

3901 (2) if adopted by the board of directors, either by the
3902 members or the board of directors.

3903 (b) A bylaw adopted or amended by the members that
3904 increases a quorum or voting requirement for the board of
3905 directors may provide that it can be amended or repealed only
3906 by a specified vote of either the members or the board of
3907 directors.

3908 (c) Action by the board of directors under subsection
3909 (a) to amend or repeal a bylaw that changes a quorum or voting
3910 requirement for the board of directors shall meet the same
3911 quorum requirement and be adopted by the same vote required to
3912 take action under the quorum.

3913 §10A-3A-9.22. Bylaw amendments requiring member
3914 approval.

3915 In a membership nonprofit corporation, except as
3916 provided in the certificate of incorporation or bylaws:

3917 (a) The board of directors of a membership nonprofit
3918 corporation that has one or more members at the time may not
3919 adopt or amend a bylaw under:

3920 (1) Section 10A-3A-6.10 providing that some of the



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3921 members shall have different rights or obligations than other
3922 members with respect to voting, dissolution, transfer of
3923 memberships, or other matters;

3924 (2) Section 10A-3A-6.13 levying dues, assessments, or
3925 fees on some or all of the members;

3926 (3) Section 10A-3A-6.21 relating to the termination or
3927 suspension of members;

3928 (4) Section 10A-3A-8.08(a):

3929 (i) requiring cause to remove a director; or

3930 (ii) specifying what constitutes cause to remove a
3931 director; or

3932 (5) Section 10A-3A-8.08(e) relating to the removal of a
3933 director who is designated in a manner other than election or
3934 appointment.

3935 (b) The board of directors of a membership nonprofit
3936 corporation may not amend the certificate of incorporation or
3937 bylaws to vary the application of subsection (a) to the
3938 membership nonprofit corporation.

3939 (c) If a membership nonprofit corporation has more than
3940 one class of members, the members of a class are entitled to
3941 vote as a separate voting group on an amendment to the bylaws
3942 that:

3943 (1) is described in subsection (a) if the amendment
3944 would affect the members of that class differently than the
3945 members of another class; or

3946 (2) has any of the effects described in Section
3947 10A-3A-9.04.

3948 (d) If a class of members will be divided into two or



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3949 more classes by an amendment to the bylaws, the amendment must
3950 be approved by a majority of the members of each class that
3951 will be created.

3952 DIVISION C. SPECIAL RIGHTS.

3953 §10A-3A-9.30. Approval by specified person or group of
3954 persons.

3955 (a) The certificate of incorporation of a membership
3956 nonprofit corporation may require that an amendment to the
3957 certificate of incorporation, including amendments under
3958 Section 10A-3A-9.03(g), be approved in writing by a specified
3959 person or group of persons in addition to the board of
3960 directors and members. The certificate of incorporation of a
3961 nonmembership nonprofit corporation may require that an
3962 amendment to the certificate of incorporation be approved in
3963 writing by a specified person or group of persons in addition
3964 to the board of directors.

3965 (b) The certificate of incorporation or bylaws of a
3966 membership nonprofit corporation may require that an amendment
3967 to the bylaws be approved in writing by a specified person or
3968 group of persons in addition to the board of directors and
3969 members. The certificate of incorporation or bylaws of a
3970 nonmembership nonprofit corporation may require that an
3971 amendment to the bylaws be approved in writing by a specified
3972 person or group of persons in addition to the board of
3973 directors.

3974 (c) A requirement in the certificate of incorporation
3975 or bylaws described in Section 10A-3A-9.30(a) or (b) may only
3976 be amended with the approval in writing of the specified



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3977 person or group of persons.

3978 ARTICLE 10. DISPOSITION OF ASSETS.

3979 §10A-3A-10.01. Disposition of assets not requiring
3980 member approval in membership nonprofit corporation.

3981 In a membership nonprofit corporation, no approval of
3982 the members is required, unless the certificate of
3983 incorporation otherwise provides:

3984 (a) to sell, lease, exchange, or otherwise dispose of
3985 any or all of the membership nonprofit corporation's assets in
3986 the usual and regular course of the membership nonprofit
3987 corporation's activities;

3988 (b) to mortgage, pledge, dedicate to the repayment of
3989 indebtedness (whether with or without recourse), or otherwise
3990 encumber any or all of the membership nonprofit corporation's
3991 assets, regardless of whether in the usual and regular course
3992 of its activities; or

3993 (c) to transfer any or all of the membership nonprofit
3994 corporation's assets to one or more corporations or other
3995 entities all of the memberships or interests of which are
3996 owned by the membership nonprofit corporation.

3997 §10A-3A-10.02. Member approval of certain dispositions
3998 in membership nonprofit corporation.

3999 (a) A sale, lease, exchange, or other disposition of
4000 assets, other than a disposition described in Section
4001 10A-3A-10.01, requires approval of the membership nonprofit
4002 corporation's members if the disposition would leave the
4003 membership nonprofit corporation without a significant
4004 continuing activity. A membership nonprofit corporation will



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4005 conclusively be deemed to have retained a significant
4006 continuing activity if it retains an activity that
4007 represented, for the membership nonprofit corporation and its
4008 subsidiaries on a consolidated basis, at least (i) 25 percent
4009 of total assets at the end of the most recently completed
4010 fiscal year, and (ii) either 25 percent of either income from
4011 continuing operations before taxes or 25 percent of revenues
4012 from continuing operations, in each case for the most recently
4013 completed fiscal year.

4014 (b) To obtain the approval of the members under
4015 subsection (a) the board of directors shall first adopt a
4016 resolution authorizing the disposition. The disposition shall
4017 then be approved by the members. In submitting the disposition
4018 to the members for approval, the board of directors shall
4019 recommend that the members approve the disposition, unless the
4020 board of directors makes a determination that because of
4021 conflicts of interest or other special circumstances it should
4022 not make a recommendation, in which case the board of
4023 directors must inform the members of the basis for that
4024 determination.

4025 (c) The board of directors may set conditions for the
4026 approval by the members of a disposition or the effectiveness
4027 of the disposition.

4028 (d) If a disposition is required to be approved by the
4029 members under subsection (a), and if the approval is to be
4030 given at a meeting, the membership nonprofit corporation shall
4031 notify each member entitled to vote on the matter of the
4032 meeting of members at which the disposition is to be submitted



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4033 for approval. The notice must state that the purpose, or one
4034 of the purposes, of the meeting is to consider the disposition
4035 and must contain a description of the disposition, including
4036 the terms and conditions of the disposition and the
4037 consideration to be received by the membership nonprofit
4038 corporation.

4039 (e) Unless the certificate of incorporation, bylaws, or
4040 the board of directors acting pursuant to subsection (c)
4041 requires a greater vote or a greater quorum, the approval of a
4042 disposition by the members shall require the approval of the
4043 members at a meeting at which a quorum exists consisting of a
4044 majority of the votes entitled to be cast on the disposition.

4045 (f) After a disposition has been approved by the
4046 members under this Article 10, and at any time before the
4047 disposition has been consummated, it may be abandoned by the
4048 membership nonprofit corporation without action by the
4049 members, subject to any contractual rights of other parties to
4050 the disposition.

4051 (g) A disposition of assets in the course of
4052 dissolution under Article 11 is not governed by this section.

4053 (h) For purposes of this section only, the property and
4054 assets of the membership nonprofit corporation include the
4055 property and assets of any subsidiary of the membership
4056 nonprofit corporation. As used in this subsection,
4057 "subsidiary" means any entity wholly owned and controlled,
4058 directly or indirectly, by the membership nonprofit
4059 corporation and includes, without limitation, nonprofit
4060 corporations, business corporations, partnerships (including



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4061 limited liability partnerships), limited partnerships
4062 (including limited liability limited partnerships), limited
4063 liability companies, and/or statutory trusts, whether domestic
4064 or foreign.

4065 (i) In addition to the approval of a disposition of
4066 assets by the board of directors and members as required by
4067 this section, the disposition must also be approved in writing
4068 by a person or group of persons whose approval is required
4069 under the certificate of incorporation in accordance with
4070 Section 10A-3A-10.04.

4071 §10A-3A-10.03. Disposition of assets in a nonmembership
4072 nonprofit corporation.

4073 Except as otherwise provided in the certificate of
4074 incorporation:

4075 (1) a sale, lease, exchange, mortgage, pledge, or other
4076 disposition of all, or substantially all, the property and
4077 assets of the nonmembership nonprofit corporation may be
4078 approved by the board of directors; and

4079 (2) a sale, lease, exchange, mortgage, pledge, or other
4080 disposition of all, or substantially all, of the property and
4081 assets of the nonmembership nonprofit corporation approved by
4082 the board of directors under this section must also be
4083 approved by that person or group of persons whose approval is
4084 required by the certificate of incorporation in accordance
4085 with Section 10A-3A-10.04.

4086 §10A-3A-10.04. Approval by specified person or group of
4087 persons.

4088 (a) The certificate of incorporation of a membership



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4089 nonprofit corporation may require that a disposition of assets
4090 under Section 10A-3A-10.02 be approved in writing by a
4091 specified person or group of persons in addition to the board
4092 of directors and members.

4093 (b) The certificate of incorporation of a nonmembership
4094 nonprofit corporation may require that a disposition of assets
4095 under Section 10A-3A-10.03 be approved in writing by a
4096 specified person or group of persons in addition to the board
4097 of directors.

4098 (c) A requirement in the certificate of incorporation
4099 described in subsection (a) or (b) of this section may only be
4100 approved by the written approval of the specified person or
4101 group of persons.

4102 ARTICLE 11. DISSOLUTION.

4103 DIVISION A. VOLUNTARY DISSOLUTION.

4104 §10A-3A-11.01. Dissolution by incorporators or
4105 directors.

4106 A majority of the incorporators or initial directors of
4107 a nonprofit corporation that has not commenced activity may
4108 dissolve the nonprofit corporation by delivering to the
4109 Secretary of State for filing a certificate of dissolution
4110 that sets forth:

4111 (1) the name of the nonprofit corporation;

4112 (2) the date of its incorporation;

4113 (3) that the nonprofit corporation has not commenced
4114 activity;

4115 (4) that no debt of the nonprofit corporation remains
4116 unpaid;



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4117 (5) that the net assets of the nonprofit corporation
4118 remaining after winding up have been distributed;

4119 (6) that a majority of the incorporators or directors
4120 authorized the dissolution; and

4121 (7) the unique identifying number or other designation
4122 as assigned by the Secretary of State.

4123 §10A-3A-11.02. Approval of dissolution of membership
4124 nonprofit corporations.

4125 (a) The board of directors of a membership nonprofit
4126 corporation may propose dissolution for submission to the
4127 members by first adopting a resolution authorizing the
4128 dissolution.

4129 (b) For a proposal to dissolve to be adopted, it shall
4130 then be approved by the members entitled to vote thereon. In
4131 submitting the proposal to dissolve to the members for
4132 approval, the board of directors shall recommend that the
4133 members approve the dissolution, unless the board of directors
4134 determines that because of conflict of interest or other
4135 special circumstances it should make no recommendation in
4136 which case the board of directors must inform the members of
4137 the basis for that determination.

4138 (c) The board of directors may set conditions for the
4139 approval of the proposal for dissolution by the members or the
4140 effectiveness of the dissolution.

4141 (d) If the approval of the members is to be given at a
4142 meeting, the membership nonprofit corporation shall notify
4143 each member entitled to vote on the dissolution, of the
4144 meeting of members at which the dissolution is to be submitted



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4145 for approval. The notice must state that the purpose, or one
4146 of the purposes, of the meeting is to consider dissolving the
4147 membership nonprofit corporation and how the assets of the
4148 membership nonprofit corporation will be distributed after all
4149 creditors have been paid, or how the distribution of assets
4150 will be determined.

4151 (e) Unless the certificate of incorporation, the
4152 bylaws, or the board of directors acting pursuant to
4153 subsection (c), requires a greater vote, a greater quorum, or
4154 a vote by voting groups, adoption of the proposal to dissolve
4155 shall require the approval of the members at a meeting at
4156 which a quorum exists consisting of a majority of the votes
4157 entitled to be cast on the proposal to dissolve.

4158 (f) Dissolution of a membership nonprofit corporation
4159 may also be authorized without action of the directors if all
4160 the members entitled to vote thereon shall consent in writing
4161 and a certificate of dissolution shall be delivered to the
4162 Secretary of State for filing pursuant to Section
4163 10A-3A-11.05.

4164 (g) In addition to the approval of the dissolution of a
4165 membership nonprofit corporation as set forth in subsections
4166 (a) through (f), the dissolution must also be approved in
4167 writing by a person or group of persons whose approval is
4168 required under the certificate of incorporation in accordance
4169 with Section 10A-3A-11.04.

4170 §10A-3A-11.03. Approval of dissolution of nonmembership
4171 nonprofit corporations.

4172 Except as otherwise provided in the certificate of



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4173 incorporation:

4174 (1) the dissolution of a nonmembership nonprofit
4175 corporation may be approved by the board of directors; and

4176 (2) the dissolution of the nonmembership nonprofit
4177 corporation approved by the board of directors under this
4178 section must also be approved by those persons whose approval
4179 is required by the certificate of incorporation in accordance
4180 with Section 10A-3A-11.04.

4181 §10A-3A-11.04. Approval by specified person or group of
4182 persons.

4183 (a) The certificate of incorporation of a membership
4184 nonprofit corporation may require that a dissolution of a
4185 membership nonprofit corporation under Section 10A-3A-11.02 be
4186 approved in writing by a specified person or group of persons
4187 in addition to the board of directors and members.

4188 (b) The certificate of incorporation of a nonmembership
4189 nonprofit corporation may require that a dissolution of a
4190 nonmembership nonprofit corporation under Section 10A-3A-11.03
4191 be approved in writing by a specified person or group of
4192 persons in addition to the board of directors.

4193 (c) A requirement in the certificate of incorporation
4194 described in subsection (a) or (b) of this section may only be
4195 approved by the written approval of the specified person or
4196 group of persons.

4197 §10A-3A-11.05. Certificate of dissolution.

4198 (a) At any time after dissolution is authorized, the
4199 nonprofit corporation may dissolve by delivering to the
4200 Secretary of State for filing a certificate of dissolution



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4201 setting forth:

4202 (1) the name of the nonprofit corporation;

4203 (2) the date that dissolution was authorized;

4204 (3) if dissolution of a membership nonprofit
4205 corporation was approved in accordance with Section

4206 10A-3A-11.02, a statement that the proposal to dissolve was
4207 duly approved in the manner required by this chapter and by
4208 the certificate of incorporation;

4209 (4) if dissolution of a nonmembership nonprofit
4210 corporation was approved in accordance with Section
4211 10A-3A-11.03, a statement that the proposal to dissolve was
4212 duly approved in the manner required by this chapter and by
4213 the certificate of incorporation;

4214 (5) if dissolution of a nonprofit corporation was
4215 approved in accordance with Section 10A-3A-11.02 or Section
4216 10A-3A-11.03, and the certificate of incorporation required
4217 the dissolution to also be approved by a specified person or
4218 group of persons in accordance with Section 10A-3A-11.04, a
4219 statement that the proposal to dissolve was duly approved by
4220 the manner required by this chapter and by the certificate of
4221 incorporation; and

4222 (6) the unique identifying number or other designation
4223 as assigned by the Secretary of State.

4224 (b) The certificate of dissolution shall take effect at
4225 the effective date determined in accordance with Article 4 of
4226 Chapter 1. A nonprofit corporation is dissolved upon the
4227 effective date of its certificate of dissolution.

4228 (c) For purposes of this Division A of this Article 11,



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4229 "dissolved nonprofit corporation" means a nonprofit
4230 corporation whose certificate of dissolution has become
4231 effective and includes a successor entity to which the
4232 remaining assets of the nonprofit corporation are transferred
4233 subject to its liabilities for purposes of liquidation.

4234 §10A-3A-11.06. Revocation of dissolution.

4235 (a) A nonprofit corporation may revoke its dissolution
4236 within 120 days after its effective date and be reinstated.

4237 (b) Revocation of dissolution and reinstatement shall
4238 be authorized in the same manner as the dissolution was
4239 authorized unless that authorization permitted revocation and
4240 reinstatement by action of the board of directors alone, in
4241 which event the board of directors may revoke the dissolution
4242 and effect the reinstatement without member action and without
4243 the action of the specified person or group of persons set
4244 forth in the certificate of incorporation in accordance with
4245 Section 10A-3A-11.04.

4246 (c) After the revocation of dissolution and
4247 reinstatement is authorized, the nonprofit corporation may
4248 revoke the dissolution and effect the reinstatement by
4249 delivering to the Secretary of State for filing a certificate
4250 of revocation of dissolution and reinstatement, together with
4251 a copy of its certificate of dissolution, that sets forth:

4252 (1) the name of the nonprofit corporation;

4253 (2) the effective date of the dissolution that was
4254 revoked;

4255 (3) the date that the revocation of dissolution and
4256 reinstatement was authorized;



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4257 (4) if the nonprofit corporation's board of directors
4258 (or incorporators) revoked the dissolution and effected the
4259 reinstatement, a statement to that effect;

4260 (5) if the nonprofit corporation's board of directors
4261 revoked a dissolution and effected the reinstatement as
4262 authorized by the members and any specified person or group of
4263 persons set forth in the certificate of incorporation in
4264 accordance with Section 10A-3A-11.04, a statement that
4265 revocation and reinstatement was permitted by action by the
4266 board of directors alone pursuant to that authorization;

4267 (6) if member action was required to revoke the
4268 dissolution and effect the reinstatement, a statement that the
4269 revocation and reinstatement was duly approved by the members
4270 in the manner required by this chapter and by the certificate
4271 of incorporation;

4272 (7) if the action of a specified person or group of
4273 persons set forth in the certificate of incorporation in
4274 accordance with Section 10A-3A-11.04 was required to revoke
4275 the dissolution and effect the reinstatement, a statement that
4276 the revocation and reinstatement was duly approved by that
4277 specified person or group of persons in the manner required by
4278 this chapter and by the certificate of incorporation; and

4279 (8) the unique identifying number or other designation
4280 as assigned by the Secretary of State.

4281 (d) The certificate of revocation of dissolution and
4282 reinstatement shall take effect at the effective date
4283 determined in accordance with Article 4 of Chapter 1.
4284 Revocation of dissolution and reinstatement is effective upon



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4285 the effective date of the certificate of revocation of
4286 dissolution and reinstatement.

4287 (e) (1) Subject to subsection (e) (2), upon revocation
4288 and reinstatement, the nonprofit corporation shall be deemed
4289 for all purposes to have continued its activities and affairs
4290 as if dissolution had never occurred; and each right inuring
4291 to, and each debt, obligation, and liability incurred by, the
4292 nonprofit corporation after the dissolution shall be
4293 determined as if the dissolution had never occurred.

4294 (2) The rights of persons acting in reliance on the
4295 dissolution before those persons had notice of the revocation
4296 and reinstatement shall not be adversely affected by the
4297 revocation and reinstatement.

4298 (f) If the nonprofit corporation is listed in the
4299 Secretary of State's records as a nonprofit corporation that
4300 has been dissolved, then the name of the nonprofit corporation
4301 following revocation and reinstatement shall be that nonprofit
4302 corporation name at the time of revocation and reinstatement
4303 if that nonprofit corporation name complies with Article 5 of
4304 Chapter 1 at the time of revocation and reinstatement. If that
4305 nonprofit corporation name does not comply with Article 5 of
4306 Chapter 1, the name of the nonprofit corporation following
4307 revocation and reinstatement shall be that nonprofit
4308 corporation name followed by the word "reinstated."

4309 §10A-3A-11.07. Effect of dissolution.

4310 (a) A dissolved nonprofit corporation continues its
4311 existence as a nonprofit corporation but may not carry on any
4312 activity except as is appropriate to wind up and liquidate its



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4313 activities and affairs, including:

4314 (1) collecting its assets;

4315 (2) disposing of its properties that will not be
4316 distributed in kind;

4317 (3) discharging or making provisions for discharging
4318 its liabilities;

4319 (4) distributing its remaining property among as
4320 required by law, its certificate of incorporation, bylaws, and
4321 as approved when the dissolution was authorized; and

4322 (5) doing every other act necessary to wind up and
4323 liquidate its activities and affairs.

4324 (b) In winding up its activities and affairs, a
4325 dissolved nonprofit corporation may:

4326 (1) preserve the nonprofit corporation's activities and
4327 affairs and property as a going concern for a reasonable time;

4328 (2) prosecute, defend, or settle actions or proceedings
4329 whether civil, criminal, or administrative;

4330 (3) transfer the nonprofit corporation's assets;

4331 (4) resolve disputes by mediation or arbitration; and

4332 (5) merge or convert in accordance with Article 12 or
4333 13 of this chapter or Article 8 of Chapter 1.

4334 (c) Dissolution of a nonprofit corporation does not:

4335 (1) transfer title to the nonprofit corporation's
4336 property;

4337 (2) subject its directors or officers to standards of
4338 conduct different from those prescribed in Article 8;

4339 (3) change:

4340 (i) quorum or voting requirements for its board of



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4341 directors or members;

4342 (ii) provisions for selection, resignation, or removal
4343 of its directors or officers or both; or

4344 (iii) provisions for amending its bylaws;

4345 (4) prevent commencement of a proceeding by or against
4346 the nonprofit corporation in its corporate name;

4347 (5) abate or suspend a proceeding pending by or against
4348 the nonprofit corporation on the effective date of
4349 dissolution; or

4350 (6) terminate the authority of the registered agent of
4351 the nonprofit corporation.

4352 (d) A distribution in liquidation under this section
4353 may only be made by a dissolved nonprofit corporation.

4354 §10A-3A-11.08. Known claims against dissolved nonprofit
4355 corporation.

4356 (a) A dissolved nonprofit corporation may dispose of
4357 any known claims against it by following the procedures
4358 described in subsection (b) at any time after the effective
4359 date of the dissolution of the nonprofit corporation.

4360 (b) A dissolved nonprofit corporation may give written
4361 notice of the dissolution to the holder of any known claim.

4362 The notice must:

4363 (1) identify the dissolved nonprofit corporation;

4364 (2) describe the information required to be included in
4365 a claim;

4366 (3) provide a mailing address to which the claim is to
4367 be sent;

4368 (4) state the deadline, which may not be fewer than 120



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4369 days from the effective date of the notice, by which the
4370 dissolved nonprofit corporation must receive the claim; and

4371 (5) state that if not sooner barred, the claim will be
4372 barred if not received by the deadline.

4373 (c) Unless sooner barred by any other statute limiting
4374 actions, a claim against a dissolved nonprofit corporation is
4375 barred:

4376 (1) if a claimant who was given notice under subsection
4377 (b) does not deliver the claim to the dissolved nonprofit
4378 corporation by the deadline; or

4379 (2) if a claimant whose claim was rejected by the
4380 dissolved nonprofit corporation does not commence a proceeding
4381 to enforce the claim within 90 days from the effective date of
4382 the rejection notice.

4383 (d) For purposes of this section, "known claim" or
4384 "claim" includes unliquidated claims, but does not include a
4385 contingent liability that has not matured so that there is no
4386 immediate right to bring suit or a claim based on an event
4387 occurring after the effective date of dissolution.

4388 (e) Nothing in this section shall be deemed to extend
4389 any otherwise applicable statute of limitations.

4390 §10A-3A-11.09. Other claims against dissolved nonprofit
4391 corporation.

4392 (a) A dissolved nonprofit corporation may publish
4393 notice of its dissolution and request that persons with claims
4394 against the dissolved nonprofit corporation present them in
4395 accordance with the notice.

4396 (b) The notice authorized by subsection (a) must:



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4397 (1) be published at least one time in a newspaper of
4398 general circulation in the county in which the dissolved
4399 nonprofit corporation's principal office is located or, if it
4400 has none in this state, in the county in which the nonprofit
4401 corporation's most recent registered office is located;

4402 (2) describe the information that must be included in a
4403 claim and provide a mailing address to which the claim is to
4404 be sent; and

4405 (3) state that if not sooner barred, a claim against
4406 the dissolved nonprofit corporation will be barred unless a
4407 proceeding to enforce the claim is commenced within two years
4408 after the publication of the notice.

4409 (c) If a dissolved nonprofit corporation publishes a
4410 newspaper notice in accordance with subsection (b), unless
4411 sooner barred by any other statute limiting actions, the claim
4412 of each of the following claimants is barred unless the
4413 claimant commences a proceeding to enforce the claim against
4414 the dissolved nonprofit corporation within two years after the
4415 publication date of the newspaper notice:

4416 (1) a claimant who was not given notice under Section
4417 10A-3A-11.08;

4418 (2) a claimant whose claim was timely sent to the
4419 dissolved nonprofit corporation but not acted on by the
4420 dissolved nonprofit corporation; and

4421 (3) a claimant whose claim is contingent at the
4422 effective date of the dissolution of the nonprofit
4423 corporation, or is based on an event occurring after the
4424 effective date of the dissolution of the nonprofit



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4425 corporation.

4426 (d) A claim that is not barred under this section, any
4427 other statute limiting actions, or Section 10A-3A-11.08 may be
4428 enforced:

4429 (1) against a dissolved nonprofit corporation, to the
4430 extent of its undistributed assets; and

4431 (2) except as provided in subsection (h), if the assets
4432 of a dissolved nonprofit corporation have been distributed
4433 after dissolution, against any person, other than a creditor
4434 of the dissolved nonprofit corporation, to whom the nonprofit
4435 corporation distributed its property to the extent of the
4436 distributee's pro rata share of the claim or the corporate
4437 assets distributed to the distributee in liquidation,
4438 whichever is less, but a distributee's total liability for all
4439 claims under this section may not exceed the total amount of
4440 assets distributed to the distributee.

4441 (e) A dissolved nonprofit corporation that published a
4442 notice under this section may file an application with the
4443 circuit court for the county in which the dissolved nonprofit
4444 corporation's principal office is located in this state and if
4445 the dissolved nonprofit corporation does not have a principal
4446 office within this state, with the circuit court for the
4447 county in which the dissolved nonprofit corporation's most
4448 recent registered office is located, for a determination of
4449 the amount and form of security to be provided for payment of
4450 claims that are contingent or have not been made known to the
4451 dissolved nonprofit corporation or that are based on an event
4452 occurring after the effective date of the dissolution of the



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4453 nonprofit corporation but that, based on the facts known to
4454 the dissolved nonprofit corporation, are reasonably estimated
4455 to arise after the effective date of the dissolution of the
4456 nonprofit corporation. Provision need not be made for any
4457 claim that is or is reasonably anticipated to be barred under
4458 subsection (c).

4459 (f) Within 10 days after the filing of the application
4460 provided for in subsection (e), notice of the proceeding shall
4461 be given by the dissolved nonprofit corporation to each
4462 potential claimant as described in subsection (e).

4463 (g) The circuit court under subsection (e) may appoint
4464 a guardian ad litem to represent all claimants whose
4465 identities are unknown in any proceeding brought under this
4466 section. The reasonable fees and expenses of the guardian,
4467 including all reasonable expert witness fees, shall be paid by
4468 the dissolved nonprofit corporation.

4469 (h) Provision by the dissolved nonprofit corporation
4470 for security in the amount and the form ordered by the circuit
4471 court under subsection (e) shall satisfy the dissolved
4472 nonprofit corporation's obligation with respect to claims that
4473 are contingent, have not been made known to the dissolved
4474 nonprofit corporation, or are based on an event occurring
4475 after the effective date of the dissolution of the nonprofit
4476 corporation, and those claims may not be enforced against a
4477 distributee to whom assets have been distributed by the
4478 dissolved nonprofit corporation after the effective date of
4479 the dissolution of the nonprofit corporation.

4480 (i) Nothing in this section shall be deemed to extend



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4481 any otherwise applicable statute of limitations.

4482 (j) If a claim has been satisfied, disposed of, or
4483 barred under Section 10A-3A-11.08, this section, or other law,
4484 the person or persons designated to wind up the affairs of a
4485 dissolved nonprofit corporation, and the distributees
4486 receiving assets from the dissolved nonprofit corporation,
4487 shall not be liable for that claim.

4488 §10A-3A-11.10. Director duties.

4489 (a) Directors shall cause the dissolved nonprofit
4490 corporation to discharge or make reasonable provision for the
4491 payment of claims and make distributions in liquidation of
4492 assets to the persons designated to receive the assets of the
4493 dissolved nonprofit corporation after payment or provision for
4494 claims.

4495 (b) Directors of a dissolved nonprofit corporation
4496 which has disposed of claims under Section 10A-3A-11.08 or
4497 Section 10A-3A-11.09 shall not be liable for breach of Section
4498 10A-3A-11.10(a) with respect to claims against the dissolved
4499 nonprofit corporation that are barred or satisfied under
4500 Section 10A-3A-11.08 or Section 10A-3A-11.09.

4501 DIVISION B. JUDICIAL DISSOLUTION.

4502 §10A-3A-11.20. Grounds for judicial dissolution.

4503 The circuit court for the county in which the nonprofit
4504 corporation's principal office is located in this state, and
4505 if none in this state, the circuit court for the county in
4506 which the nonprofit corporation's most recent registered
4507 office is located may dissolve a nonprofit corporation:

4508 (1) in a proceeding by the Attorney General if it is



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4509 established that:

4510 (i) the nonprofit corporation obtained its certificate
4511 of incorporation through fraud; or

4512 (ii) the nonprofit corporation has continued to exceed
4513 or abuse the authority conferred upon it by law;

4514 (2) in a proceeding by a director, or members holding
4515 at least 25 percent of the aggregate voting power of all of
4516 the members entitled to vote on dissolution, unless the
4517 certificate of incorporation reduces or eliminates that
4518 percentage requirement, if it is established that:

4519 (i) the directors are deadlocked in the management of
4520 the corporate affairs, the members, if any, are unable to
4521 break the deadlock, and irreparable injury to the nonprofit
4522 corporation or its mission is threatened or being suffered,
4523 because of the deadlock;

4524 (ii) the directors or those in control of the nonprofit
4525 corporation have acted, are acting, or will act in a manner
4526 that is illegal, oppressive, or fraudulent;

4527 (iii) the members are deadlocked in voting power and
4528 have failed, for a period that includes at least two
4529 consecutive annual meeting dates, to elect successors to
4530 directors whose terms have expired;

4531 (iv) the corporate assets are being misapplied or
4532 wasted;

4533 (v) the nonprofit corporation has insufficient assets
4534 to continue its activities and affairs;

4535 (vi) the nonprofit corporation is not able to assemble
4536 a quorum of directors or members; or



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4537 (vii) the nonprofit corporation has abandoned its
4538 activities and affairs and has failed within a reasonable time
4539 to liquidate and distribute its assets and dissolve; or

4540 (3) in a proceeding by a creditor if it is established
4541 that:

4542 (i) the creditor's claim has been reduced to judgment,
4543 the execution on the judgment returned unsatisfied, and the
4544 nonprofit corporation is insolvent; or

4545 (ii) the nonprofit corporation has admitted in writing
4546 that the creditor's claim is due and owing and the nonprofit
4547 corporation is insolvent;

4548 (4) in a proceeding by the nonprofit corporation to
4549 have its voluntary dissolution continued under court
4550 supervision; or

4551 (5) in a proceeding by an interested person, as
4552 determined by the court, if it is established that:

4553 (i) there is not at least one member or director of the
4554 nonprofit corporation; and

4555 (ii) a member or director cannot be elected in
4556 accordance with the certificate of incorporation or bylaws of
4557 the nonprofit corporation.

4558 §10A-3A-11.21. Procedure for judicial dissolution.

4559 (a) Venue for a proceeding by the Attorney General to
4560 dissolve a nonprofit corporation lies in circuit court for the
4561 county in which the nonprofit corporation's principal office
4562 is located in this state, and if none in this state, in the
4563 circuit court for the county in which the nonprofit
4564 corporation's most recent registered office is located. Venue



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4565 for a proceeding brought by any other party named in Section
4566 10A-3A-11.20 lies in circuit court for the county in which the
4567 nonprofit corporation's principal office is located in this
4568 state, and if none in this state, in the circuit court for the
4569 county in which the nonprofit corporation's most recent
4570 registered office is located.

4571 (b) It is not necessary to make members or directors
4572 parties to a proceeding to dissolve a nonprofit corporation
4573 unless relief is sought against them individually.

4574 (c) A court in a proceeding brought to dissolve a
4575 nonprofit corporation may issue injunctions, appoint a
4576 receiver or custodian during the proceeding with all powers
4577 and duties the court directs, take other action required to
4578 preserve the corporate assets wherever located, and carry on
4579 the activities and affairs of the nonprofit corporation until
4580 a full hearing can be held.

4581 §10A-3A-11.22. Receivership; custodianship;
4582 continuation.

4583 (a) A court in a judicial proceeding brought to
4584 dissolve a nonprofit corporation may (i) appoint one or more
4585 receivers to wind up and liquidate, (ii) appoint one or more
4586 custodians to manage the activities and affairs of the
4587 nonprofit corporation, or (iii) appoint one or more custodians
4588 to determine whether the nonprofit corporation should be
4589 dissolved. The court shall hold a hearing, after notifying all
4590 parties to the proceeding and any interested persons
4591 designated by the court, before appointing a receiver or
4592 custodian. The court appointing a receiver or custodian has



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4593 jurisdiction over the nonprofit corporation and all of its
4594 property wherever located.

4595 (b) The court may appoint an individual, nonprofit
4596 corporation, or other entity as a receiver or custodian,
4597 which, if a foreign entity, must be registered to do business
4598 in this state. The court may require the receiver or custodian
4599 to post bond, with or without sureties, in an amount the court
4600 directs.

4601 (c) The court shall describe the powers and duties of
4602 the receiver or custodian in its appointing order, which may
4603 be amended from time to time. Among other powers:

4604 (1) the receiver: (i) may dispose of all or any part of
4605 the assets of the nonprofit corporation wherever located, at a
4606 public or private sale; and (ii) may sue and defend in the
4607 receiver's own name as receiver of the nonprofit corporation
4608 in all courts of this state.

4609 (2) the custodian may exercise all of the powers of the
4610 nonprofit corporation, through or in place of its board of
4611 directors, to the extent necessary to manage the affairs of
4612 the nonprofit corporation in the best interests of the mission
4613 of the nonprofit corporation and in the best interests of the
4614 nonprofit corporation, its members, if any, and creditors.

4615 (3) in lieu of dissolution, the court may authorize a
4616 custodian in a proceeding brought under Section 10A-3A-11.20,
4617 to determine whether the nonprofit corporation should be
4618 dissolved. If the custodian determines that the nonprofit
4619 corporation should not be dissolved, the custodian shall
4620 prepare and present to the court a plan of operation which



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4621 shall set forth:

4622 (i) the reasons that it is in the best interest of the
4623 nonprofit corporation to continue its activities and affairs
4624 and not be dissolved;

4625 (ii) that the continuation of the activities and
4626 affairs of the nonprofit corporation will not be in
4627 contravention of the certificate of incorporation or bylaws of
4628 the nonprofit corporation;

4629 (iii) any amendments to the certificate of
4630 incorporation or bylaws necessary for the nonprofit
4631 corporation to continue its activities and affairs in
4632 accordance with the plan of operation;

4633 (iv) for a membership nonprofit corporation that does
4634 not have any members, the name of at least one person proposed
4635 to be a member; and

4636 (v) for a nonmembership nonprofit corporation that does
4637 not have any directors, the name of at least one person
4638 proposed to be a director.

4639 (4) the receiver or custodian shall have any other
4640 powers and duties as the court may provide in the appointing
4641 order, which may be amended from time to time.

4642 (d) The court during a receivership may redesignate the
4643 receiver a custodian and during a custodianship may
4644 redesignate the custodian a receiver.

4645 (e) The court from time to time during the receivership
4646 or custodianship may order compensation paid and expenses paid
4647 or reimbursed to the receiver or custodian from the assets of
4648 the nonprofit corporation or proceeds from the sale of the



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4649 assets.

4650 §10A-3A-11.23. Decree of dissolution or continuation.

4651 (a) If after a hearing the court determines that one or
4652 more grounds for judicial dissolution described in Section
4653 10A-3A-11.20 exist, the court may enter a decree dissolving
4654 the nonprofit corporation and specifying the effective date of
4655 the dissolution. If the court enters a decree dissolving the
4656 nonprofit corporation, then the clerk of the court shall
4657 deliver a certified copy of the decree to the Secretary of
4658 State for filing.

4659 (b) After entering the decree of dissolution, the court
4660 shall direct the winding up and liquidation of the nonprofit
4661 corporation's activities and affairs in accordance with
4662 Section 10A-3A-11.07 and the notification of claimants in
4663 accordance with Sections 10A-3A-11.08 and 10A-3A-11.09.

4664 (c) If after a hearing the court determines pursuant to
4665 Section 10A-3A-11.22(c)(3) that a nonprofit corporation should
4666 not be dissolved, but should continue its activities and
4667 affairs, the court shall issue a decree naming at least one
4668 person as a member of the nonprofit corporation if it is a
4669 membership nonprofit corporation, naming at least one director
4670 if the nonprofit corporation is a nonmembership nonprofit
4671 corporation, and such other matters as the court may
4672 determine. If the court approves an amendment to the
4673 certificate of incorporation in accordance with Section
4674 10A-3A-11.22(c)(3), then the court's decree shall also set
4675 forth that amendment, specifying the effective date of that
4676 amendment, and the clerk of the court shall deliver a



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4677 certified copy of the decree to the Secretary of State for
4678 filing.

4679 §10A-3A-11.24. Deposit with State Treasurer.

4680 Assets of a dissolved nonprofit corporation that should
4681 be transferred to a creditor, claimant, or a person designated
4682 to receive the assets of the nonprofit corporation who cannot
4683 be found or who is not competent to receive them shall be
4684 reduced to cash and deposited with the State Treasurer or
4685 other appropriate state official for safekeeping. When the
4686 creditor, claimant, or person designated to receive the assets
4687 of the nonprofit corporation furnishes satisfactory proof of
4688 entitlement to the amount deposited, the State Treasurer or
4689 other appropriate state official shall pay that person or that
4690 person's representative that amount.

4691 ARTICLE 12. MERGERS.

4692 §10A-3A-12.01. Definitions.

4693 As used in this article, unless the context otherwise
4694 requires, the following terms mean:

4695 (1) CONSTITUENT CORPORATION means a constituent
4696 organization that is a nonprofit corporation.

4697 (2) CONSTITUENT ORGANIZATION means an organization that
4698 is party to a merger under this article.

4699 (3) GOVERNING STATUTE of an organization means the
4700 statute that governs the organization's internal affairs.

4701 (4) ORGANIZATION means a general partnership, including
4702 a limited liability partnership; limited partnership,
4703 including a limited liability limited partnership; limited
4704 liability company; business trust; business corporation;



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4705 nonprofit corporation; professional corporation; or any other
4706 person having a governing statute. The term includes domestic
4707 and foreign organizations whether or not organized for profit.

4708 (5) ORGANIZATIONAL DOCUMENTS means:

4709 (A) for a general partnership or foreign general
4710 partnership, its partnership agreement and if applicable, its
4711 registration as a limited liability partnership or a foreign
4712 limited liability partnership;

4713 (B) for a limited partnership or foreign limited
4714 partnership, its certificate of formation and partnership
4715 agreement, or comparable writings as provided in its governing
4716 statute;

4717 (C) for a limited liability company or foreign limited
4718 liability company, its certificate of formation and limited
4719 liability company agreement, or comparable writings as
4720 provided in its governing statute;

4721 (D) for a business or statutory trust or foreign
4722 business or statutory trust its agreement of trust and
4723 declaration of trust, or comparable writings as provided in
4724 its governing statute;

4725 (E) for a business corporation or foreign business
4726 corporation, its certificate of incorporation, bylaws, and
4727 other agreements among its stockholders that are authorized by
4728 its governing statute, or comparable writings as provided in
4729 its governing statute;

4730 (F) for a nonprofit corporation or foreign nonprofit
4731 corporation, its certificate of incorporation, bylaws, and
4732 other agreements that are authorized by its governing statute,



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4733 or comparable writings as provided in its governing statute;

4734 (G) for a professional corporation or foreign
4735 professional corporation, its certificate of incorporation,
4736 bylaws, and other agreements among its stockholders that are
4737 authorized by its governing statute, or comparable writings as
4738 provided in its governing statute; and

4739 (H) for any other organization, the basic writings that
4740 create the organization and determine its internal governance
4741 and the relations among the persons that own it, have an
4742 interest in it, or are members of it.

4743 (6) SURVIVING ORGANIZATION means an organization into
4744 which one or more other organizations are merged under this
4745 article, whether the organization pre-existed the merger or
4746 was created pursuant to the merger.

4747 §10A-3A-12.02. Merger.

4748 (a) A nonprofit corporation may merge with one or more
4749 other constituent organizations pursuant to this article, and
4750 a plan of merger, if:

4751 (1) the governing statute of each of the other
4752 organizations authorizes the merger;

4753 (2) the merger is not prohibited by the law of a
4754 jurisdiction that enacted any of those governing statutes; and

4755 (3) each of the other organizations complies with its
4756 governing statute in effecting the merger.

4757 (b) A plan of merger must be in writing and must
4758 include:

4759 (1) the name, type of organization, and mailing address
4760 of the principal office of each constituent organization, the



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4761 jurisdiction of the governing statute of each constituent
4762 organization, and the respective unique identifying number or
4763 other designation as assigned by the Secretary of State, if
4764 any, of each constituent organization;

4765 (2) the name, type of organization, and mailing address
4766 of the principal office of the surviving organization, the
4767 unique identifying number or other designation as assigned by
4768 the Secretary of State, if any, of the surviving organization,
4769 the jurisdiction of the governing statute of the surviving
4770 organization, and, if the surviving organization is created
4771 pursuant to the merger, a statement to that effect;

4772 (3) the terms and conditions of the merger, including
4773 the manner and basis for converting the interests in each
4774 constituent organization into any combination of money,
4775 securities, interests in the surviving organization, and other
4776 consideration as allowed by subsection (c);

4777 (4) if the surviving organization is to be created
4778 pursuant to the merger, the surviving organization's
4779 organizational documents; and

4780 (5) if the surviving organization is not to be created
4781 pursuant to the merger, any amendments to be made by the
4782 merger to the surviving organization's organizational
4783 documents.

4784 (c) In connection with a merger, rights, securities, or
4785 interests, if any, in a constituent organization may be
4786 exchanged for or converted into cash, property, rights,
4787 securities, or interests, if any, in the surviving
4788 organization, or, in addition to or in lieu thereof, may be



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4789 exchanged for or converted into cash, property, rights,
4790 securities, or interests, if any, in another organization, or
4791 may be cancelled.

4792 (d) In addition to the requirements of subsection (b),
4793 a plan of merger may contain any other provision not
4794 prohibited by law.

4795 (e) Terms of a plan of merger may be made dependent on
4796 facts objectively ascertainable outside the plan in accordance
4797 with Section 10A-3A-1.04(c)(5).

4798 (f) A plan of merger may be amended only with the
4799 consent of each constituent organization, except as provided
4800 in the plan. A domestic constituent organization may approve
4801 an amendment to a plan:

4802 (1) in the same manner as the plan was approved, if the
4803 plan does not provide for the manner in which it may be
4804 amended; or

4805 (2) in the manner provided in the plan, except that if
4806 the plan has been approved by the interest holders that were
4807 entitled to vote on, consent to, or approve of, the plan, then
4808 those interest holders are entitled to vote on, consent to, or
4809 approve of any amendment of the plan that will change:

4810 (i) the amount or kind of securities, interests,
4811 obligations, rights to acquire other interests or securities,
4812 cash, or other property to be received under the plan by the
4813 interest holders of a constituent organization;

4814 (ii) the certificate of incorporation of any nonprofit
4815 corporation, foreign nonprofit corporation, business
4816 corporation, foreign business corporation or the



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4817 organizational documents of any other organization, that will
4818 be the surviving organization, except for changes permitted by
4819 Section 10A-3A-9.03(g) or by comparable provisions of the
4820 governing statute of the foreign nonprofit corporation,
4821 business corporation, foreign business corporation, or other
4822 organization; or

4823 (iii) any of the other terms or conditions of the plan
4824 if the change would adversely affect the interest holders in
4825 any material respect.

4826 §10A-3A-12.03. Action on a plan of merger in a
4827 membership nonprofit corporation.

4828 In the case of a membership nonprofit corporation that
4829 is a constituent organization, the plan of merger shall be
4830 adopted in the following manner:

4831 (a) The plan of merger shall first be adopted by the
4832 board of directors.

4833 (b) Except as provided in subsection (h), the plan of
4834 merger shall then be approved by the members entitled to vote
4835 thereon. In submitting the plan of merger to the members for
4836 approval, the board of directors shall recommend that the
4837 members approve the plan of merger, unless the board of
4838 directors makes a determination that because of conflicts of
4839 interest or other special circumstances it should not make a
4840 recommendation, in which case the board of directors shall
4841 inform the members of the basis for its so proceeding.

4842 (c) The board of directors may set conditions for the
4843 approval of the plan of merger by the members or the
4844 effectiveness of the plan of merger.



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4845 (d) If the plan of merger is required to be approved by
4846 the members, and if the approval is to be given at a meeting,
4847 the membership nonprofit corporation shall notify each member
4848 who is entitled to vote, of the meeting of the members at
4849 which the plan of merger is to be submitted for approval. The
4850 notice must state that the purpose, or one of the purposes, of
4851 the meeting is to consider the plan of merger and must contain
4852 or be accompanied by a copy or summary of the plan of merger.
4853 If the membership nonprofit corporation is to be merged into
4854 an existing nonprofit corporation, foreign nonprofit
4855 corporation, or other organization, the notice must also
4856 include or be accompanied by a copy or summary of the
4857 certificate of incorporation and bylaws or the organizational
4858 documents of that nonprofit corporation, foreign nonprofit
4859 corporation, or other organization. If the membership
4860 nonprofit corporation is to be merged with a nonprofit
4861 corporation, foreign nonprofit corporation, or other
4862 organization and a new nonprofit corporation, foreign
4863 nonprofit corporation, or organization is to be created
4864 pursuant to the merger, the notice must include or be
4865 accompanied by a copy or a summary of the certificate of
4866 incorporation and bylaws or the organizational documents of
4867 the new nonprofit corporation, foreign nonprofit corporation,
4868 or other organization.

4869 (e) Unless the certificate of incorporation, or the
4870 board of directors acting pursuant to subsection (c), requires
4871 a greater vote or a greater quorum, approval of the plan of
4872 merger requires the approval of the members entitled to vote



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4873 at a meeting at which a quorum exists consisting of a majority
4874 of the votes entitled to be cast on the plan of merger, and,
4875 if any class of membership interests entitled to vote as a
4876 separate group on the plan of merger, the approval of each
4877 separate voting group at a meeting at which a quorum of the
4878 voting group is present consisting of a majority of the votes
4879 entitled to be cast on the merger by that voting group.

4880 (f) Subject to subsection (g), separate voting by
4881 voting groups is required:

4882 (1) on a plan of merger, by each class of membership
4883 interests that:

4884 (i) are to be converted under the plan of merger into
4885 securities, interests, obligations, rights to acquire other
4886 securities or interests, cash, other property, or any
4887 combination of the foregoing; or

4888 (ii) are entitled to vote as a separate group on a
4889 provision in the plan of merger that constitutes a proposed
4890 amendment to the certificate of incorporation of a surviving
4891 nonprofit corporation that requires action by separate voting
4892 groups under Section 10A-3A-9.04; and

4893 (2) on a plan of merger, if the voting group is
4894 entitled under the certificate of incorporation or bylaws to
4895 vote as a voting group to approve a plan of merger,
4896 respectively.

4897 (g) The certificate of incorporation may expressly
4898 limit or eliminate the separate voting rights provided in
4899 subsection (f) (1) (i) and subsection (f) (2) as to any class of
4900 membership, except when the plan of merger includes what is or



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4901 would be in effect an amendment subject to subsection
4902 (f) (1) (ii).

4903 (h) Unless the certificate of incorporation otherwise
4904 provides, approval by the membership nonprofit corporation's
4905 members of a plan of merger is not required if:

4906 (1) the membership nonprofit corporation will survive
4907 the merger;

4908 (2) except for amendments that do not require member
4909 approval under Section 10A-3A-9.03(g) or the approval of a
4910 person or group of persons under Section 10A-3A-9.30, its
4911 certificate of incorporation will not be changed;

4912 (3) except for amendments that do not require member
4913 approval under Section 10A-3A-9.22 or the approval of a person
4914 or group of persons under Section 10A-3A-9.30, its bylaws will
4915 not be changed; and

4916 (4) each member of the membership nonprofit corporation
4917 whose membership interest was outstanding immediately before
4918 the effective date of the merger will hold the same number of
4919 membership interests, with identical preferences, rights, and
4920 limitations, immediately after the effective date of the
4921 merger.

4922 (i) In addition to the adoption and approval of the
4923 plan of merger as required by this section, the plan must also
4924 be approved in writing by a person or group of persons, if
4925 any, whose approval is required under Section 10A-3A-12.08.

4926 §10A-3A-12.04. Action on a plan of merger in a
4927 nonmembership nonprofit corporation.

4928 In the case of a merger of a nonmembership nonprofit



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4929 corporation the plan of merger shall be adopted in the
4930 following manner:

4931 (a) The plan of merger shall be adopted by the board of
4932 directors; and

4933 (b) A plan of merger adopted by the board of directors
4934 under this section must also be approved in writing by a
4935 person or group of persons, if any, whose approval is required
4936 under Section 10A-3A-12.08.

4937 §10A-3A-12.05. Statement of merger.

4938 (a) After a plan of merger has been adopted and
4939 approved as required by this article, then a statement of
4940 merger shall be signed by each party to the merger. The
4941 statement of merger must set forth:

4942 (1) the name, type of organization, and mailing address
4943 of the principal office of each constituent organization, the
4944 jurisdiction of the governing statute of each constituent
4945 organization, and the respective unique identifying number or
4946 other designation as assigned by the Secretary of State, if
4947 any, of each constituent organization;

4948 (2) the name, type of organization, and mailing address
4949 of the principal office of the surviving organization, the
4950 unique identifying number or other designation as assigned by
4951 the Secretary of State, if any, of the surviving organization,
4952 the jurisdiction of the governing statute of the surviving
4953 organization, and, if the surviving organization is created
4954 pursuant to the merger, a statement to that effect;

4955 (3) the date the merger is effective under the
4956 governing statute of the surviving organization;



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4957 (4) if the surviving organization is to be created
4958 pursuant to the merger:

4959 (A) if it will be a nonprofit corporation, the
4960 nonprofit corporation's certificate of incorporation; or

4961 (B) if it will be an organization other than a
4962 nonprofit corporation, any organizational document that
4963 creates the organization that is required to be in a public
4964 writing or in the case of a limited liability partnership, its
4965 statement of limited liability partnership;

4966 (5) if the surviving organization exists before the
4967 merger, any amendments provided for in the plan of merger for
4968 the organizational document that created the organization that
4969 are in a public writing;

4970 (6) a statement as to each constituent organization
4971 that the merger was approved as required by the organization's
4972 governing statute;

4973 (7) if the surviving organization is a foreign
4974 organization not authorized to conduct activities and affairs
4975 in this state, the street and mailing address of an office for
4976 the purposes of Section 10A-3A-12.06(b);

4977 (8) any additional information required by the
4978 governing statute of any constituent organization;

4979 (9) if the plan of merger required approval by the
4980 members of a membership nonprofit corporation that is a
4981 constituent organization, a statement that the plan was duly
4982 approved by the members and, if voting by any separate voting
4983 group was required, by each separate voting group, in the
4984 manner required by this chapter, the certificate of



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4985 incorporation or bylaws;

4986 (10) if the plan of merger required approval by a
4987 person or group of persons as specified in the certificate of
4988 incorporation pursuant to Section 10A-3A-12.08, a statement
4989 that the plan was duly approved by that person or group of
4990 persons;

4991 (11) if the plan of merger did not require approval by
4992 the members of a membership nonprofit corporation that is a
4993 constituent organization, a statement to that effect; and

4994 (12) a statement that the plan of merger will be
4995 furnished by the surviving organization, on request and
4996 without cost, to any member or owner of any constituent
4997 organization which is a party to the merger.

4998 (b) In addition to the requirements of subsection (a),
4999 a statement of merger may contain any other provision not
5000 prohibited by law.

5001 (c) The statement of merger shall be delivered to the
5002 Secretary of State for filing and, subject to subsection (d),
5003 the merger shall take effect at the effective date and time
5004 determined in accordance with Article 4 of Chapter 1.

5005 (d) With respect to a merger in which one or more
5006 foreign organizations is a constituent organization or a
5007 foreign organization created by the merger is the surviving
5008 organization, the merger itself shall become effective at the
5009 later of:

5010 (1) when all documents required to be filed in foreign
5011 jurisdictions to effect the merger have become effective, or

5012 (2) when the statement of merger takes effect.



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5013 (e) A statement of merger filed under this section may
5014 be combined with any filing required under the governing
5015 statute governing any domestic organization involved in the
5016 transaction if the combined filing satisfies the requirements
5017 of this section, the other governing statute, and Article 4 of
5018 Chapter 1.

5019 (f) A certified copy of the statement of merger
5020 required to be filed under this section may be filed in the
5021 real estate records in the office of the judge of probate in
5022 any county in which any constituent organization owned real
5023 property, without payment and without collection by the judge
5024 of probate of any deed or other transfer tax or fee. The judge
5025 of probate, however, shall be entitled to collect the filing
5026 fee of five dollars (\$5). Any filing shall evidence chain of
5027 title, but lack of filing shall not affect the surviving
5028 organization's title to real property.

5029 (g) A statement of conversion is a filing instrument
5030 under Chapter 1.

5031 (h) The filing fees for a statement of conversion shall
5032 be as set forth in Chapter 1.

5033 §10A-3A-12.06. Effect of merger.

5034 (a) When a merger becomes effective:

5035 (1) the surviving organization continues or, in the
5036 case of a surviving organization created pursuant to the
5037 merger, comes into existence;

5038 (2) each constituent organization that merges into the
5039 surviving organization ceases to exist as a separate entity;

5040 (3) except as provided in the plan of merger, all



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5041 property owned by, and every contract right possessed by, each
5042 constituent organization that ceases to exist vests in the
5043 surviving organization without transfer, reversion, or
5044 impairment and the title to any property and contract rights
5045 vested by deed or otherwise in the surviving organization
5046 shall not revert, be in any way impaired, or be deemed to be a
5047 transfer by reason of the merger;

5048 (4) all debts, obligations, and other liabilities of
5049 each constituent organization, other than the surviving
5050 organization, are debts, obligations, and liabilities of the
5051 surviving organization, and neither the rights of creditors,
5052 nor any liens upon the property of any constituent
5053 organization, shall be impaired by the merger;

5054 (5) an action or proceeding pending by or against any
5055 constituent organization continues as if the merger had not
5056 occurred and the name of the surviving organization may, but
5057 need not be, substituted in any pending proceeding for the
5058 name of any constituent organization whose separate existence
5059 ceased in the merger;

5060 (6) except as prohibited by law other than this chapter
5061 or as provided in the plan of merger, all the rights,
5062 privileges, franchises, immunities, powers, and purposes of
5063 each constituent organization, other than the surviving
5064 organization, vest in the surviving organization;

5065 (7) except as otherwise provided in the plan of merger,
5066 the terms and conditions of the plan of merger take effect;

5067 (8) except as otherwise agreed, if a constituent
5068 organization that is a nonprofit corporation ceases to exist,



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5069 the merger does not dissolve the nonprofit corporation;

5070 (9) if the surviving organization is created pursuant
5071 to the merger:

5072 (A) if it is a nonprofit corporation, the certificate
5073 of incorporation and bylaws become effective; or

5074 (B) if it is an organization other than a nonprofit
5075 corporation, the organizational documents that create the
5076 organization becomes effective;

5077 (10) if the surviving organization existed before the
5078 merger, any amendments provided for in the statement of merger
5079 for the organizational documents of that organization become
5080 effective;

5081 (11) the membership interests, if any, of each
5082 nonprofit corporation or foreign nonprofit corporation that is
5083 a constituent organization to the merger, and the interests in
5084 an organization that is a constituent organization, that are
5085 to be converted in accordance with the terms of the merger
5086 into securities, interests, obligations, rights to acquire
5087 other securities or interests, cash, other property, or any
5088 combination of the foregoing, are converted, and the former
5089 holders of membership interests, if any, or interests are
5090 entitled only to the rights provided to them by those terms or
5091 to any rights they may have under the governing statute
5092 governing that constituent organization;

5093 (12) if the surviving organization exists before the
5094 merger:

5095 (A) except as provided in the plan of merger, all
5096 property and contract rights of the surviving organization



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5097 remain its property and contract rights without transfer,
5098 reversion, or impairment;

5099 (B) the surviving organization remains subject to all
5100 its debts, obligations, and other liabilities; and

5101 (C) except as provided by law other than this chapter
5102 or the plan of merger, the surviving organization continues to
5103 hold all of its rights, privileges, franchises, immunities,
5104 powers and purposes.

5105 (b) A surviving organization that is a foreign
5106 organization:

5107 (1) consents to the jurisdiction of this state to
5108 enforce any debt, obligation, or other liability owed by a
5109 constituent organization, if before the merger the constituent
5110 organization was subject to suit in this state on the debt,
5111 obligation, or other liability; and

5112 (2) consents that if it fails to designate or maintain
5113 a registered agent, or the designated registered agent cannot
5114 with reasonable diligence be served, then the service of
5115 process on that surviving organization for the purposes of
5116 enforcing a debt, obligation, or other liability under this
5117 subsection and for enforcing the rights, if any, of members of
5118 each nonprofit corporation that is a constituent organization
5119 may be made in the same manner and has the same consequences
5120 as provided in Section 10A-1-5.35.

5121 §10A-3A-12.07. Abandonment of a merger.

5122 (a) After a plan of merger has been adopted and
5123 approved as required by this Article 12, and before the
5124 statement of merger has become effective, the plan may be



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5125 abandoned by a nonprofit corporation that is a party to the
5126 plan without action by its members, if any, or a person or
5127 group of persons under Section 10A-3A-12.08, if any, in
5128 accordance with any procedures set forth in the plan of merger
5129 or, if no procedures are set forth in the plan, in the manner
5130 determined by the board of directors.

5131 (b) If a merger is abandoned under subsection (a) after
5132 the statement of merger has been delivered to the Secretary of
5133 State for filing but before the merger has become effective, a
5134 statement of abandonment signed by all the parties that signed
5135 the statement of merger shall be delivered to the Secretary of
5136 State for filing before the statement of merger becomes
5137 effective. The statement shall take effect on filing and the
5138 merger shall be deemed abandoned and shall not become
5139 effective. The statement of abandonment must contain:

5140 (1) the name of each party to the merger;

5141 (2) the date on which the statement of merger was filed
5142 by the Secretary of State; and

5143 (3) a statement that the merger has been abandoned in
5144 accordance with this section.

5145 §10A-3A-12.08. Approval by specified person or group of
5146 persons.

5147 (a) The certificate of incorporation of a membership
5148 nonprofit corporation may require that a merger under this
5149 article or under Article 8 of Chapter 1 be approved in writing
5150 by a specified person or group of persons in addition to the
5151 board of directors and members.

5152 (b) The certificate of incorporation of a nonmembership



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5153 nonprofit corporation may require that a merger under this
5154 article or under Article 8 of Chapter 1 be approved in writing
5155 by a specified person or group of persons in addition to the
5156 board of directors.

5157 (c) A requirement in the certificate of incorporation
5158 described in subsections (a) or (b) of this section may only
5159 be approved by the written approval of the specified person or
5160 group of persons.

5161 §10A-3A-12.09. Nonexclusive.

5162 This article is not exclusive. This article does not
5163 preclude a nonprofit corporation from merging under law other
5164 than this chapter.

5165 ARTICLE 13. CONVERSIONS.

5166 §10A-3A-13.01. Definitions.

5167 As used in this article, unless the context otherwise
5168 requires, the following terms mean:

5169 (1) CONVERTED ORGANIZATION means the organization into
5170 which a converting organization converts pursuant to this
5171 article.

5172 (2) CONVERTING NONPROFIT CORPORATION means a converting
5173 organization that is a nonprofit corporation.

5174 (3) CONVERTING ORGANIZATION means an organization that
5175 converts into another organization pursuant to this article.

5176 (4) GOVERNING STATUTE of an organization means the
5177 statute that governs the organization's internal affairs.

5178 (5) ORGANIZATION means a general partnership, including
5179 a limited liability partnership; limited partnership,
5180 including a limited liability limited partnership; limited



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5181 liability company; business trust; business corporation;
5182 nonprofit corporation; professional corporation; or any other
5183 person having a governing statute. The term includes domestic
5184 and foreign organizations whether or not organized for profit.

5185 (6) ORGANIZATIONAL DOCUMENTS means:

5186 (A) for a general partnership or foreign general
5187 partnership, its partnership agreement and if applicable, its
5188 registration as a limited liability partnership or a foreign
5189 limited liability partnership;

5190 (B) for a limited partnership or foreign limited
5191 partnership, its certificate of formation and partnership
5192 agreement, or comparable writings as provided in its governing
5193 statute;

5194 (C) for a limited liability company or foreign limited
5195 liability company, its certificate of formation and limited
5196 liability company agreement, or comparable writings as
5197 provided in its governing statute;

5198 (D) for a business or statutory trust or foreign
5199 business or statutory trust, its agreement of trust and
5200 declaration of trust, or comparable writings as provided in
5201 its governing statute;

5202 (E) for a business corporation or foreign business
5203 corporation, its certificate of incorporation, bylaws, and
5204 other agreements among its stockholders that are authorized by
5205 its governing statute or comparable writings as provided in
5206 its governing statute;

5207 (F) for a nonprofit corporation or foreign nonprofit
5208 corporation, its certificate of incorporation, bylaws, and



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5209 other agreements that are authorized by its governing statute,
5210 or comparable writings as provided in its governing statute;

5211 (G) for a professional corporation or foreign
5212 professional corporation, its certificate of incorporation,
5213 bylaws, and other agreements among its stockholders that are
5214 authorized by its governing statute or comparable writings as
5215 provided in its governing statute; and

5216 (H) for any other organization, the basic writings that
5217 create the organization and determine its internal governance
5218 and the relations among the persons that own it, have an
5219 interest in it, or are members of it.

5220 §10A-3A-13.02. Conversion.

5221 (a) An organization other than a nonprofit corporation
5222 may convert to a nonprofit corporation, and a nonprofit
5223 corporation may convert to an organization other than a
5224 nonprofit corporation pursuant to this article, and a plan of
5225 conversion, if:

5226 (1) the governing statute of the organization that is
5227 not a nonprofit corporation authorizes the conversion;

5228 (2) the law of the jurisdiction governing the
5229 converting organization and the converted organization does
5230 not prohibit the conversion; and

5231 (3) the converting organization and the converted
5232 organization each comply with the governing statute and
5233 organizational documents applicable to that organization in
5234 effecting the conversion.

5235 (b) A plan of conversion must be in writing and must
5236 include:



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5237 (1) the name, type of organization, and mailing address
5238 of the principal office of the converting organization and its
5239 unique identifying number or other designation as assigned by
5240 the Secretary of State, if any, before conversion;

5241 (2) the name, type of organization, and mailing address
5242 of the principal office of the converted organization after
5243 conversion;

5244 (3) the terms and conditions of the conversion,
5245 including the manner and basis for converting interests, if
5246 any, in the converting organization into any combination of
5247 money, interests in the converted organization, and other
5248 consideration allowed in subsection (c); and

5249 (4) the organizational documents of the converted
5250 organization.

5251 (c) In connection with a conversion, rights or
5252 securities of or interests, if any, in the converting
5253 organization may be exchanged for or converted into cash,
5254 property, or rights or securities of or interests, if any, in
5255 the converted organization, or, in addition to or in lieu
5256 thereof, may be exchanged for or converted into cash,
5257 property, rights, securities, or interests, if any, in another
5258 organization, or may be cancelled.

5259 (d) In addition to the requirements of subsection (b),
5260 a plan of conversion may contain any other provision not
5261 prohibited by law.

5262 (e) Terms of a plan of conversion may be made dependent
5263 on facts objectively ascertainable outside the plan in
5264 accordance with Section 10A-3A-1.04(c).



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5265 §10A-3A-13.03. Action on a plan of conversion in a
5266 membership nonprofit corporation.

5267 In the case of a conversion of a membership nonprofit
5268 corporation the plan of conversion shall be adopted in the
5269 following manner:

5270 (a) The plan of conversion shall first be adopted by
5271 the board of directors.

5272 (b) The plan of conversion shall then be approved by
5273 the members entitled to vote thereon. In submitting the plan
5274 of conversion to the members for their approval, the board of
5275 directors must recommend that the members approve the plan of
5276 conversion, unless the board of directors makes a
5277 determination that because of conflicts of interest or other
5278 special circumstances it should not make a recommendation, in
5279 which case the board of directors shall inform the members of
5280 the basis for its so proceeding.

5281 (c) The board of directors may set conditions for the
5282 approval of the plan of conversion by the members or the
5283 effectiveness of the plan of conversion.

5284 (d) If the approval of the members is to be given at a
5285 meeting, the nonprofit corporation shall notify each member
5286 entitled to vote of the meeting of members at which the plan
5287 of conversion is to be submitted for approval. The notice must
5288 state that the purpose, or one of the purposes, of the meeting
5289 is to consider the plan of conversion and must contain or be
5290 accompanied by a copy or summary of the plan of conversion.
5291 The notice must include or be accompanied by a copy of the
5292 organizational documents of the converted organization which



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5293 are to be in writing as they will be in effect immediately
5294 after the conversion.

5295 (e) Unless the certificate of incorporation or the
5296 board of directors acting pursuant to subsection (c), requires
5297 a greater vote or a greater quorum, approval of the plan of
5298 conversion requires (i) the approval of the members entitled
5299 to vote at a meeting at which a quorum exists consisting of a
5300 majority of the votes entitled to be cast on the plan of
5301 conversion, and (ii) the approval of each class of members
5302 voting as a separate voting group at a meeting at which a
5303 quorum of the voting group exists consisting of a majority of
5304 the votes entitled to be cast on the plan of conversion by
5305 that voting group.

5306 (f) In addition to the adoption and approval of the
5307 plan of conversion as required by this section, the plan of
5308 conversion must also be approved in writing by a person or
5309 group of persons, if any, whose approval is required under
5310 Section 10A-3A-13.08.

5311 §10A-3A-13.04. Action on a plan of conversion in a
5312 nonmembership nonprofit corporation.

5313 In the case of a conversion of a nonmembership
5314 nonprofit corporation the plan of conversion shall be adopted
5315 in the following manner:

5316 (a) The plan of conversion shall be adopted by the
5317 board of directors; and

5318 (b) A plan of conversion adopted by the board of
5319 directors under this section must also be approved in writing
5320 by a person or group of persons, if any, whose approval is



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5321 required under Section 10A-3A-13.08.

5322 §10A-3A-13.05. Statement of conversion; effectiveness.

5323 (a) After a plan of conversion is approved:

5324 (1) if the converting organization is an organization
5325 formed under, or its internal affairs are governed by, the
5326 laws of this state, the converting organization shall file a
5327 statement of conversion in accordance with subsection (c),
5328 which statement of conversion must be signed in accordance
5329 with Section 10A-1-4.01 and which must include:

5330 (A) the name, type of organization, and mailing address
5331 of the principal office of the converting organization, and
5332 its unique identifying number or other designation as assigned
5333 by the Secretary of State, if any;

5334 (B) a statement that the converting organization has
5335 been converted into the converted organization;

5336 (C) the name and type of organization of the converted
5337 organization and the jurisdiction of its governing statute;

5338 (D) the street and mailing address of the principal
5339 office of the converted organization;

5340 (E) the date the conversion is effective under the
5341 governing statute of the converted organization;

5342 (F) a statement that the conversion was approved as
5343 required by this chapter;

5344 (G) a statement that the conversion was approved as
5345 required by the governing statute of the converted
5346 organization;

5347 (H) a statement that a copy of the plan of conversion
5348 will be furnished by the converted organization, on request



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5349 and without cost, to any owner of the converting organization;
5350 and

5351 (I) if the converted organization is a foreign
5352 organization not authorized to conduct activities and affairs
5353 in this state, the street and mailing address of an office for
5354 the purposes of Section 10A-3A-13.07(b); and

5355 (2) if the converted organization is a nonprofit
5356 corporation, the converting organization shall deliver for
5357 filing a certificate of incorporation in accordance with
5358 subsection (d), which certificate of incorporation must
5359 include, in addition to the information required by Section
5360 10A-3A-2.02:

5361 (A) a statement that the nonprofit corporation was
5362 converted from the converting organization;

5363 (B) the name and type of organization of the converting
5364 organization, the jurisdiction of the converting
5365 organization's governing statute, and the converting
5366 organization's unique identifying number or other designation
5367 as assigned by the Secretary of State, if any; and

5368 (C) a statement that the conversion was approved in a
5369 manner that complied with the converting organization's
5370 governing statute.

5371 (b) A conversion becomes effective:

5372 (1) if the converted organization is a nonprofit
5373 corporation, when the certificate of incorporation takes
5374 effect; and

5375 (2) if the converted organization is not a nonprofit
5376 corporation, as provided by the governing statute of the



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5377 converted organization.

5378 (c) If the converting organization is an organization
5379 formed under, or its internal affairs are governed by, the
5380 laws of this state, then the converting organization shall
5381 deliver for filing the statement of conversion required under
5382 subsection (a)(1) to the Secretary of State.

5383 (d) If the converted organization is a nonprofit
5384 corporation, then, the converting organization shall deliver
5385 for filing the certificate of incorporation required under
5386 subsection (a)(2) to the Secretary of State.

5387 (e) If the converting organization is required to
5388 deliver for filing a statement of conversion and a certificate
5389 of formation or a certificate of incorporation to the
5390 Secretary of State, then the converting organization shall
5391 deliver for filing the statement of conversion and the
5392 certificate of formation or certificate of incorporation to
5393 the Secretary of State simultaneously.

5394 (f) If:

5395 (1) the converting organization is a filing entity or a
5396 foreign filing entity registered to conduct activities and
5397 affairs in this state;

5398 (2) the converted organization will be a filing entity
5399 or a foreign filing entity registered to conduct activities
5400 and affairs in this state;

5401 (3) the name of the converting organization and the
5402 converted organization are to be the same, other than words,
5403 phrases, or abbreviations indicating the type of entity; and

5404 (4) the name of the converted organization complies



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5405 with Division A of Article 5 of Chapter 1 or Section
5406 10A-1-7.07, as the case may be; then notwithstanding Division
5407 B of Article 5 of Chapter 1, no name reservation shall be
5408 required and the converted organization shall for all purposes
5409 of this title be entitled to utilize the name of the
5410 converting organization without any further action by the
5411 converting organization or the converted organization.

5412 (g) A certified copy of any document required to be
5413 filed under this section may be filed in the real estate
5414 records in the office of the judge of probate in any county in
5415 which the converting organization owned real property, without
5416 payment and without collection by the judge of probate of any
5417 deed or other transfer tax or fee. The judge of probate shall,
5418 however, be entitled to collect a filing fee of five dollars
5419 (\$5). Any such filing with the judge of probate shall evidence
5420 chain of title, but lack of filing shall not affect the
5421 converted organization's title to such real property.

5422 (h) A statement of conversion is a filing instrument
5423 under Chapter 1.

5424 (i) The filing fees for a statement of conversion shall
5425 be as set forth in Chapter 1.

5426 §10A-3A-13.06. Amendment of plan of conversion;
5427 abandonment.

5428 (a) A plan of conversion of a converting organization
5429 that is a nonprofit corporation may be amended:

5430 (1) in the same manner as the plan was approved, if the
5431 plan does not provide for the manner in which it may be
5432 amended; or



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5433 (2) in the manner provided in the plan, except that if
5434 the plan has been approved by the members that were entitled
5435 to vote on, consent to, or approve of the plan, then those
5436 members are entitled to vote on, consent to, or approve of any
5437 amendment of the plan that will change:

5438 (i) the amount or kind of interests, if any, or other
5439 securities, obligations, rights to acquire interests, if any,
5440 or other securities, cash, other property, or any combination
5441 of the foregoing, to be received by the members, if any, of
5442 the converting nonprofit corporation under the plan;

5443 (ii) the organizational documents of the converted
5444 organization that will be in effect immediately after the
5445 conversion becomes effective, except for changes that do not
5446 require approval of the interest holders of the converted
5447 organization under its governing statute or organizational
5448 documents; or

5449 (iii) any other terms or conditions of the plan, if the
5450 change would adversely affect the members in any material
5451 respect.

5452 (b) After a plan of conversion has been approved by a
5453 converting organization that is a nonprofit corporation in the
5454 manner required by this article and before the statement of
5455 conversion becomes effective, the plan may be abandoned by the
5456 nonprofit corporation without action by its members, if any,
5457 or a person or group of persons under Section 10A-3A-13.08, in
5458 accordance with any procedures set forth in the plan or, if no
5459 procedures are set forth in the plan, in the manner determined
5460 by the board of directors.



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5461 (c) If a conversion is abandoned after the statement of
5462 conversion has been delivered to the Secretary of State for
5463 filing and before the statement of conversion becomes
5464 effective, a statement of abandonment, signed by the
5465 converting organization, must be delivered to the Secretary of
5466 State for filing before the statement of conversion becomes
5467 effective. The statement of abandonment takes effect on
5468 filing, and the conversion is abandoned and does not become
5469 effective. The statement of abandonment must contain:

- 5470 (1) the name of the converting organization;
- 5471 (2) the date on which the statement of conversion was
5472 filed by the Secretary of State; and
- 5473 (3) a statement that the conversion has been abandoned
5474 in accordance with this section.

5475 §10A-3A-13.07. Effect of conversion.

5476 (a) When a conversion takes effect:

5477 (1) all property and contract rights owned by the
5478 converting organization remain vested in the converted
5479 organization without transfer, reversion, or impairment, and
5480 the title to any property vested by deed or otherwise in the
5481 converting organization shall not revert or be in any way
5482 impaired by reason of the conversion;

5483 (2) all debts, obligations, or other liabilities of the
5484 converting organization continue as debts, obligations, or
5485 other liabilities of the converted organization and neither
5486 the rights of creditors, nor the liens upon the property of
5487 the converting organization shall be impaired by the
5488 conversion;



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5489 (3) an action or proceeding pending by or against the
5490 converting organization continues as if the conversion had not
5491 occurred and the name of the converted organization may, but
5492 need not, be substituted for the name of the converting
5493 organization in any pending action or proceeding;

5494 (4) except as prohibited by law other than this
5495 chapter, all of the rights, privileges, immunities, powers,
5496 and purposes of the converting organization remain vested in
5497 the converted organization;

5498 (5) except as otherwise provided in the plan of
5499 conversion, the terms and conditions of the plan of conversion
5500 take effect;

5501 (6) except as otherwise agreed, for all purposes of the
5502 laws of this state, the converting organization shall not be
5503 required to wind up its affairs or pay its liabilities and
5504 distribute its assets, and the conversion shall not be deemed
5505 to constitute a dissolution of the converting organization;

5506 (7) for all purposes of the laws of this state, the
5507 rights, privileges, powers, interests in property, debts,
5508 liabilities, and duties of the converting organization, shall
5509 be the rights, privileges, powers, interests in property,
5510 debts, liabilities, and duties of the converted organization,
5511 and shall not be deemed as a consequence of the conversion, to
5512 have been transferred to the converted organization;

5513 (8) if the converted organization is a nonprofit
5514 corporation, for all purposes of the laws of this state, the
5515 nonprofit corporation shall be deemed to be the same
5516 organization as the converting organization, and the



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5517 conversion shall constitute a continuation of the existence of
5518 the converting organization in the form of a nonprofit
5519 corporation;

5520 (9) if the converted organization is a nonprofit
5521 corporation, the existence of the nonprofit corporation shall
5522 be deemed to have commenced on the date the converting
5523 organization commenced its existence in the jurisdiction in
5524 which the converting organization was first created, formed,
5525 organized, incorporated, or otherwise came into being;

5526 (10) the conversion shall not affect the choice of law
5527 applicable to matters arising prior to conversion;

5528 (11) if the Secretary of State has assigned a unique
5529 identifying number or other designation to the converting
5530 organization and (i) the converted organization is formed
5531 pursuant to, or its internal affairs are governed by, the laws
5532 of this state, or (ii) the converted organization is, within
5533 30 days after the effective date of the conversion, registered
5534 to transact business in this state, then that unique
5535 identifying number or other designation shall continue to be
5536 assigned to the converted organization; and

5537 (12) the interests, if any, of the converting
5538 organization are reclassified into interests or other
5539 securities, obligations, rights to acquire interests or other
5540 securities, cash, or other property in accordance with the
5541 terms of the conversion, and the interest holders, if any, of
5542 the converting organization are entitled only to the rights
5543 provided to them by those terms and to any rights they may
5544 have under the governing statute of the converting



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5545 organization.

5546 (b) A converted organization that is a foreign entity
5547 consents to the jurisdiction of the courts of this state to
5548 enforce any debt, obligation, or other liability for which the
5549 converting nonprofit corporation, is liable if, before the
5550 conversion, the converting nonprofit corporation was subject
5551 to suit in this state on the debt, obligation, or other
5552 liability. If a converted organization is a foreign entity and
5553 fails to designate or maintain a registered agent, or the
5554 designated registered agent cannot with reasonable diligence
5555 be served, then service of process on that converted
5556 organization for the purposes of enforcing a debt, obligation,
5557 or other liability under this subsection may be made in the
5558 same manner and has the same consequences as provided in
5559 Section 10A-1-5.35.

5560 §10A-3A-13.08. Approval by specified person or group of
5561 persons.

5562 (a) The certificate of incorporation of a membership
5563 nonprofit corporation may require that a conversion under this
5564 article or under Article 8 of Chapter 1 be approved in writing
5565 by a specified person or group of persons in addition to the
5566 board of directors and members.

5567 (b) The certificate of incorporation of a nonmembership
5568 nonprofit corporation may require that a conversion under this
5569 article or under Article 8 of Chapter 1 be approved in writing
5570 by a specified person or group of persons in addition to the
5571 board of directors.

5572 (c) A requirement in the certificate of incorporation



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5573 described in subsections (a) or (b) of this section may only
5574 be approved by the written approval of the specified person or
5575 group of persons.

5576 §10A-3A-13.09. Nonexclusive.

5577 This article is not exclusive. This article does not
5578 preclude a nonprofit corporation from converting under law
5579 other than this chapter.

5580 ARTICLE 14. TRANSITIONAL PROVISIONS.

5581 §10A-3A-14.01. Application to existing nonprofit
5582 corporations.

5583 (a) Before January 1, 2025, this chapter governs only:

5584 (1) a nonprofit corporation incorporated on or after
5585 January 1, 2024; and

5586 (2) a nonprofit corporation incorporated before January
5587 1, 2024, which elects, by amending or restating that nonprofit
5588 corporation's certificate of incorporation, to be governed by
5589 this chapter.

5590 (b) On and after January 1, 2025, this chapter governs
5591 all existing nonprofit corporations incorporated under:

5592 (1) any general or special law of this state providing
5593 for the incorporation of nonprofit corporations for a purpose
5594 or purposes for which a nonprofit corporation might be
5595 incorporated under this chapter, where the power has been
5596 reserved to amend, repeal, or modify the law under which the
5597 nonprofit corporation was incorporated; and

5598 (2) any predecessor statute hereto.

5599 (c) For purposes of applying this chapter to a
5600 nonprofit corporation incorporated before January 1, 2024:



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5601 (1) the nonprofit corporation is not required to amend
5602 its certificate of incorporation to comply with Section
5603 10A-3A-2.02(a) (5); but once amended or restated, the
5604 certificate of incorporation must comply with Section
5605 10A-3A-2.02(a) (5);

5606 (2) if on December 31, 2023, the certificate of
5607 incorporation or bylaws of a nonprofit corporation in
5608 existence on that date provides members with the right to
5609 cumulate their votes for the election of directors, that right
5610 to cumulate their votes shall continue unless the certificate
5611 of incorporation or bylaws of the nonprofit corporation are
5612 amended to deny that right. Notwithstanding the foregoing, no
5613 such members may cumulate their votes for the election of
5614 directors by utilizing an action by written consent.

5615 (3) the nonprofit corporation's incorporation document,
5616 whether a certificate of incorporation, certificate of
5617 formation, charter, or articles of incorporation is deemed to
5618 be the nonprofit corporation's certificate of incorporation;

5619 (4) the nonprofit corporation's bylaws are deemed to be
5620 the nonprofit corporation's bylaws;

5621 (5) any amendment or restatement of a nonprofit
5622 corporation's certificate of incorporation or bylaws on or
5623 after January 1, 2024, shall conform with this chapter; and

5624 (d) No nonprofit corporation may be incorporated after
5625 December 31, 2023, pursuant to Sections 10A-3-1.01 to
5626 10A-3-8.02, inclusive.

5627 §10-3A-14.02. Application to existing foreign nonprofit
5628 corporations.



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5629 A foreign nonprofit corporation registered or
5630 authorized to transact business in this state on January 1,
5631 2024, is subject to this chapter and is deemed to be
5632 registered to transact business in this state, and is not
5633 required to renew its registration to transact business under
5634 Article 7 of Chapter 1, except as required by Article 7 of
5635 Chapter 1.

5636 §10A-3A-14.03. Saving Provisions.

5637 (a) Except as provided in subsection (b), the repeal of
5638 a statute by this chapter does not affect:

5639 (1) the operation of the statute or any action taken
5640 under it before its repeal;

5641 (2) any ratification, right, remedy, privilege,
5642 obligation, or liability acquired, accrued, or incurred under
5643 the statute before its repeal;

5644 (3) any violation of the statute, or any penalty,
5645 forfeiture, or punishment incurred because of the violation
5646 before its repeal; or

5647 (4) any proceeding, reorganization, or dissolution
5648 commenced under the statute before its repeal, and the
5649 proceeding, reorganization, or dissolution may be completed in
5650 accordance with the statute as if it had not been repealed.

5651 (5) the application of Article 16 of Chapter 20 of this
5652 Title to any "officer" and "qualified entity" as such terms
5653 are defined in Article 16 of Chapter 20 of this Title.

5654 (b) If a penalty or punishment imposed for violation of
5655 a statute repealed by this chapter is reduced by this chapter,
5656 the penalty or punishment, if not already imposed, shall be
5657 imposed in accordance with this chapter.



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5658 §10A-3A-14.04. Severability.

5659 If any provision of this chapter or its application to
5660 any person or circumstance is held invalid by a court of
5661 competent jurisdiction, the invalidity does not affect other
5662 provisions or applications of this chapter that can be given
5663 effect without the invalid provision or application, and to
5664 this end the provisions of this chapter are severable.

5665 §10A-3A-14.05. Relation to electronic signatures in
5666 global and national commerce act.

5667 This chapter modifies, limits, and supersedes the
5668 Federal Electronic Signatures in Global and National Commerce
5669 Act, 15 U.S.C. § 7001 et seq., but does not modify, limit, or
5670 supersede Section 101(c) of that act, 15 U.S.C. § 7001(c), or
5671 authorize electronic delivery of any of the notices described
5672 in Section 103(b) of that act, 15 U.S.C. § 7003(b).

5673 §10A-3A-14.06. Interstate application.

5674 A nonprofit corporation formed and existing under this
5675 chapter may conduct its activities and affairs, carry on its
5676 operations, and have and exercise the powers granted by this
5677 chapter in any state, foreign country, or other jurisdiction.

5678 Section 2. Sections 10A-1-1.03, 10A-1-1.08, 10A-1-3.32,
5679 10A-1-8.01, 10A-1-8.02, and 10A-1-9.01 of the Code of Alabama
5680 1975, are amended to read as follows:

5681 "§10A-1-1.03

5682 (a) If a term, including a term that is defined in
5683 subsection (b) of this section, is defined in a chapter of
5684 this title, then, when used in that chapter, the term shall
5685 have the meaning set forth in that chapter.



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5686 (b) As used in this title, except as provided in
5687 subsection (a) of this section or where the context otherwise
5688 requires, the following terms mean:

5689 (1) AFFILIATE. A person who controls, is controlled by,
5690 or is under common control with another person. An affiliate
5691 of an individual includes the spouse, or a parent or sibling
5692 thereof, of the individual, or a child, grandchild, sibling,
5693 parent, or spouse of any thereof, of the individual, or an
5694 individual having the same home as the individual, or a trust
5695 or estate of which an individual specified in this sentence is
5696 a substantial beneficiary; a trust, estate, incompetent,
5697 conservatee, protected person, or minor of which the
5698 individual is a fiduciary; or an entity of which the
5699 individual is director, general partner, agent, employee or
5700 the governing authority or member of the governing authority.

5701 (2) ASSOCIATE. When used to indicate a relationship
5702 with:

5703 (A) a domestic or foreign entity for which the person
5704 is:

5705 (i) an officer or governing person; or

5706 (ii) a beneficial owner of 10 percent or more of a
5707 class of voting ownership interests or similar securities of
5708 the entity;

5709 (B) a trust or estate in which the person has a
5710 substantial beneficial interest or for which the person serves
5711 as trustee or in a similar fiduciary capacity;

5712 (C) the person's spouse or a relative of the person
5713 related by consanguinity or affinity within the fifth degree



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5714 who resides with the person; or

5715 (D) a governing person or an affiliate or officer of
5716 the person.

5717 (3) ASSOCIATION. Includes, but is not limited to, an
5718 unincorporated nonprofit association as defined in Chapter 17
5719 and an unincorporated professional association as defined in
5720 Article 1 of Chapter 30.

5721 (4) BENEFIT CORPORATION. A benefit corporation as
5722 defined in Chapter 2A.

5723 (5) BUSINESS CORPORATION. A corporation or foreign
5724 corporation as defined in Chapter 2A. The term includes a
5725 benefit corporation as defined in Chapter 2A.

5726 (6) BUSINESS TRUST. A business trust as defined in
5727 Chapter 16.

5728 (7) CERTIFICATE OF DISSOLUTION. Any document such as a
5729 certificate of dissolution, statement of dissolution, or
5730 articles of dissolution, required or permitted to be filed
5731 publicly with respect to an entity's dissolution and winding
5732 up of its business, activity, activities, not for profit
5733 activity, or affairs.

5734 (8) CERTIFICATE OF FORMATION.

5735 (A) The document required to be filed publicly under
5736 this title to form a filing entity; and

5737 (B) if appropriate, a restated certificate of formation
5738 and all amendments of an original or restated certificate of
5739 formation; provided that a restated certificate of formation
5740 and an amendment of an original or restated certificate of
5741 formation shall not be deemed to be a certificate of formation



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5742 [for purposes of Section 10A-1-4.31.](#)

5743 (9) CERTIFICATE OF OWNERSHIP. An instrument evidencing
5744 an ownership interest or membership interest in an entity.

5745 (10) CERTIFICATED OWNERSHIP INTEREST. An ownership
5746 interest of a domestic entity represented by a certificate.

5747 (11) CERTIFICATION or CERTIFIED. Duly authenticated by
5748 the proper officer or filing officer of the jurisdiction the
5749 laws of which govern the internal affairs of an entity.

5750 (12) CONTRIBUTION. A tangible or intangible benefit
5751 that a person transfers to an entity in consideration for an
5752 ownership interest in the entity or otherwise in the person's
5753 capacity as an owner or a member. A benefit that may
5754 constitute a contribution transferred in exchange for an
5755 ownership interest or transferred in the transferor's capacity
5756 as an owner or member may include cash, property, services
5757 rendered, a contract for services to be performed, a
5758 promissory note or other obligation of a person to pay cash or
5759 transfer property to the entity, or securities or other
5760 interests in or obligations of an entity. In either case, the
5761 benefit does not include cash or property received by the
5762 entity:

5763 (A) with respect to a promissory note or other
5764 obligation to the extent that the agreed value of the note or
5765 obligation has previously been included as a contribution; or

5766 (B) that the person intends to be a loan to the entity.

5767 (13) CONVERSION. A conversion, whether referred to as a
5768 conversion, domestication, or otherwise, means:

5769 (A) the continuance of a domestic entity as a foreign



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5770 entity of any type;

5771 (B) the continuance of a foreign entity as a domestic
5772 entity of any type; or

5773 (C) the continuance of a domestic entity of one type as
5774 a domestic entity of another type.

5775 (14) CONVERTED ENTITY. An entity resulting from a
5776 conversion.

5777 (15) CONVERTING ENTITY. An entity as the entity existed
5778 before the entity's conversion.

5779 (16) COOPERATIVE. Includes an employee cooperative as
5780 defined in Chapter 11.

5781 (17) CORPORATION. Includes a domestic or foreign
5782 business corporation, including a benefit corporation, as
5783 defined in Chapter 2A, a domestic or foreign nonprofit
5784 corporation as defined in Chapter 3 or Chapter 3A, a domestic
5785 or foreign professional corporation as defined in Chapter 4,
5786 and those entities specified in Chapter 20 as corporate.

5787 (18) COURT. The designated court, and if none, the
5788 circuit court specifically set forth in this title, and if
5789 none, any other court having jurisdiction in a case.

5790 (19) DAY. When used in the computation of time,
5791 excludes the first day and includes the last day of the period
5792 so computed, unless the last day is a Saturday, Sunday, or
5793 legal holiday, in which event the period runs until the end of
5794 the next day that is not a Saturday, a Sunday, or a legal
5795 holiday. When the period of time to be computed is less than 7
5796 days, intermediate Saturdays, Sundays, and legal holidays
5797 shall be excluded.



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5798 (20) DEBTOR IN BANKRUPTCY. A person who is the subject
5799 of:

5800 (A) an order for relief under the United States
5801 bankruptcy laws, Title 11, United States Code, or comparable
5802 order under a successor statute of general application; or

5803 (B) a comparable order under federal, state, or foreign
5804 law governing insolvency.

5805 (21) DESIGNATED COURT. The court or courts that are
5806 designated in the (i) certificate of incorporation or bylaws
5807 of a corporation as authorized by Chapter 2A, (ii) certificate
5808 of incorporation or bylaws of a nonprofit corporation as
5809 authorized by Chapter 3A, (iii) limited liability company
5810 agreement of a limited liability company formed pursuant to or
5811 governed by Chapter 5A, ~~(iii)~~(iv) partnership agreement of a
5812 partnership formed pursuant to or governed by Chapter 8A, or
5813 ~~(iv)~~(v) limited partnership agreement of a limited partnership
5814 formed pursuant to or governed by Chapter 9A.

5815 (22) DIRECTOR. An individual who serves on the board of
5816 directors, by whatever name known, of a foreign or domestic
5817 corporation.

5818 (23) DISTRIBUTION. A transfer of property, including
5819 cash, from an entity to an owner or member of the entity in
5820 the owner's or member's capacity as an owner or member. The
5821 term includes a dividend, a redemption or purchase of an
5822 ownership interest, or a liquidating distribution.

5823 (24) DOMESTIC. With respect to an entity, means
5824 governed as to its internal affairs by this title.

5825 (25) DOMESTIC ENTITY. An entity governed as to its



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5826 internal affairs by this title.

5827 (26) EFFECTIVE DATE OF THIS TITLE. January 1, 2011.

5828 (27) ELECTRONIC. Relating to technology having
5829 electrical, digital, magnetic, wireless, optical,
5830 electromagnetic, or similar capabilities.

5831 (28) ELECTRONIC SIGNATURE. An electronic signature as
5832 that term is defined in the Alabama Electronic Transactions
5833 Act, Chapter 1A of Title 8, or any successor statute.

5834 (29) ELECTRONIC TRANSMISSION or ELECTRONICALLY
5835 TRANSMITTED. Any form or process of communication not directly
5836 involving the physical transfer of paper or another tangible
5837 medium, which (i) is suitable for the retention, retrieval,
5838 and reproduction of information by the recipient, and (ii) is
5839 retrievable in paper form by the recipient through an
5840 automated process used in conventional commercial practice.

5841 (30) ELECTRONIC WRITING. Information that is stored in
5842 an electronic or other nontangible medium and is retrievable
5843 in paper form through an automated process used in
5844 conventional commercial practice.

5845 (31) ENTITY. A domestic or foreign organization.

5846 (32) FILING ENTITY. A domestic entity that is a
5847 corporation, limited partnership, limited liability limited
5848 partnership, limited liability company, professional
5849 association, employee cooperative corporation, or real estate
5850 investment trust.

5851 (33) FILING INSTRUMENT. An instrument, document, or
5852 statement that is required or permitted by this title to be
5853 delivered for filing by or for an entity to a filing officer.



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5854 (34) FILING OFFICER. An officer of this state with whom
5855 a filing instrument is required or permitted to be delivered
5856 for filing pursuant to this title.

5857 (35) FOREIGN. With respect to an entity, means governed
5858 as to its internal affairs by the laws of a jurisdiction other
5859 than this state.

5860 (36) FOREIGN ENTITY. An entity governed as to its
5861 internal affairs by the laws of a jurisdiction other than this
5862 state.

5863 (37) FOREIGN FILING ENTITY. A foreign entity that
5864 registers or is required to register as a foreign entity under
5865 Article 7.

5866 (38) FOREIGN GOVERNMENTAL AUTHORITY. A governmental
5867 official, agency, or instrumentality of a jurisdiction other
5868 than this state.

5869 (39) FOREIGN NONFILING ENTITY. A foreign entity that is
5870 not a foreign filing entity.

5871 (40) GENERAL PARTNER.

5872 (A) Each partner in a general partnership; or

5873 (B) a person who is admitted to a limited partnership
5874 as a general partner in accordance with the governing
5875 documents of the limited partnership.

5876 (41) GENERAL PARTNERSHIP. A partnership as defined in
5877 Chapter 8A. The term includes a limited liability partnership
5878 as defined in Chapter 8A.

5879 (42) GOVERNING AUTHORITY. A person or group of persons
5880 who are entitled to manage and direct the affairs of an entity
5881 pursuant to this title and the governing documents of the



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5882 entity, except that if the governing documents of the entity
5883 or this title divide the authority to manage and direct the
5884 affairs of the entity among different persons or groups of
5885 persons according to different matters, governing authority
5886 means the person or group of persons entitled to manage and
5887 direct the affairs of the entity with respect to a matter
5888 under the governing documents of the entity or this title. The
5889 term includes the board of directors of a corporation, by
5890 whatever name known, or other persons authorized to perform
5891 the functions of the board of directors of a corporation, the
5892 general partners of a general partnership or limited
5893 partnership, the persons who have direction and oversight of a
5894 limited liability company, and the trust managers of a real
5895 estate investment trust. The term does not include an officer
5896 who is acting in the capacity of an officer.

5897 (43) GOVERNING DOCUMENTS.

5898 (A) In the case of a domestic entity:

5899 (i) the certificate of formation for a filing entity or
5900 the document or agreement under which a nonfiling entity is
5901 formed; and

5902 (ii) the other documents or agreements, including
5903 bylaws, partnership agreements of partnerships, limited
5904 liability company agreements of limited liability companies,
5905 or similar documents, adopted by the entity pursuant to this
5906 title to govern the formation or the internal affairs of the
5907 entity; or

5908 (B) in the case of a foreign entity, the instruments,
5909 documents, or agreements adopted under the law of its



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5910 jurisdiction of formation to govern the formation or the
5911 internal affairs of the entity.

5912 (44) GOVERNING PERSON. A person serving as part of the
5913 governing authority of an entity.

5914 (45) INDIVIDUAL. A natural person and the estate of an
5915 incompetent or deceased natural person.

5916 (46) INSOLVENCY. The inability of a person to pay the
5917 person's debts as they become due in the usual course of
5918 business or affairs.

5919 (47) INSOLVENT. A person who is unable to pay the
5920 person's debts as they become due in the usual course of
5921 business or affairs.

5922 (48) JUDGE OF PROBATE. The judge of probate of the
5923 county in which an entity is required or permitted to deliver
5924 a filing instrument for filing pursuant to this title.

5925 (49) JURISDICTION OF FORMATION.

5926 (A) In the case of a filing entity, this state;

5927 (B) in the case of a foreign entity, the jurisdiction
5928 in which the entity's certificate of formation or similar
5929 organizational instrument is filed, or if no certificate of
5930 formation or similar organizational instrument is filed, then
5931 the laws of the jurisdiction which govern the internal affairs
5932 of the foreign entity;

5933 (C) in the case of a general partnership which has
5934 filed a statement of partnership, a statement of not for
5935 profit partnership, or a statement of limited liability
5936 partnership in accordance with Chapter 8A, in this state;

5937 (D) in the case of a foreign limited liability



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5938 partnership, the laws of the jurisdiction which govern the
5939 filing of the foreign limited liability partnership's
5940 statement of limited liability partnership or such filing in
5941 that jurisdiction; and

5942 (E) in the case of a foreign or domestic nonfiling
5943 entity other than those entities described in subsection (C)
5944 or (D):

5945 (i) the jurisdiction the laws of which are chosen in
5946 the entity's governing documents to govern its internal
5947 affairs if that jurisdiction bears a reasonable relation to
5948 the owners or members or to the domestic or foreign nonfiling
5949 entity's business, activities, and affairs under the
5950 principles of this state that otherwise would apply to a
5951 contract among the owners or members; or

5952 (ii) if subparagraph (i) does not apply, the
5953 jurisdiction in which the entity has its principal office.

5954 (50) LAW. Unless the context requires otherwise, both
5955 statutory and common law.

5956 (51) LICENSE. A license, certificate of registration,
5957 or other legal authorization.

5958 (52) LICENSING AUTHORITY. The state court, state
5959 regulatory licensing board, or other like agency which has the
5960 power to issue a license or other legal authorization to
5961 render professional services.

5962 (53) LIMITED LIABILITY COMPANY. A limited liability
5963 company as defined in Chapter 5A.

5964 (54) LIMITED LIABILITY LIMITED PARTNERSHIP. A limited
5965 liability limited partnership as defined in Chapter 9A.



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5966 (55) LIMITED LIABILITY PARTNERSHIP. A limited liability
5967 partnership as defined in Chapter 8A.

5968 (56) LIMITED PARTNER. A person who has been admitted to
5969 a limited partnership as a limited partner as provided by:

5970 (A) in the case of a domestic limited partnership,
5971 Chapter 9A; or

5972 (B) in the case of a foreign limited partnership, the
5973 laws of its jurisdiction of formation.

5974 (57) LIMITED PARTNERSHIP. A limited partnership as
5975 defined in Chapter 9A. The term includes a limited liability
5976 limited partnership as defined in Chapter 9A.

5977 (58) MANAGERIAL OFFICIAL. An officer or a governing
5978 person.

5979 (59) MEMBER.

5980 (A) A person defined as a member under Chapter 5A;

5981 (B) in the case of a nonprofit corporation formed
5982 pursuant to or governed by Chapter 3, a person having
5983 membership rights in the nonprofit corporation in accordance
5984 with its governing documents as provided in Chapter 3, and in
5985 the case of a nonprofit corporation formed pursuant to or
5986 governed by Chapter 3A, a person defined as a member under
5987 Chapter 3A;

5988 (C) in the case of an employee cooperative corporation
5989 formed pursuant to or governed by Chapter 11, a natural person
5990 who, as provided in Chapter 11, has been accepted for
5991 membership in and owns a membership share in an employee
5992 cooperative;

5993 (D) in the case of a nonprofit association, a person



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5994 who, as provided in Chapter 17, may participate in the
5995 selection of persons authorized to manage the affairs of the
5996 nonprofit association or in the development of its policy.

5997 (60) MERGER. The combination of one or more domestic
5998 entities with one or more domestic entities or foreign
5999 entities resulting in:

6000 (A) one or more surviving domestic entities or foreign
6001 entities;

6002 (B) the creation of one or more new domestic entities
6003 or foreign entities, or one or more surviving domestic
6004 entities or foreign entities; or

6005 (C) one or more surviving domestic entities or foreign
6006 entities and the creation of one or more new domestic entities
6007 or foreign entities.

6008 (61) NONFILING ENTITY. A domestic entity that is not a
6009 filing entity. The term includes a domestic general
6010 partnership, a limited liability partnership, and a nonprofit
6011 association.

6012 (62) NONPROFIT ASSOCIATION. An unincorporated nonprofit
6013 association as defined in Chapter 17. The term does not
6014 include a general partnership which has filed a statement of
6015 not for profit partnership in accordance with Chapter 8A, a
6016 limited partnership which is carrying on a not for profit
6017 purpose, or a limited liability company which is carrying on a
6018 not for profit purpose.

6019 (63) NONPROFIT CORPORATION. A domestic or foreign
6020 nonprofit corporation as defined in Chapter 3 or Chapter 3A.

6021 (64) NONPROFIT ENTITY. An entity that is a nonprofit



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6022 corporation, nonprofit association, or other entity that is
6023 organized solely for one or more nonprofit purposes.

6024 (65) OFFICER. An individual elected, appointed, or
6025 designated as an officer of an entity by the entity's
6026 governing authority or under the entity's governing documents.

6027 (66) ORGANIZATION. A corporation, limited partnership,
6028 general partnership, limited liability company, business
6029 trust, real estate investment trust, joint venture, joint
6030 stock company, cooperative, association, or other
6031 organization, including, regardless of its organizational
6032 form, a bank, insurance company, credit union, and savings and
6033 loan association, whether for profit, not for profit,
6034 nonprofit, domestic, or foreign.

6035 (67) ORGANIZER. A person, who need not be an owner or
6036 member of the entity, who, having the capacity to contract, is
6037 authorized to execute documents in connection with the
6038 formation of the entity. The term includes an incorporator.

6039 (68) OWNER.

6040 (A) With respect to a foreign or domestic business
6041 corporation or real estate investment trust, a stockholder or
6042 a shareholder;

6043 (B) with respect to a foreign or domestic partnership,
6044 a partner;

6045 (C) with respect to a foreign or domestic limited
6046 liability company or association, a member; and

6047 (D) with respect to another foreign or domestic entity,
6048 an owner of an equity interest in that entity.

6049 (69) OWNERSHIP INTEREST. An owner's interest in an



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6050 entity. The term includes the owner's share of profits and
6051 losses or similar items and the right to receive
6052 distributions. The term does not include an owner's right to
6053 participate in management or participate in the direction or
6054 oversight of the entity. An ownership interest is personal
6055 property.

6056 (70) PARENT or PARENT ENTITY. An entity that:

6057 (A) owns at least 50 percent of the ownership or
6058 membership interest of a subsidiary; or

6059 (B) possesses at least 50 percent of the voting power
6060 of the owners or members of a subsidiary.

6061 (71) PARTNER. A limited partner or general partner.

6062 (72) PARTNERSHIP. Includes a general partnership, a
6063 limited liability partnership, a foreign limited liability
6064 partnership, a limited partnership, a foreign limited
6065 partnership, a limited liability limited partnership, and a
6066 foreign limited liability limited partnership.

6067 (73) PARTNERSHIP AGREEMENT. Any agreement (whether
6068 referred to as a partnership agreement or otherwise), written,
6069 oral or implied, of the partners as to the activities and
6070 affairs of a general partnership or a limited partnership. The
6071 partnership agreement includes any amendments to the
6072 partnership agreement. In the case of limited partnerships
6073 formed prior to October 1, 1998, partnership agreement
6074 includes the certificate of partnership.

6075 (74) PARTY TO THE MERGER. A domestic entity or foreign
6076 entity that under a plan of merger is combined by a merger.
6077 The term does not include a domestic entity or foreign entity



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6078 that is not to be combined into or with one or more domestic
6079 entities or foreign entities, regardless of whether ownership
6080 interests of the entity are to be issued under the plan of
6081 merger.

6082 (75) PERSON. An individual, including the estate of an
6083 incompetent or deceased individual, or an entity, whether
6084 created by the laws of this state or another state or foreign
6085 country, including, without limitation, a general partnership,
6086 limited liability partnership, limited partnership, limited
6087 liability limited partnership, limited liability company,
6088 corporation, professional corporation, nonprofit corporation,
6089 professional association, trustee, personal representative,
6090 fiduciary, as defined in Section 19-3-150 or person performing
6091 in any similar capacity, business trust, estate, trust,
6092 association, joint venture, government, governmental
6093 subdivision, agency, or instrumentality, or any other legal or
6094 commercial entity.

6095 (76) PRESIDENT.

6096 (A) The individual designated as president of an entity
6097 under the entity's governing documents; or

6098 (B) the officer or committee of persons authorized to
6099 perform the functions of the principal executive officer of an
6100 entity without regard to the designated name of the officer or
6101 committee.

6102 (77) PRINCIPAL OFFICE. The office, in or out of this
6103 state, where the principal executive office, whether referred
6104 to as the principal executive office, chief executive office,
6105 or otherwise, of an entity is located.



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6106 (78) PROFESSIONAL ASSOCIATION. A professional
6107 association as defined in Chapter 30.

6108 (79) PROFESSIONAL CORPORATION. A domestic or foreign
6109 professional corporation as defined in Chapter 4.

6110 (80) PROFESSIONAL ENTITY. A professional association
6111 and a professional corporation.

6112 (81) PROFESSIONAL SERVICE. Any type of service that may
6113 lawfully be performed only pursuant to a license issued by a
6114 state court, state regulatory licensing board, or other like
6115 agency pursuant to state laws.

6116 (82) PROPERTY. Includes all property, whether real,
6117 personal, or mixed, or tangible or intangible, or any right or
6118 interest therein.

6119 (83) REAL ESTATE INVESTMENT TRUST. An unincorporated
6120 trust, association, or other entity as defined in Chapter 10.

6121 (84) SECRETARY.

6122 (A) The individual designated as secretary of an entity
6123 under the entity's governing documents; or

6124 (B) the officer or committee of persons authorized to
6125 perform the functions of secretary of an entity without regard
6126 to the designated name of the officer or committee.

6127 (85) SECRETARY OF STATE. The Secretary of State of the
6128 State of Alabama.

6129 (86) SIGN or SIGNATURE. With the present intent to
6130 authenticate or adopt a writing:

6131 (A) to execute or adopt a tangible symbol to a writing,
6132 and includes any manual, facsimile, or conformed signature; or

6133 (B) to attach to or logically associate with an



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6134 electronic transmission an electronic sound, symbol, or
6135 process, and includes an electronic signature in an electronic
6136 transmission.

6137 (87) STATE. Includes, when referring to a part of the
6138 United States, a state or commonwealth, and its agencies and
6139 governmental subdivisions, and a territory or possession, and
6140 its agencies and governmental subdivisions, of the United
6141 States.

6142 (88) SUBSCRIBER. A person who agrees with or makes an
6143 offer to an entity to purchase by subscription an ownership
6144 interest in the entity.

6145 (89) SUBSCRIPTION. An agreement between a subscriber
6146 and an entity, or a written offer made by a subscriber to an
6147 entity before or after the entity's formation, in which the
6148 subscriber agrees or offers to purchase a specified ownership
6149 interest in the entity.

6150 (90) SUBSIDIARY. An entity at least 50 percent of:

6151 (A) the ownership or membership interest of which is
6152 owned by a parent entity; or

6153 (B) the voting power of which is possessed by a parent
6154 entity.

6155 (91) TREASURER.

6156 (A) The individual designated as treasurer of an entity
6157 under the entity's governing documents; or

6158 (B) the officer or committee of persons authorized to
6159 perform the functions of treasurer of an entity without regard
6160 to the designated name of the officer or committee.

6161 (92) TRUSTEE. A person who serves as a trustee of a



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6162 trust, including a real estate investment trust.

6163 (93) UNCERTIFICATED OWNERSHIP INTEREST. An ownership
6164 interest in a domestic entity that is not represented by a
6165 certificate.

6166 (94) VICE PRESIDENT.

6167 (A) The individual designated as vice president of an
6168 entity under the governing documents of the entity; or

6169 (B) the officer or committee of persons authorized to
6170 perform the functions of the president of the entity on the
6171 death, absence, or resignation of the president or on the
6172 inability of the president to perform the functions of office
6173 without regard to the designated name of the officer or
6174 committee.

6175 (95) WRITING or WRITTEN. Information that is inscribed
6176 on a tangible medium or that is stored in an electronic or
6177 other medium and is retrievable in perceivable form."

6178 "§10A-1-1.08

6179 (a) The provisions of this title as described by this
6180 section may be cited as provided by this section.

6181 (b) Chapter 2A and the provisions of Chapter 1 to the
6182 extent applicable to business corporations may be cited as the
6183 Alabama Business Corporation Law.

6184 (c) Chapter 3 or Chapter 3A and the provisions of
6185 Chapter 1 to the extent applicable to nonprofit corporations
6186 may be cited as the Alabama Nonprofit Corporation Law.

6187 (d) Chapter 4 and the provisions of Chapter 1 to the
6188 extent applicable to professional corporations may be cited as
6189 the Alabama Professional Corporation Law.



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6190 (e) Chapter 5A and the provisions of Chapter 1 to the
6191 extent applicable to limited liability companies may be cited
6192 as the Alabama Limited Liability Company Law.

6193 (f) Chapter 8A and the provisions of Chapter 1 to the
6194 extent applicable to general partnerships may be cited as the
6195 Alabama Partnership Law.

6196 (g) Chapter 9A and the provisions of Chapter 1 to the
6197 extent applicable to limited partnerships may be cited as the
6198 Alabama Limited Partnership Law.

6199 (h) Chapter 10 and the provisions of Chapter 1 to the
6200 extent applicable to real estate investment trusts may be
6201 cited as the Alabama Real Estate Investment Trust Law.

6202 (i) Chapter 11 and the provisions of Chapter 1 and
6203 Chapter 2A to the extent applicable to employee cooperative
6204 corporations may be cited as the Alabama Employee Cooperative
6205 Corporations Law.

6206 (j) Chapter 17 and the provisions of Chapter 1 to the
6207 extent applicable to unincorporated nonprofit associations may
6208 be cited as the Alabama Unincorporated Nonprofit Association
6209 Law."

6210 "§10A-1-3.32

6211 (a) This section applies to domestic entities other
6212 than (i) corporations formed pursuant to or governed by
6213 Chapter 2A or Chapter 4, and real estate investment trusts
6214 formed pursuant to or governed by Chapter 10, each of which is
6215 governed by the separate recordkeeping requirements and record
6216 inspections provisions of Chapter 2A and (ii) nonprofit
6217 corporations formed pursuant to or governed by Chapter 3 or



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6218 Chapter 3A, limited liability companies formed pursuant to or
6219 governed by Chapter 5A, general partnerships formed pursuant
6220 to or governed by Chapter 8A, and limited partnerships formed
6221 pursuant to or governed by Chapter 9A, each of which are
6222 governed by the separate recordkeeping requirements and record
6223 inspection provisions set forth in each entity's respective
6224 chapter governing that entity.

6225 (b) With respect to a domestic entity covered by this
6226 section, the books and records maintained under the chapter of
6227 this title applicable to that entity and any other books and
6228 records of that entity, wherever situated, are subject to
6229 inspection and copying at the reasonable request, and at the
6230 expense of, any owner or member or the owner's or member's
6231 agent or attorney during regular business hours. The right of
6232 access extends to the legal representative of a deceased owner
6233 or member or owner or member under legal disability. The
6234 entity shall also provide former owners and members with
6235 access to its books and records pertaining to the period
6236 during which they were owners or members.

6237 (c) The governing documents of a domestic entity may
6238 not unreasonably restrict an owner's or member's right to
6239 information or access to books and records.

6240 (d) Any agent or governing person of a domestic entity
6241 who, without reasonable cause, refuses to allow any owner or
6242 member or the owner's or member's agent or legal counsel to
6243 inspect any books or records of that entity shall be
6244 personally liable to the agent or member for a penalty in an
6245 amount not to exceed 10 percent of the fair market value of



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6246 the ownership interest of the owner or member, in addition to
6247 any other damages or remedy."

6248 "§10A-1-8.01

6249 ~~(a)~~ A conversion of an entity may be accomplished as
6250 provided in this section:

6251 (a) The plan of conversion must be in writing, and:

6252 (1) must include the following:

6253 (A) the name, type of entity, and mailing address of
6254 the principal office of the converting entity, and its unique
6255 identifying number or other designation as assigned by the
6256 Secretary of State, if any, before conversion;

6257 (B) the name, type of entity, and mailing address of
6258 the principal office of the converted entity after conversion;

6259 (C) the terms and conditions of the conversion,
6260 including the manner and basis for converting interests in the
6261 converting entity into any combination of money, interests in
6262 the converted entity, and other consideration allowed in
6263 subsection (b); and

6264 (D) the organizational documents of the converted
6265 entity; and

6266 (2) may include other provisions relating to the
6267 conversion not prohibited by law.

6268 (b) In connection with a conversion, rights or
6269 securities of or interests in a converting entity may be
6270 exchanged for or converted into cash, property, or rights or
6271 securities of or interests in the converted entity, or, in
6272 addition to or in lieu thereof, may be exchanged for or
6273 converted into cash, property, or rights or securities of or



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6274 interests in another entity, or may be cancelled.

6275 (c) The plan of conversion of an entity must be
6276 approved as follows:

6277 (1) CORPORATIONS.

6278 ~~(A) a. The terms and conditions of a plan of conversion~~
6279 ~~of a corporation, other than a nonprofit corporation, If a~~
6280 ~~corporation is governed by Chapter 2A and that corporation is~~
6281 ~~a converting entity, the plan of conversion under subsection~~
6282 ~~(a) must be approved in accordance with ~~the procedures and by~~~~
6283 ~~the stockholder vote required by Article 9 of Chapter 2A. ~~If~~~~
6284 ~~the governing documents provide for approval of a conversion~~
6285 ~~by less than all of a corporation's stockholders, approval of~~
6286 ~~the conversion shall constitute corporate action subject to~~
6287 ~~appraisal rights pursuant to Article 13 of Chapter 2A. No~~
6288 ~~conversion of a corporation to a general or limited~~
6289 ~~partnership may be effected without the consent in writing of~~
6290 ~~each stockholder who will have personal liability with respect~~
6291 ~~to the converted entity, notwithstanding any provision in the~~
6292 ~~governing documents of the converting corporation providing~~
6293 ~~for less than unanimous stockholder approval for the~~
6294 ~~conversion. If the conversion is a corporate action as~~
6295 ~~described in Section 10A-2A-13.02, then the rights,~~
6296 ~~obligations, and procedures under Article 13 of Chapter 2A~~
6297 ~~shall be applicable to that conversion.~~

6298 ~~(B) b. The terms and conditions of a plan of conversion~~
6299 ~~of a nonprofit corporation must be approved by all the~~
6300 ~~nonprofit corporation's members entitled to vote thereon, if~~
6301 ~~it is a nonprofit corporation with members with voting rights,~~



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6302 ~~or as otherwise provided in the nonprofit corporation's~~
6303 ~~governing documents; but in no case may the governing~~
6304 ~~documents provide for approval by less than a majority of the~~
6305 ~~members entitled to vote thereon. If the converting nonprofit~~
6306 ~~corporation has no members, or no members entitled to vote~~
6307 ~~thereon, the terms and conditions of the plan of conversion~~
6308 ~~must be approved by a unanimous vote of the board of directors~~
6309 ~~of the converting nonprofit corporation, or as otherwise~~
6310 ~~provided in the governing documents; but in no case may the~~
6311 ~~governing documents provide for approval by less than a~~
6312 ~~majority of the board of directors. If a corporation is~~
6313 ~~governed by Chapter 3A and that corporation is a converting~~
6314 ~~entity, the plan of conversion under subsection (a) must be~~
6315 ~~approved in accordance with Article 13 of Chapter 3A.~~

6316 (C) If a corporation is not governed by Chapter 2A or
6317 Chapter 3A and that corporation is a converting entity, the
6318 plan of conversion under subsection (a) must be approved in
6319 accordance with the law of the jurisdiction of formation of
6320 that corporation.

6321 (2) LIMITED PARTNERSHIPS, INCLUDING LIMITED LIABILITY
6322 LIMITED PARTNERSHIPS. ~~The terms and conditions of a plan of~~
6323 ~~conversion of a limited partnership must be approved by all of~~
6324 ~~the partners or as otherwise provided in the partnership~~
6325 ~~agreement. No conversion of a limited partnership to a general~~
6326 ~~partnership may be effected without the consent in writing of~~
6327 ~~each limited partner who will have personal liability with~~
6328 ~~respect to the converted entity, notwithstanding any provision~~
6329 ~~in the limited partnership agreement of the converting limited~~



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6330 ~~partnership providing for approval of the conversion by less~~
6331 ~~than all partners.~~ If a limited partnership is a converting
6332 entity, the plan of conversion under subsection (a) must be
6333 approved in accordance with Article 10 of Chapter 9A.

6334 (3) LIMITED LIABILITY COMPANIES. ~~The terms and~~
6335 ~~conditions of a plan of conversion of a limited liability~~
6336 ~~company must be approved by all of the limited liability~~
6337 ~~company's members or as otherwise provided in the limited~~
6338 ~~liability company's governing documents. No conversion of a~~
6339 ~~limited liability company to a general or limited partnership~~
6340 ~~may be effected without the consent in writing of each member~~
6341 ~~who will have personal liability with respect to the converted~~
6342 ~~entity, notwithstanding any provision in the governing~~
6343 ~~documents of the converting limited liability company~~
6344 ~~providing for less than unanimous member approval for the~~
6345 ~~conversion.~~ If a limited liability company is a converting
6346 entity, the plan of conversion under subsection (a) must be
6347 approved in accordance with Article 10 of Chapter 5A.

6348 (4) GENERAL PARTNERSHIPS, INCLUDING LIMITED LIABILITY
6349 PARTNERSHIPS. ~~The terms and conditions of a plan of conversion~~
6350 ~~of a general partnership must be approved by all of the~~
6351 ~~partners or as otherwise provided in the partnership~~
6352 ~~agreement. No conversion of a limited liability partnership to~~
6353 ~~a general or limited partnership may be effected without the~~
6354 ~~consent in writing of each partner who will have personal~~
6355 ~~liability with respect to the converted entity,~~
6356 ~~notwithstanding any provision in the partnership agreement of~~
6357 ~~the converting limited liability partnership providing for~~



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6358 ~~less than unanimous partner approval for the conversion.~~ If a
6359 general partnership is a converting entity, the plan of
6360 conversion under subsection (a) must be approved in accordance
6361 with Article 9 of Chapter 8A. If a general partnership is the
6362 converting entity and that general partnership does not have
6363 an effective statement of partnership, statement of not for
6364 profit partnership, or statement of limited liability
6365 partnership on file with the Secretary of State, then that
6366 general partnership must, before proceeding with a conversion
6367 deliver to the Secretary of State for filing, a statement of
6368 partnership, statement of not for profit partnership, or
6369 statement of limited liability partnership simultaneously with
6370 the delivery to the Secretary of State for filing, of a
6371 statement of conversion.

6372 (5) REAL ESTATE INVESTMENT TRUST. The terms and
6373 conditions of ~~a~~ the plan of conversion under subsection (a) of
6374 a real estate investment trust must be approved by all of the
6375 trust's shareholders or as otherwise provided in the trust's
6376 declaration of trust; but in no case may the vote required for
6377 shareholder approval be set at less than a majority of all the
6378 votes entitled to be cast. No conversion of a real estate
6379 investment trust to a general or limited partnership may be
6380 effected without the consent in writing of each shareholder
6381 who will have personal liability with respect to the converted
6382 entity, notwithstanding any provision in the declaration of
6383 trust of the converting real estate investment trust providing
6384 for less than unanimous shareholder approval for the
6385 conversion.



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6386 (6) OTHER ENTITY. ~~The terms and conditions of a plan of~~
6387 ~~conversion of any entity not specified above must be approved~~
6388 ~~by all owners of the converting entity. No conversion of any~~
6389 ~~entity shall be effected without the consent in writing of any~~
6390 ~~owner of the converting entity who has limited liability and~~
6391 ~~who shall become an owner without limited liability protection~~
6392 ~~of the converted entity.~~ In the case of an entity not
6393 specified in paragraphs (1) through (5) above, a plan of
6394 conversion under subsection (a) must be approved in writing by
6395 all owners of that entity or, if the entity has no owners,
6396 then by all members of the governing authority of that entity.

6397 ~~(7) ENTITY WITHOUT OWNERS. If the converting entity~~
6398 ~~does not have owners, the terms and conditions of the plan of~~
6399 ~~conversion must be unanimously approved by the governing~~
6400 ~~authority of the converting entity.~~

6401 ~~(b) The plan of conversion must be in writing, and:~~

6402 ~~(1) must include the following:~~

6403 ~~a. the name, type of entity, and mailing address of the~~
6404 ~~principal office of the converting entity, and its unique~~
6405 ~~identifying number or other designation as assigned by the~~
6406 ~~Secretary of State, if any, before conversion;~~

6407 ~~b. the name, type of entity, and mailing address of the~~
6408 ~~principal office of the converted entity after conversion;~~

6409 ~~c. the terms and conditions of the conversion,~~
6410 ~~including the manner and basis for converting interests in the~~
6411 ~~converting entity into any combination of money, interests in~~
6412 ~~the converted entity, and other consideration allowed in~~
6413 ~~subsection (c); and~~



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6414 ~~d. the organizational documents of the converted~~
6415 ~~entity; and~~

6416 ~~(2) may include other provisions relating to the~~
6417 ~~conversion not prohibited by law.~~

6418 ~~(c) In connection with a conversion, rights or~~
6419 ~~securities of or interests in a converting entity may be~~
6420 ~~exchanged for or converted into cash, property, or rights or~~
6421 ~~securities of or interests in the converted entity, or, in~~
6422 ~~addition to or in lieu thereof, may be exchanged for or~~
6423 ~~converted into cash, property, or rights or securities of or~~
6424 ~~interests in another entity or may be cancelled.~~

6425 ~~(d) After a plan of conversion is approved and before~~
6426 ~~the conversion takes effect, the plan may be amended or~~
6427 ~~abandoned as provided in the plan, or if the plan does not~~
6428 ~~provide for amendment or abandonment, in the same manner as~~
6429 ~~required for the approval of the plan of conversion~~
6430 ~~originally.~~

6431 ~~(e)~~ (d) After the plan of conversion is approved
6432 pursuant to subsection ~~(a)~~ (c):

6433 (1) if the converting entity is a ~~domestic~~ filing
6434 entity, the converting entity shall deliver to the Secretary
6435 of State for filing, a statement of conversion, which must
6436 include:

6437 ~~a.~~ (A) the name, type of entity, and mailing address of
6438 the principal office of the converting entity, and its unique
6439 identifying number or other designation as assigned by the
6440 Secretary of State, if any, before conversion;

6441 ~~b. the date of the filing of the certificate of~~



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6442 ~~formation of the converting entity, if any, and all prior~~
6443 ~~amendments and the filing office or offices, if any, where~~
6444 ~~such is filed;~~

6445 ~~e.~~ (B) a statement that the converting entity has been
6446 converted into the converted entity;

6447 ~~d.~~ (C) the name and type of entity of the converted
6448 entity and the jurisdiction of its governing statute;

6449 ~~e.~~ (D) the street and mailing address of the principal
6450 office of the converted entity;

6451 ~~f.~~ (E) the date the conversion is effective under the
6452 governing statute of the converted entity;

6453 ~~g.~~ (F) a statement that the conversion was approved as
6454 required by this chapter;

6455 ~~h.~~ (G) a statement that the conversion was approved as
6456 required by the governing statute of the converted entity;

6457 ~~i.~~ (H) a statement that a copy of the plan of conversion
6458 will be furnished by the converted entity, on request and
6459 without cost, to any owner of the converted or converting
6460 entity; and

6461 ~~j.~~ (I) if the converted entity is a foreign entity not
6462 authorized to conduct activities and affairs in this state,
6463 the street and mailing address of an office for the purposes
6464 of Section 10A-1-8.04(b); and

6465 (2) if the converted entity is (I) a filing entity, the
6466 converting entity shall deliver to the Secretary of State for
6467 filing a certificate of formation or (II) a general
6468 partnership, the converting entity shall deliver to the
6469 Secretary of State for filing a statement of partnership, a



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6470 statement of not for profit partnership, or a statement of
6471 limited liability partnership, as applicable, which
6472 certificate of formation or statement of partnership,
6473 statement of not for profit partnership, or statement of
6474 limited liability partnership, as applicable, must include, in
6475 addition to the information required in the chapter governing
6476 the certificate of formation of the converted entity, the
6477 following:

6478 ~~a.~~ (A) The name, mailing address of the principal office
6479 of, type of entity, and the jurisdiction of the governing
6480 statute of the converting entity and its unique identifying
6481 number or other designation as assigned by the Secretary of
6482 State, if any, before conversion;

6483 ~~b.~~ (B) A statement that the converting entity has been
6484 converted into the converted entity;

6485 ~~c.~~ (C) The filing office where the certificate of
6486 formation, if any, of the converting entity is filed and the
6487 date of the filing thereof;

6488 ~~d.~~ (D) If the converted entity is one in which one or
6489 more owners lack limited liability protection, a statement
6490 that each owner of the converting entity who is to become an
6491 owner without limited liability protection of the converted
6492 entity has consented in writing to the conversion as required
6493 by this section; and

6494 ~~e.~~ (E) A statement that the conversion was approved
6495 pursuant to this section and, if the converting entity is a
6496 foreign entity, that the conversion was approved as required
6497 by the governing statute of such foreign entity;



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6498 (3) if the converting entity is required pursuant to
6499 subsections (e) (2) and (3) to deliver to the Secretary of
6500 State for filing both (I) a statement of conversion and
6501 (II) (A) a certificate of formation, or (B) a statement of
6502 partnership, statement of not for profit partnership, or
6503 statement of limited liability partnership, as applicable,
6504 then the converting entity shall deliver the statement of
6505 conversion and the certificate of formation or the statement
6506 of partnership, statement of not for profit partnership, or
6507 statement of limited liability partnership, as applicable, to
6508 the Secretary of State simultaneously; and

6509 (4) if the converting entity is a general partnership
6510 and that partnership does not have an effective statement of
6511 partnership, statement of not for profit partnership, or
6512 statement of limited liability partnership on file with the
6513 Secretary of State, then the converting entity must deliver to
6514 the Secretary of State for filing, a statement of partnership,
6515 statement of not for profit partnership, or statement of
6516 limited liability partnership simultaneously with the delivery
6517 to the Secretary of State for filing, of a statement of
6518 conversion.

6519 (e) After a plan of conversion is approved and before
6520 the conversion takes effect, the plan may be amended or
6521 abandoned as provided in the plan, or if the plan does not
6522 provide for amendment or abandonment, in the same manner as
6523 required for the approval of the plan of conversion
6524 originally.

6525 (f) A conversion becomes effective:



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6526 (1) if the converted entity is a ~~domestic~~ filing
6527 entity, the effective date determined in accordance with
6528 Article 4 of this chapter; and

6529 (2) if the converted entity is not a domestic filing
6530 entity, as provided by the governing statute of the converted
6531 entity.

6532 (g) When a conversion becomes effective:

6533 (1) all property and contract rights owned by the
6534 converting entity remain vested in the converted entity
6535 without transfer, reversion, or impairment, and the title to
6536 any property vested by deed or otherwise in the converting
6537 entity shall not revert or be in any way impaired by reason of
6538 the conversion;

6539 (2) all debts, obligations, or other liabilities of the
6540 converting entity continue as debts, obligations, or other
6541 liabilities of the converted entity and neither the rights of
6542 creditors nor the liens upon the property of the converting
6543 entity shall be impaired by the conversion;

6544 (3) an action or proceeding pending by or against the
6545 converting entity continues as if the conversion had not
6546 occurred and the name of the converted entity may, but need
6547 not, be substituted for the name of the converting entity in
6548 any pending action or proceeding;

6549 (4) except as prohibited by law other than this
6550 chapter, all of the rights, privileges, immunities, powers,
6551 and purposes of the converting entity remain vested in the
6552 converted entity;

6553 (5) except as otherwise provided in the statement of



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6554 conversion, the terms and conditions of the statement of
6555 conversion take effect;

6556 (6) except as otherwise agreed, for all purposes of the
6557 laws of this state, the converting entity shall not be
6558 required to wind up its affairs or pay its liabilities and
6559 distribute its assets, and the conversion shall not be deemed
6560 to constitute a dissolution of the converting entity;

6561 (7) for all purposes of the laws of this state, the
6562 rights, privileges, powers, interests in property, debts,
6563 liabilities, and duties of the converting entity, shall be the
6564 rights, privileges, powers, interests in property, debts,
6565 liabilities, and duties of the converted entity, and shall not
6566 be deemed as a consequence of the conversion, to have been
6567 transferred to the converted entity;

6568 (8) if the converted entity is a domestic entity, for
6569 all purposes of the laws of this state, the converted entity
6570 shall be deemed to be the same entity as the converting
6571 entity, and the conversion shall constitute a continuation of
6572 the existence of the converting entity in the form of the
6573 converted entity;

6574 (9) if the converting entity is a domestic entity, the
6575 existence of the converted entity shall be deemed to have
6576 commenced on the date the converting entity commenced its
6577 existence in the jurisdiction in which the converting entity
6578 was first created, formed, organized, incorporated, or
6579 otherwise came into being;

6580 (10) the conversion shall not affect the choice of law
6581 applicable to matters arising prior to conversion;



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6582 (11) if the Secretary of State has assigned a unique
6583 identifying number or other designation to the converting
6584 entity and (i) the converted entity is formed pursuant to the
6585 laws of this state, or (ii) the converted entity is, within 30
6586 days after the effective date of the conversion, registered to
6587 transact business in this state, then that unique identifying
6588 number or other designation shall continue to be assigned to
6589 the converted entity; and

6590 (12) ~~a.~~ (A) An owner with limited liability protection
6591 remains liable, if at all, for an obligation incurred by the
6592 converting entity before the conversion takes effect only to
6593 the extent, if any, the owner would have been liable if the
6594 conversion had not occurred.

6595 ~~b.~~ (B) An owner with limited liability protection who
6596 becomes an owner without limited liability protection is
6597 liable for an obligation of the converted entity incurred
6598 after conversion to the extent provided for by the laws
6599 applicable to the converted entity.

6600 (13) An owner without limited liability protection who
6601 as a result of a conversion becomes an owner of a converted
6602 entity with limited liability protection remains liable for an
6603 obligation incurred by the converting entity before the
6604 conversion takes effect only to the extent, if any, the owner
6605 would have been liable if the conversion had not occurred.

6606 (h) If:

6607 (1) the converting entity is a filing entity, a general
6608 partnership with an effective statement of partnership,
6609 statement of not for profit partnership, or statement of



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6610 limited liability partnership on file with the Secretary of
6611 State, a foreign filing entity registered to transact business
6612 or not for profit activity in this state, or a qualified
6613 foreign limited liability partnership;

6614 (2) the converted entity will be a filing entity, a
6615 general partnership with an effective statement of
6616 partnership, statement of not for profit partnership, or
6617 statement of limited liability partnership on file with the
6618 Secretary of State, a foreign filing entity registered to
6619 transact business or not for profit activity in this state, or
6620 a qualified foreign limited liability partnership;

6621 (3) the name of the converting entity and the converted
6622 entity are to be the same, other than words, phrases, or
6623 abbreviations indicating the type of entity; and

6624 (4) the name of the converted entity complies with
6625 Division A of Article 5 or Section 10A-1-7.07, as the case may
6626 be;

6627 then, notwithstanding Division B of Article 5, no name
6628 reservation shall be required and the converted entity shall
6629 for all purposes of this title be entitled to utilize the name
6630 of the converting entity without any further action by the
6631 converting entity or the converted entity.

6632 (i) A certified copy of the statement of conversion may
6633 be delivered to the office of the judge of probate in any
6634 county in which the converting entity owned real property, to
6635 be recorded without payment and without collection by the
6636 judge of probate of any deed or other transfer tax or fee. The
6637 judge of probate shall, however, be entitled to collect a



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6638 filing fee of five dollars (\$5). Any filing shall evidence
6639 chain of title, but lack of filing shall not affect the
6640 converted entity's title to the real property."

6641 "§10A-1-8.02

6642 ~~(a)~~—A merger of two or more entities, whether the other
6643 entity or entities are the same or another form of entity, may
6644 be accomplished as provided in this section.

6645 (a) The plan of merger must be in writing, and:

6646 (1) must include the following:

6647 (A) the name, type of entity, and mailing address of
6648 the principal office of each entity that is a party to the
6649 merger, the jurisdiction of the governing statute of each
6650 entity that is a party to the merger, and the respective
6651 unique identifying number or other designation as assigned by
6652 the Secretary of State, if any, of each entity that is a party
6653 to the merger;

6654 (B) the name, type of entity, and mailing address of
6655 the principal office of the surviving entity and, if the
6656 surviving entity is to be created pursuant to the merger, the
6657 surviving entity's organizational documents;

6658 (C) the terms and conditions of the merger, including
6659 the manner and basis for converting the interests in each
6660 entity that is a party to the merger into any combination of
6661 money, interests in the surviving entity, and other
6662 consideration as allowed by subsection (b); and

6663 (D) if the surviving entity is not to be created
6664 pursuant to the merger, any amendments to be made by the
6665 merger to the surviving entity's organizational documents; and



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6666 (2) may include other provisions relating to the merger
6667 not prohibited by law.

6668 (b) In connection with a merger, rights or securities
6669 of or interests in a merged entity may be exchanged for or
6670 converted into cash, property, or rights or securities of or
6671 interests in the surviving entity, or, in addition to or in
6672 lieu thereof, may be exchanged for or converted into cash,
6673 property, or rights or securities of or interests in another
6674 entity, or may be cancelled.

6675 (c) The plan of merger of an entity must be approved as
6676 follows:

6677 (1) CORPORATIONS.

6678 ~~(A) a. In the case of a corporation, other than a~~
6679 ~~nonprofit corporation, that~~ If a corporation is governed by
6680 Chapter 2A and that corporation is a party to a merger, a plan
6681 of merger under subsection (a) must be approved in accordance
6682 with ~~the procedures and by the stockholder vote required by~~
6683 ~~Article 11 of Chapter 2A. If the governing documents of the~~
6684 ~~corporation provide for approval of a merger by less than all~~
6685 ~~of the corporation's stockholders, approval of the merger~~
6686 ~~shall constitute corporate action subject to appraisal rights~~
6687 ~~pursuant to Article 13 of Chapter 2A, as applicable. No merger~~
6688 ~~of a corporation into a general or limited partnership may be~~
6689 ~~effected without the consent in writing of each stockholder~~
6690 ~~who will have personal liability with respect to the surviving~~
6691 ~~entity, notwithstanding any provision in the governing~~
6692 ~~documents of the corporation that is a party to the merger~~
6693 ~~providing for less than unanimous stockholder approval for the~~



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6694 ~~conversion.~~ If the merger is a corporate action as described
6695 in Section 10A-2A-13.02, then the rights, obligations, and
6696 procedures under Article 13 of Chapter 2A shall be applicable
6697 to that merger.

6698 ~~(B) b. In the case of a nonprofit corporation that is a~~
6699 ~~party to the merger, a plan of merger must be approved by all~~
6700 ~~the nonprofit corporation's members entitled to vote thereon,~~
6701 ~~if it is a nonprofit corporation with members with voting~~
6702 ~~rights, or as otherwise provided in the nonprofit~~
6703 ~~corporation's governing documents; but in no case may the~~
6704 ~~governing documents provide for approval by less than a~~
6705 ~~majority of the members entitled to vote thereon. If the~~
6706 ~~nonprofit corporation has no members, or no members entitled~~
6707 ~~to vote thereon, the plan of merger must be approved by a~~
6708 ~~unanimous vote of the board of directors of the nonprofit~~
6709 ~~corporation, except as otherwise provided in the governing~~
6710 ~~documents; but in no case may the governing documents provide~~
6711 ~~for approval by less than a majority of the board of~~
6712 ~~directors.~~ If a nonprofit corporation is governed by Chapter
6713 3A and that corporation is a party to a merger, a plan of
6714 merger under subsection (a) must be approved in accordance
6715 with Article 12 of Chapter 3A.

6716 (C) If a corporation is not governed by Chapter 2A or
6717 Chapter 3A and that corporation is a party to a merger, the
6718 plan of merger under subsection (a) must be approved in
6719 accordance with the law of the jurisdiction of formation of
6720 that corporation.

6721 (2) LIMITED PARTNERSHIPS. In the case of a limited



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6722 partnership that is a party to the merger, a plan of merger
6723 under subsection (a) must be approved in ~~writing by all of the~~
6724 ~~partners or as otherwise provided in the partnership~~
6725 ~~agreement. No merger of a limited partnership with a general~~
6726 ~~partnership in which the general partnership is the surviving~~
6727 ~~entity may be effected without the consent in writing of each~~
6728 ~~limited partner who will have personal liability with respect~~
6729 ~~to the surviving entity, notwithstanding any provision in the~~
6730 ~~limited partnership agreement of the merging limited~~
6731 ~~partnership providing for approval of the merger by less than~~
6732 ~~all partners~~ accordance with Article 10 of Chapter 9A.

6733 (3) LIMITED LIABILITY COMPANIES. In the case of a
6734 limited liability company that is a party to the merger, a
6735 plan of merger under subsection (a) must be approved in
6736 ~~writing by all of the limited liability company's members or~~
6737 ~~as otherwise provided in the limited liability company's~~
6738 ~~governing documents. No merger of a limited liability company~~
6739 ~~with a general or limited partnership that is the surviving~~
6740 ~~entity may be effected without the consent in writing of each~~
6741 ~~member who will have personal liability with respect to the~~
6742 ~~surviving entity, notwithstanding any provision in the~~
6743 ~~governing documents of the merging limited liability company~~
6744 ~~providing for less than unanimous member approval for a merger~~
6745 accordance with Article 10 of Chapter 5A.

6746 (4) GENERAL PARTNERSHIPS, INCLUDING LIMITED LIABILITY
6747 PARTNERSHIPS. In the case of a general partnership that is a
6748 party to the merger, a plan of merger under subsection (a)
6749 must be approved in ~~writing by all of the partners or as~~



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6750 ~~otherwise provided in the partnership agreement. No merger of~~
6751 ~~a limited liability partnership into a general or limited~~
6752 ~~partnership may be effected without the consent in writing of~~
6753 ~~each partner who will have personal liability with respect to~~
6754 ~~the surviving entity, notwithstanding any provision in the~~
6755 ~~partnership agreement of the limited liability partnership~~
6756 ~~providing for less than unanimous partner approval for a~~
6757 ~~merger~~ accordance with Article 9 of Chapter 8A. All general
6758 partnerships, other than a general partnership that is created
6759 pursuant to the merger, that are parties to a merger must have
6760 on file with the Secretary of State a statement of
6761 partnership, statement of not for profit partnership, or
6762 statement of limited liability partnership prior to delivering
6763 the statement of merger to the Secretary of State for filing.

6764 (5) REAL ESTATE INVESTMENT TRUST. In the case of a real
6765 estate investment trust that is a party to the merger, a plan
6766 of merger under subsection (a) must be approved in writing by
6767 all of the trust's shareholders or as otherwise provided in
6768 the trust's declaration of trust, but in no case may the vote
6769 required for shareholder approval be set at less than a
6770 majority of all the votes entitled to be cast. No merger of a
6771 real estate investment trust with a general or limited
6772 partnership that is to be the surviving entity may be effected
6773 without the consent in writing of each shareholder who will
6774 have personal liability with respect to the surviving entity,
6775 notwithstanding any provision in the declaration of trust of
6776 the converting real estate investment trust providing for less
6777 than unanimous shareholder approval for the merger.



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6778 (6) OTHER ENTITY. ~~In the case of an entity other than a~~
6779 ~~corporation, limited partnership, limited liability company,~~
6780 ~~general partnership, or real estate investment trust that is a~~
6781 ~~party to the merger, a plan of merger must be approved in~~
6782 ~~writing by all owners of the entity. No merger of any entity~~
6783 ~~shall be effected without the consent in writing of any owner~~
6784 ~~who has limited liability as an owner of an entity party to~~
6785 ~~the merger, and who will have personal liability with respect~~
6786 ~~to the surviving entity.~~ In the case of an entity not
6787 specified in paragraphs (1) through (5) above, a plan of
6788 merger under subsection (a) must be approved in writing by all
6789 owners of that entity or, if the entity has no owners, then by
6790 all members of the governing authority of that entity.

6791 ~~(b) The plan of merger must be in writing, and:~~

6792 ~~(1) must include the following:~~

6793 ~~a. the name, type of entity, and mailing address of the~~
6794 ~~principal office of each entity that is a party to the merger,~~
6795 ~~the jurisdiction of the governing statute of each entity that~~
6796 ~~is a party to the merger, and the respective unique~~
6797 ~~identifying number or other designation as assigned by the~~
6798 ~~Secretary of State, if any, of each entity that is a party to~~
6799 ~~the merger;~~

6800 ~~b. the name, type of entity, and mailing address of the~~
6801 ~~principal office of the surviving entity and, if the surviving~~
6802 ~~entity is to be created pursuant to the merger, the surviving~~
6803 ~~entity's organizational documents;~~

6804 ~~c. the terms and conditions of the merger, including~~
6805 ~~the manner and basis for converting the interests in each~~



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6806 ~~entity that is a party to the merger into any combination of~~
6807 ~~money, interests in the surviving entity, and other~~
6808 ~~consideration as allowed by subsection (c); and~~
6809 ~~d. if the surviving entity is not to be created~~
6810 ~~pursuant to the merger, any amendments to be made by the~~
6811 ~~merger to the surviving entity's organizational documents; and~~
6812 ~~(2) may include other provisions relating to the merger~~
6813 ~~not prohibited by law.~~
6814 ~~(c) In connection with a merger, rights or securities~~
6815 ~~of or interests in a merged entity may be exchanged for or~~
6816 ~~converted into cash, property, or rights or securities of or~~
6817 ~~interests in the surviving entity, or, in addition to or in~~
6818 ~~lieu thereof, may be exchanged for or converted into cash,~~
6819 ~~property, or rights or securities of or interests in another~~
6820 ~~entity or may be cancelled.~~
6821 ~~(d) After a plan of merger is approved and before the~~
6822 ~~merger takes effect, the plan may be amended or abandoned as~~
6823 ~~provided in the plan, or if the plan does not provide for~~
6824 ~~amendment or abandonment, in the same manner as required for~~
6825 ~~the approval of the plan of merger originally.~~
6826 ~~(e)~~ (d) After each entity has approved the plan of
6827 merger pursuant to subsection (c), the entities must deliver
6828 to the Secretary of State for filing a statement of merger
6829 signed on behalf of each entity as provided by its governing
6830 statute which must include:
6831 (1) the name, type of entity, and mailing address of
6832 the principal office of each entity that is a party to the
6833 merger, the jurisdiction of the governing statute of each



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6834 entity that is a party to the merger, and the respective
6835 unique identifying number or other designation as assigned by
6836 the Secretary of State, if any, of each entity that is a party
6837 to the merger;

6838 (2) the name, type of entity, and mailing address of
6839 the principal office of the surviving entity, the unique
6840 identifying number or other designation as assigned by the
6841 Secretary of State, if any, of the surviving entity, the
6842 jurisdiction of the governing statute of the surviving entity,
6843 and, if the surviving entity is created pursuant to the
6844 merger, a statement to that effect;

6845 ~~(3) for each entity other than a general partnership,~~
6846 ~~the date of the filing of the certificate of formation, if~~
6847 ~~any, and all prior amendments and the filing office or~~
6848 ~~offices, if any, where such is filed;~~

6849 ~~(4)~~ (3) for each general partnership, the date of the
6850 filing of the statement of partnership, statement of not for
6851 profit partnership, or statement of limited liability
6852 partnership, if any, and all prior amendments and the filing
6853 office or offices, if any, where such is filed;

6854 ~~(5)~~ (4) the date the merger is effective under the
6855 governing statute of the surviving entity;

6856 ~~(6)~~ (5) if the surviving entity is to be created
6857 pursuant to the merger, (i) if it will be a filing entity, its
6858 certificate of formation; or (ii) if it will be a non-filing
6859 entity, any document that creates the entity that is required
6860 to be in a public writing or in the case of a general
6861 partnership, its statement of partnership, statement of not



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6862 for profit partnership, or statement of limited liability
6863 partnership, as applicable;

6864 ~~(7)~~ (6) if the surviving entity is a domestic entity
6865 that exists before the merger, any amendments provided for in
6866 the plan of merger for the organizational documents that
6867 created the domestic entity that are required to be in a
6868 public writing, or in the case of a general partnership, its
6869 statement of partnership, statement of not for profit
6870 partnership, or statement of limited liability partnership, as
6871 applicable;

6872 ~~(8)~~ (7) a statement as to each entity that the merger
6873 was approved as required by the entity's governing statute;

6874 ~~(9)~~ (8) a statement that a copy of the plan of merger
6875 will be furnished by the surviving entity, on request and
6876 without cost, to any owner of any entity which is a party to
6877 the merger;

6878 ~~(10)~~ (9) if the surviving entity is a foreign entity not
6879 authorized to conduct activities and affairs in this state,
6880 the street and mailing address of an office for the purposes
6881 of Section 10A-1-8.04; and

6882 ~~(11)~~ (10) any additional information required by the
6883 governing statute of any entity that is a party to the merger.

6884 ~~(f)~~ (e) Prior to the statement of merger being delivered
6885 for filing to the Secretary of State in accordance with
6886 subsection ~~(e)~~ (d), all parties to the merger that are general
6887 partnerships, other than a general partnership that is created
6888 pursuant to the merger, must have on file with the Secretary
6889 of State a statement of partnership, statement of not for



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6890 profit partnership, or statement of limited liability
6891 partnership.

6892 (f) After a plan of merger is approved and before the
6893 merger takes effect, the plan may be amended or abandoned as
6894 provided in the plan, or if the plan does not provide for
6895 amendment or abandonment, in the same manner as required for
6896 the approval of the plan of merger originally.

6897 (g) If all of the entities that are parties to the
6898 merger are domestic entities, the merger becomes effective on
6899 the effective date determined in accordance with Article 4. If
6900 one or more parties to the merger is a foreign entity, or a
6901 foreign entity created by the merger is the surviving entity,
6902 the merger shall become effective at the later of:

6903 (1) when all documents required to be filed in foreign
6904 jurisdictions to effect the merger have become effective, or

6905 (2) the effective date determined in accordance with
6906 Article 4.

6907 (h) When a merger becomes effective:

6908 (1) the surviving entity continues or, in the case of a
6909 surviving entity created pursuant to the merger, comes into
6910 existence;

6911 (2) each entity that merges into the surviving entity
6912 ceases to exist as a separate entity;

6913 (3) except as provided in the plan of merger, all
6914 property owned by, and every contract right possessed by, each
6915 merging entity that ceases to exist vests in the surviving
6916 entity without transfer, reversion, or impairment and the
6917 title to any property and contract rights vested by deed or



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6918 otherwise in the surviving entity shall not revert, be in any
6919 way impaired, or be deemed to be a transfer by reason of the
6920 merger;

6921 (4) all debts, obligations, and other liabilities of
6922 each merging entity, other than the surviving entity, are
6923 debts, obligations, and liabilities of the surviving entity,
6924 and neither the rights of creditors, nor any liens upon the
6925 property of any entity that is a party to the merger, shall be
6926 impaired by the merger;

6927 (5) an action or proceeding, pending by or against any
6928 merging entity that ceases to exist continues as if the merger
6929 had not occurred and the name of the surviving entity may, but
6930 need not be substituted in any pending proceeding for the name
6931 of any merging entity whose separate existence ceased in the
6932 merger;

6933 (6) except as prohibited by law other than this chapter
6934 or as provided in the plan of merger, all the rights,
6935 privileges, franchises, immunities, powers, and purposes of
6936 each merging entity, other than the surviving entity, vest in
6937 the surviving entity;

6938 (7) except as otherwise provided in the plan of merger,
6939 the terms and conditions of the plan of merger take effect;

6940 (8) except as otherwise agreed, if a merged entity
6941 ceases to exist, the merger does not dissolve the merged
6942 entity;

6943 (9) if the surviving entity is created pursuant to the
6944 merger:

6945 ~~(i)~~ (A) if it is a general partnership, the statement of



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6946 partnership, statement of not for profit partnership, or
6947 statement of limited liability partnership becomes effective;
6948 or

6949 ~~(ii)~~ (B) if it is an entity other than a partnership,
6950 the organizational documents that create the entity become
6951 effective;

6952 (10) the interests in a merging entity that are to be
6953 converted in accordance with the terms of the merger into
6954 interests, obligations, rights to acquire interests, cash,
6955 other property, or any combination of the foregoing, are
6956 converted as provided in the plan of merger, and the former
6957 holders of interests are entitled only to the rights provided
6958 to them by those terms or to any appraisal or dissenters'
6959 rights they may have under the governing statute governing the
6960 merging entity;

6961 (11) if the surviving entity exists before the merger:

6962 ~~(i)~~ (A) except as provided in the plan of merger, all
6963 the property and contract rights of the surviving entity
6964 remain its property and contract rights without transfer,
6965 reversion, or impairment;

6966 ~~(ii)~~ (B) the surviving entity remains subject to all its
6967 debts, obligations, and other liabilities; and

6968 ~~(iii)~~ (C) except as provided by law other than this
6969 chapter or the plan of merger, the surviving entity continues
6970 to hold all of its rights, privileges, franchises, immunities,
6971 powers, and purposes.

6972 (12) Service of process in an action or proceeding
6973 against a surviving foreign entity to enforce an obligation of



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6974 a domestic entity that is a party to a merger may be made by
6975 registered mail addressed to the surviving entity at the
6976 address set forth in the statement of merger or by any method
6977 provided by the Alabama Rules of Civil Procedure. Any notice
6978 or demand required or permitted by law to be served on a
6979 domestic entity may be served on the surviving foreign entity
6980 by registered mail addressed to the surviving entity at the
6981 address set forth in the statement of merger or in any other
6982 manner similar to the procedure provided by the Alabama Rules
6983 of Civil Procedure for the service of process.

6984 (13) ~~a.~~ (A) An owner of an entity with limited liability
6985 protection remains liable, if at all, for an obligation
6986 incurred prior to the merger by an entity that ceases to exist
6987 as a result of the merger only to the extent, if any, that the
6988 owner would have been liable under the laws applicable to
6989 owners of the form of entity that ceased to exist if the
6990 merger had not occurred.

6991 ~~b.~~ (B) An owner with limited liability protection who,
6992 as a result of the merger, becomes an owner without limited
6993 liability protection of the surviving entity is liable for an
6994 obligation of the surviving entity incurred after merger to
6995 the extent provided for by the laws applicable to the
6996 surviving entity.

6997 (14) An owner without limited liability protection of
6998 an entity that ceases to exist as a result of a merger and who
6999 as a result of the merger becomes an owner of a surviving
7000 entity with limited liability protection remains liable for an
7001 obligation of the entity that ceases to exist incurred before



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7002 the merger takes effect only to the extent, if any, that the
7003 owner would have been liable if the merger had not occurred.

7004 (i) A certified copy of the statement of merger
7005 required to be filed under this section may be filed in the
7006 real estate records in the office of the judge of probate in
7007 any county in which any merged entity owned real property,
7008 without payment and without collection by the judge of probate
7009 of any deed or other transfer tax or fee. The judge of
7010 probate, however, shall be entitled to collect a filing fee of
7011 five dollars (\$5). Any such filing shall evidence chain of
7012 title, but lack of filing shall not affect the surviving
7013 entity's title to such real property."

7014 "§10A-1-9.01

7015 This article does not apply to business corporations,
7016 nonprofit corporations, limited liability companies, general
7017 partnerships, and limited partnerships."

7018 Section 3. Sections 10A-2A-1.40, 10A-2A-1.43,
7019 10A-2A-1.51, 10A-2A-2.02, 10A-2A-2.06, 10A-2A-7.04,
7020 10A-2A-7.32, 10A-2A-7.20, 10A-2A-8.10, 10A-2A-8.21,
7021 10A-2A-8.22, 10A-2A-8.24, 10A-2A-8.59, 10A-2A-10.06,
7022 10A-2A-10.07, 10A-2A-10.08, 10A-2A-11.02, 10A-2A-11.06,
7023 10A-2A-12.02, and 10A-2A-14.13 of the Code of Alabama 1975,
7024 are amended to read as follows:

7025 "§10A-2A-1.40

7026 As used in this chapter, unless otherwise specified or
7027 unless the context otherwise requires, the following terms
7028 have the following meanings:

7029 (1) AUTHORIZED STOCK means the stock of all classes and



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7030 series a corporation or foreign corporation is authorized to
7031 issue.

7032 (2) BENEFICIAL STOCKHOLDER means a person who owns the
7033 beneficial interest in stock, which is either a record
7034 stockholder or a person on whose behalf shares of stock are
7035 registered in the name of an intermediary or nominee.

7036 (3) CERTIFICATE OF INCORPORATION means the certificate
7037 of incorporation described in Section 10A-2A-2.02, all
7038 amendments to the certificate of incorporation, and any other
7039 documents permitted or required to be delivered for filing by
7040 a corporation with the Secretary of State under this chapter
7041 or Chapter 1 that modify, amend, supplement, restate, or
7042 replace the certificate of incorporation. After an amendment
7043 of the certificate of incorporation or any other document
7044 filed under this chapter or Chapter 1 that restates the
7045 certificate of incorporation in its entirety, the certificate
7046 of incorporation shall not include any prior documents. When
7047 used with respect to a corporation incorporated and existing
7048 on December 31, 2019, under a predecessor law of this state,
7049 the term "certificate of incorporation" means articles of
7050 incorporation, charter, or similar incorporating document, and
7051 all amendments and restatements to the certificate of
7052 incorporation, charter, or similar incorporating document.
7053 When used with respect to a foreign corporation, a nonprofit
7054 corporation, or a foreign nonprofit corporation, the
7055 "certificate of incorporation" of such an entity means the
7056 document of such entity that is equivalent to the certificate
7057 of incorporation of a corporation. The term "certificate of



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7058 incorporation" as used in this chapter is synonymous to the
7059 term "certificate of formation" used in Chapter 1.

7060 (4) CORPORATION, except in the phrase foreign
7061 corporation, means an entity incorporated or existing under
7062 this chapter.

7063 (5) DELIVER or DELIVERY means any method of delivery
7064 used in conventional commercial practice, including delivery
7065 by hand, mail, commercial delivery, and, if authorized in
7066 accordance with Section 10A-2A-1.41, by electronic
7067 transmission.

7068 (6) DISTRIBUTION means a direct or indirect transfer of
7069 cash or other property (except a corporation's own stock) or
7070 incurrence of indebtedness by a corporation to or for the
7071 benefit of its stockholders in respect of any of its stock. A
7072 distribution may be in the form of a payment of a dividend; a
7073 purchase, redemption, or other acquisition of stock; a
7074 distribution of indebtedness; a distribution in liquidation;
7075 or otherwise.

7076 (7) DOCUMENT means a writing as defined in Chapter 1.

7077 (8) EFFECTIVE DATE, when referring to a document
7078 accepted for filing by the Secretary of State, means the time
7079 and date determined in accordance with Article 4 of Chapter 1.

7080 (9) ELECTRONIC MAIL means an electronic transmission
7081 directed to a unique electronic mail address.

7082 (10) ELECTRONIC MAIL ADDRESS means a destination,
7083 commonly expressed as a string of characters, consisting of a
7084 unique user name or mailbox (commonly referred to as the
7085 "local part" of the address) and a reference to an internet



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7086 domain (commonly referred to as the "domain part" of the
7087 address), whether or not displayed, to which electronic mail
7088 can be sent or delivered.

7089 (11) ELIGIBLE ENTITY means an unincorporated entity,
7090 foreign unincorporated entity, nonprofit corporation, or
7091 foreign nonprofit corporation.

7092 (12) ELIGIBLE INTERESTS means interests or memberships.

7093 (13) EMPLOYEE includes an officer, but not a director.
7094 A director may accept duties that make the director also an
7095 employee.

7096 (14) ENTITY includes corporation; foreign corporation;
7097 nonprofit corporation; foreign nonprofit corporation; estate;
7098 trust; unincorporated entity; foreign unincorporated entity;
7099 and state, United States, and foreign government.

7100 (15) EXPENSES means reasonable expenses of any kind
7101 that are incurred in connection with a matter.

7102 (16) FILING ENTITY means an unincorporated entity,
7103 other than a limited liability partnership, that is of a type
7104 that is created by filing a public organic record or is
7105 required to file a public organic record that evidences its
7106 creation.

7107 (17) FOREIGN CORPORATION means a corporation
7108 incorporated under a law other than the law of this state
7109 which would be a corporation if incorporated under the law of
7110 this state.

7111 (18) FOREIGN NONPROFIT CORPORATION means a corporation
7112 incorporated under a law other than the law of this state
7113 which would be a nonprofit corporation if incorporated under



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7114 the law of this state.

7115 (19) GOVERNING STATUTE means the statute governing the
7116 internal affairs of a corporation, foreign corporation,
7117 nonprofit corporation, foreign nonprofit corporation,
7118 unincorporated entity, or foreign unincorporated entity.

7119 (20) GOVERNMENTAL SUBDIVISION includes authority,
7120 county, district, and municipality.

7121 (21) INCLUDES and INCLUDING denote a partial definition
7122 or a nonexclusive list.

7123 (22) INTEREST means either or both of the following
7124 rights under the governing statute governing an unincorporated
7125 entity:

7126 (i) the right to receive distributions from the entity
7127 either in the ordinary course or upon liquidation; or

7128 (ii) the right to receive notice or vote on issues
7129 involving its internal affairs, other than as an agent,
7130 assignee, proxy, or person responsible for managing its
7131 business and affairs.

7132 (23) INTEREST HOLDER means a person who holds of record
7133 an interest.

7134 (24) KNOWLEDGE is determined as follows:

7135 (a) A person knows a fact when the person:

7136 (1) has actual knowledge of it; or

7137 (2) is deemed to know it under law other than this
7138 chapter.

7139 (b) A person has notice of a fact when the person:

7140 (1) knows of it;

7141 (2) receives notification of it in accordance with



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7142 Section 10A-2A-1.41;

7143 (3) has reason to know the fact from all of the facts
7144 known to the person at the time in question; or

7145 (4) is deemed to have notice of the fact under
7146 subsection (d).

7147 (c) A person notifies another of a fact by taking steps
7148 reasonably required to inform the other person in ordinary
7149 course in accordance with Section 10A-2A-1.41, whether or not
7150 the other person knows the fact.

7151 (d) A person is deemed to have notice of a
7152 corporation's:

7153 (1) matters included in the certificate of
7154 incorporation upon filing;

7155 (2) dissolution, 90 days after a certificate of
7156 dissolution under Section 10A-2A-14.03 becomes effective;

7157 (3) conversion, merger, or interest exchange under
7158 Article 9 or Article 11, 90 days after a statement of
7159 conversion, or statement of merger or interest exchange
7160 becomes effective;

7161 (4) conversion or merger under Article 8 of Chapter 1,
7162 90 days after a statement of conversion or statement of merger
7163 becomes effective; and

7164 (5) revocation of dissolution and reinstatement, 90
7165 days after certificate of revocation of dissolution and
7166 reinstatement under Section 10A-2A-14.04 becomes effective.

7167 (e) A stockholder's knowledge, notice, or receipt of a
7168 notification of a fact relating to the corporation is not
7169 knowledge, notice, or receipt of a notification of a fact by



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7170 the corporation solely by reason of the stockholder's capacity
7171 as a stockholder.

7172 (f) The date and time of the effectiveness of a notice
7173 delivered in accordance with Section 10A-2A-1.41, is
7174 determined by Section 10A-2A-1.41.

7175 (25) MEANS denotes an exhaustive definition.

7176 (26) MEMBERSHIP means the rights of a member in a
7177 nonprofit corporation or foreign nonprofit corporation.

7178 ~~(27) MERGER means a transaction pursuant to Section~~
7179 ~~10A-2A-11.02.~~

7180 ~~(28)~~ (27) ORGANIZATIONAL DOCUMENTS means the public
7181 organic record and private organizational documents of a
7182 corporation, foreign corporation, or eligible entity.

7183 ~~(29)~~ (28) PRINCIPAL OFFICE means the office (in or out
7184 of this state) so designated in the annual report where the
7185 principal executive offices of a corporation or foreign
7186 corporation are located.

7187 ~~(30)~~ (29) PRIVATE ORGANIZATIONAL DOCUMENTS means (i) the
7188 bylaws of a corporation, foreign corporation, nonprofit
7189 corporation, or foreign nonprofit corporation, or (ii) the
7190 rules, regardless of whether in writing, that govern the
7191 internal affairs of an unincorporated entity or foreign
7192 unincorporated entity, are binding on all its interest
7193 holders, and are not part of its public organic record, if
7194 any. Where private organizational documents have been amended
7195 or restated, the term means the private organizational
7196 documents as last amended or restated.

7197 ~~(31)~~ (30) PROCEEDING includes any civil suit and



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7198 criminal, administrative, and investigatory action.

7199 ~~(32)~~ (31) PUBLIC ORGANIC RECORD means (i) the
7200 certificate of incorporation of a corporation, foreign
7201 corporation, nonprofit corporation, or foreign nonprofit
7202 corporation, or (ii) the document, if any, the filing of which
7203 is required to create an unincorporated entity or foreign
7204 unincorporated entity, or which creates the unincorporated
7205 entity or foreign unincorporated entity and is required to be
7206 filed. Where a public organic record has been amended or
7207 restated, the term means the public organic record as last
7208 amended or restated.

7209 ~~(33)~~ (32) RECORD DATE means the date fixed for
7210 determining the identity of the corporation's stockholders and
7211 their stockholdings for purposes of this chapter. Unless
7212 another time is specified when the record date is fixed, the
7213 determination shall be made as of the close of business at the
7214 principal office of the corporation on the date so fixed.

7215 ~~(34)~~ (33) RECORD STOCKHOLDER means (i) the person in
7216 whose name shares of stock are registered in the records of
7217 the corporation, or (ii) the person identified as the
7218 beneficial owner of stock in a beneficial ownership
7219 certificate pursuant to Section 10A-2A-7.23 on file with the
7220 corporation to the extent of the rights granted by such
7221 certificate.

7222 ~~(35)~~ (34) SECRETARY means the corporate officer to whom
7223 the board of directors has delegated responsibility under
7224 Section 10A-2A-8.40(c) to maintain the minutes of the meetings
7225 of the board of directors and of the stockholders and for



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7226 authenticating records of the corporation.

7227 ~~(36)~~ (35) STOCK EXCHANGE means a transaction pursuant to
7228 Section 10A-2A-11.03.

7229 ~~(37)~~ (36) STOCKHOLDER means a record stockholder.

7230 ~~(38)~~ (37) STOCK means the units into which the
7231 proprietary interests in a corporation or foreign corporation
7232 are divided.

7233 ~~(39)~~ (38) TYPE OF ENTITY means a generic form of entity:
7234 (i) recognized at common law; or (ii) formed under a governing
7235 statute, regardless of whether some entities formed under that
7236 law are subject to provisions of that law that create
7237 different categories of the form of entity.

7238 ~~(40)~~ (39) UNINCORPORATED ENTITY means an organization or
7239 artificial legal person that either has a separate legal
7240 existence or has the power to acquire an estate in real
7241 property in its own name and that is not any of the following:
7242 a corporation, foreign corporation, nonprofit corporation,
7243 foreign nonprofit corporation, a series of a limited liability
7244 company or of another type of entity, an estate, a trust, a
7245 state, United States, or foreign government. The term includes
7246 a general partnership, limited liability company, limited
7247 partnership, business trust, joint stock association, and
7248 unincorporated nonprofit association.

7249 ~~(41)~~ (40) UNITED STATES includes any district,
7250 authority, bureau, commission, department, and any other
7251 agency of the United States.

7252 ~~(42)~~ (41) UNRESTRICTED VOTING TRUST BENEFICIAL OWNER
7253 means, with respect to any stockholder rights, a voting trust



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7254 beneficial owner whose entitlement to exercise the stockholder
7255 right in question is not inconsistent with the voting trust
7256 agreement.

7257 ~~(43)~~ (42) VOTING GROUP means all stock of one or more
7258 classes or series that under the certificate of incorporation
7259 or this chapter are entitled to vote and be counted together
7260 collectively on a matter at a meeting of stockholders. All
7261 stock entitled by the certificate of incorporation or this
7262 chapter to vote generally on the matter is for that purpose a
7263 single voting group.

7264 ~~(44)~~ (43) VOTING POWER means the current power to vote
7265 in the election of directors.

7266 ~~(45)~~ (44) VOTING TRUST BENEFICIAL OWNER means an owner
7267 of a beneficial interest in stock of the corporation held in a
7268 voting trust established pursuant to Section 10A-2A-7.30(a)."

7269 "§10A-2A-1.43

7270 (a) A "qualified director" is a director who, at the
7271 time action is to be taken under:

7272 (1) Section 10A-2A-2.02(b)(6), is not a director (i) to
7273 whom the limitation or elimination of the duty of an officer
7274 to offer potential business opportunities to the corporation
7275 would apply, or (ii) who has a material relationship with any
7276 other person to whom the limitation or elimination would
7277 apply;

7278 ~~(2) Section 10A-2A-7.44, does not have (i) a material~~
7279 ~~interest in the outcome of the proceeding, or (ii) a material~~
7280 ~~relationship with a person who has such an interest;~~

7281 ~~(3)~~ (2) Section 10A-2A-8.53 or Section 10A-2A-8.55, (i)



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7282 is not a party to the proceeding, (ii) is not a director as to
7283 whom a transaction is a director's conflicting interest
7284 transaction or who sought a disclaimer of the corporation's
7285 interest in a business opportunity under Section 10A-2A-8.60,
7286 which transaction or disclaimer is challenged, and (iii) does
7287 not have a material relationship with a director described in
7288 either clause (i) or clause (ii) of this subsection ~~(a)(3)~~
7289 (a)(2); or

7290 ~~(4)~~ (3) Section 10A-2A-8.60, is not a director (i) as to
7291 whom the contract or transaction is a director's conflicting
7292 interest transaction, (ii) who has a material relationship
7293 with another director as to whom the transaction is a
7294 director's conflicting interest transaction, (iii) pursues or
7295 takes advantage of the business opportunity, directly, or
7296 indirectly through or on behalf of another person, or (iv) has
7297 a material relationship with a director or officer who pursues
7298 or takes advantage of the business opportunity, directly, or
7299 indirectly through or on behalf of another person.

7300 (b) For purposes of this section:

7301 (1) "material relationship" means a familial,
7302 financial, professional, employment, or other relationship
7303 that would reasonably be expected to impair the objectivity of
7304 the director's judgment when participating in the action to be
7305 taken; and

7306 (2) "material interest" means an actual or potential
7307 benefit or detriment (other than one which would devolve on
7308 the corporation or the stockholders generally) that would
7309 reasonably be expected to impair the objectivity of the



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7310 director's judgment when participating in the action to be
7311 taken.

7312 (c) The presence of one or more of the following
7313 circumstances shall not automatically prevent a director from
7314 being a qualified director:

7315 (1) nomination or election of the director to the
7316 current board of directors by any director who is not a
7317 qualified director with respect to the matter (or by any
7318 person that has a material relationship with that director),
7319 acting alone or participating with others; or

7320 (2) service as a director of another corporation of
7321 which a director who is not a qualified director with respect
7322 to the matter (or any individual who has a material
7323 relationship with that director), is or was also a director;
7324 ~~or~~ .

7325 ~~(3) with respect to action to be taken under Section~~
7326 ~~10A-2A-7.44, status as a named defendant, as a director~~
7327 ~~against whom action is demanded, or as a director who approved~~
7328 ~~the conduct being challenged."~~

7329 "§10A-2A-1.51

7330 (a) If the defective corporate action ratified under
7331 this Division D of Article 1 would have required under any
7332 other section of this chapter a filing in accordance with this
7333 chapter, then, regardless of whether a filing was previously
7334 made in respect of such defective corporate action and in lieu
7335 of a filing otherwise required by this chapter, the
7336 corporation shall file a certificate of validation in
7337 accordance with this section, and that certificate of



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7338 validation shall serve to amend or substitute for any other
7339 filing with respect to such defective corporate action
7340 required by this chapter.

7341 (b) The certificate of validation must set forth:

7342 (1) the name of the corporation;

7343 (2) the unique identifying number or other designation

7344 as assigned by the Secretary of State;

7345 ~~(1)~~ (3) the defective corporate action that is the
7346 subject of the certificate of validation (including, in the
7347 case of any defective corporate action involving the issuance
7348 of putative stock, the number and type of shares of putative
7349 stock issued and the date or dates upon which that putative
7350 stock was purported to have been issued);

7351 ~~(2)~~ (4) the date of the defective corporate action;

7352 ~~(3)~~ (5) the nature of the failure of authorization in
7353 respect of the defective corporate action;

7354 ~~(4)~~ (6) a statement that the defective corporate action
7355 was ratified in accordance with Section 10A-2A-1.47, including
7356 the date on which the board of directors ratified that
7357 defective corporate action and the date, if any, on which the
7358 stockholders approved the ratification of that defective
7359 corporate action; and

7360 ~~(5)~~ (7) the information required by subsection (c).

7361 (c) The certificate of validation must also contain the
7362 following information:

7363 (1) if a filing was previously made in respect of the
7364 defective corporate action and no changes to that filing are
7365 required to give effect to the ratification of that defective



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7366 corporate action in accordance with Section 10A-2A-1.47, the
7367 certificate of validation must set forth (i) the name, title,
7368 and filing date of the filing previously made and any
7369 certificate of correction to that filing, and (ii) a statement
7370 that a copy of the filing previously made, together with any
7371 certificate of correction to that filing, is attached as an
7372 exhibit to the certificate of validation;

7373 (2) if a filing was previously made in respect of the
7374 defective corporate action and that filing requires any change
7375 to give effect to the ratification of that defective corporate
7376 action in accordance with Section 10A-2A-1.47, the certificate
7377 of validation must set forth (i) the name, title, and filing
7378 date of the filing previously made and any certificate of
7379 correction to that filing, and (ii) a statement that a filing
7380 containing all of the information required to be included
7381 under the applicable section or sections of this chapter to
7382 give effect to that defective corporate action is attached as
7383 an exhibit to the certificate of validation, and (iii) the
7384 date and time that filing is deemed to have become effective;
7385 or

7386 (3) if a filing was not previously made in respect of
7387 the defective corporate action and the defective corporate
7388 action ratified under Section 10A-2A-1.47 would have required
7389 a filing under any other section of this chapter, the
7390 certificate of validation must set forth (i) a statement that
7391 a filing containing all of the information required to be
7392 included under the applicable section or sections of this
7393 chapter to give effect to that defective corporate action is



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7394 attached as an exhibit to the certificate of validation, and
7395 (ii) the date and time that filing is deemed to have become
7396 effective."

7397 "§10A-2A-2.02

7398 Section 10A-1-3.05 shall not apply to this chapter.

7399 Instead:

7400 (a) The certificate of incorporation must set forth:

7401 (1) a corporate name for the corporation that satisfies
7402 the requirements of Article 5 of Chapter 1;

7403 (2) the number of shares of stock the corporation is
7404 authorized to issue;

7405 (3) the street and mailing addresses of the
7406 corporation's initial registered office, the county within
7407 this state in which the street and mailing address is located,
7408 and the name of the corporation's initial registered agent at
7409 that office as required by Article 5 of Chapter 1; and

7410 (4) the name and address of each incorporator.

7411 (b) The certificate of incorporation may set forth:

7412 (1) the names and addresses of the individuals who are
7413 to serve as the initial directors;

7414 (2) provisions not inconsistent with law regarding:

7415 (i) the purpose or purposes for which the corporation
7416 is organized;

7417 (ii) managing the business and regulating the affairs
7418 of the corporation;

7419 (iii) defining, limiting, and regulating the powers of
7420 the corporation, its board of directors, and stockholders;

7421 (iv) a par value for authorized stock or classes of



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7422 stock; or

7423 (v) subject to subsection (f), a provision imposing
7424 personal liability for the debts of the corporation on its
7425 stockholders to a specified extent and upon specified
7426 conditions; otherwise, the stockholders of a corporation shall
7427 not be personally liable for the payment of the corporation's
7428 debts, except as they may be liable by reason of their own
7429 conduct or acts;

7430 (3) any provision that under this chapter is permitted
7431 to be set forth in the certificate of incorporation or
7432 required or permitted to be set forth in the bylaws;

7433 (4) a provision eliminating or limiting the liability
7434 of a director to the corporation or its stockholders for money
7435 damages for any action taken, or any failure to take any
7436 action, as a director, except liability for (i) the amount of
7437 a financial benefit received by a director to which the
7438 director is not entitled; (ii) an intentional infliction of
7439 harm on the corporation or the stockholders; (iii) a violation
7440 of Section 10A-2A-8.32; or (iv) an intentional violation of
7441 criminal law;

7442 (5) a provision permitting or making obligatory
7443 indemnification of a director for liability as defined in
7444 Section 10A-2A-8.50 to any person for any action taken, or any
7445 failure to take any action, as a director, except liability
7446 for (i) receipt of a financial benefit to which the director
7447 is not entitled, (ii) an intentional infliction of harm on the
7448 corporation or its stockholders, (iii) a violation of Section
7449 10A-2A-8.32, or (iv) an intentional violation of criminal law;



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7450 and

7451 (6) a provision limiting or eliminating any duty of a
7452 director or any other person to offer the corporation the
7453 right to have or participate in any, or one or more classes or
7454 categories of, business opportunities, before the pursuit or
7455 taking of the opportunity by the director or other person;
7456 provided that any application of that provision to an officer
7457 or a related person of that officer (i) also requires approval
7458 of that application by the board of directors, subsequent to
7459 the effective date of the provision, by action of qualified
7460 directors taken in compliance with the same procedures as are
7461 set forth in Section 10A-2A-8.60, and (ii) may be limited by
7462 the authorizing action of the board of directors.

7463 (c) The certificate of incorporation need not set forth
7464 any of the corporate powers enumerated in Sections 10A-1-2.11,
7465 10A-1-2.12, and 10A-1-2.13.

7466 (d) Provisions of the certificate of incorporation may
7467 be made dependent upon facts objectively ascertainable outside
7468 the certificate of incorporation in accordance with Section
7469 10A-2A-1.20(c).

7470 (e) As used in this section, "related person" ~~has the~~
7471 ~~meaning specified in Section 10A-2A-8.60~~ means:

7472 (i) the individual's spouse;

7473 (ii) a child, stepchild, grandchild, parent,
7474 stepparent, grandparent, sibling, stepsibling, half sibling,
7475 aunt, uncle, niece, or nephew (or spouse of any such person)
7476 of the individual or of the individual's spouse;

7477 (iii) a natural person living in the same home as the



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7478 individual;

7479 (iv) an entity (other than the corporation or an entity
7480 controlled by the corporation) controlled by the individual or
7481 any person specified above in this definition;

7482 (v) a domestic or foreign:

7483 (A) business or nonprofit corporation (other than the
7484 corporation or an entity controlled by the corporation) of
7485 which the individual is a director;

7486 (B) unincorporated entity of which the individual is a
7487 general partner or a member of the governing authority; or

7488 (C) individual, trust or estate for whom or of which
7489 the individual is a trustee, guardian, personal
7490 representative, or like fiduciary; or

7491 (vi) a person that is, or an entity that is, controlled
7492 by an employer of the individual.

7493 (f) The certificate of incorporation may not contain
7494 any provision that would impose liability on a stockholder for
7495 the attorney's fees or expenses of the corporation or any
7496 other party in connection with an internal corporate claim, as
7497 defined in Section 10A-2A-2.07(d).

7498 (g) The certificate of incorporation is part of a
7499 binding contract between the corporation and the stockholders,
7500 subject to the provisions of this chapter."

7501 "§10A-2A-2.06

7502 (a) Unless the certificate of incorporation provides
7503 otherwise, ~~the board of directors may adopt~~ bylaws may be
7504 adopted to be effective only in an emergency defined in
7505 subsection (d). The emergency bylaws, which are subject to



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7506 amendment or repeal by the stockholders, may make all
7507 provisions necessary for managing the corporation during the
7508 emergency, including:

7509 (1) procedures for calling a meeting of the board of
7510 directors;

7511 (2) quorum requirements for the meeting; and

7512 (3) designation of additional or substitute directors.

7513 (b) All provisions of the regular bylaws not
7514 inconsistent with the emergency bylaws remain effective during
7515 the emergency. The emergency bylaws are not effective after
7516 the emergency ends.

7517 (c) Corporate action taken in good faith in accordance
7518 with the emergency bylaws:

7519 (1) binds the corporation; and

7520 (2) may not be used to impose liability on a director,
7521 officer, employee, or agent of the corporation.

7522 (d) An emergency exists for purposes of this section if
7523 a quorum of the board of directors cannot readily be assembled
7524 because of some catastrophic event."

7525 "§10A-2A-7.04

7526 (a) Unless otherwise provided in the certificate of
7527 incorporation, any action required or permitted by this
7528 chapter to be taken at any meeting of the stockholders may be
7529 taken without a meeting, and without prior notice, if one or
7530 more consents in writing setting forth the action so taken are
7531 signed by the holders of outstanding stock having not less
7532 than the minimum number of votes that would be required to
7533 authorize or take the action at a meeting at which all shares



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7534 of stock entitled to vote on the action were present and
7535 voted; provided, however, that if a corporation's certificate
7536 of incorporation authorizes stockholders to cumulate their
7537 votes when electing directors pursuant to Section 10A-2A-7.28,
7538 directors may not be elected by less than unanimous written
7539 consent. The action must be evidenced by one or more written
7540 consents describing the action taken, signed by the
7541 stockholders approving the action and delivered to the
7542 corporation for filing by the corporation with the minutes or
7543 corporate records.

7544 (b) If not otherwise fixed under Section 10A-2A-7.07
7545 and if prior action by the board of directors is not required
7546 respecting the action to be taken without a meeting, the
7547 record date for determining the stockholders entitled to take
7548 action without a meeting shall be the first date on which a
7549 signed written consent is delivered to the corporation. If not
7550 otherwise fixed under Section 10A-2A-7.07 and if prior action
7551 by the board of directors is required respecting the action to
7552 be taken without a meeting, the record date shall be the close
7553 of business on the day the resolution of the board of
7554 directors taking the prior action is adopted. No written
7555 consent shall be effective to take the corporate action
7556 referred to therein unless, within 60 days of the earliest
7557 date on which a consent is delivered to the corporation as
7558 required by this section, written consents signed by
7559 sufficient stockholders to take the action have been delivered
7560 to the corporation. Any person executing a consent may
7561 provide, whether through instruction to an agent or otherwise,



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7562 that such consent will be effective at a future time,
7563 including a time determined upon the happening of an event,
7564 occurring not later than 60 days after such instruction is
7565 given or such provision is made, if evidence of the
7566 instruction or provision is provided to the corporation. A
7567 written consent may be revoked by a writing to that effect
7568 delivered to the corporation before unrevoked written consents
7569 sufficient in number to take the corporate action have been
7570 delivered to the corporation.

7571 (c) A consent signed pursuant to the provisions of this
7572 section has the effect of a vote taken at a meeting and may be
7573 described as such in any document. Unless the certificate of
7574 incorporation, bylaws or a resolution of the board of
7575 directors provides for a reasonable delay to permit tabulation
7576 of written consents, the action taken by written consent shall
7577 be effective when written consents signed by sufficient
7578 stockholders to take the action have been delivered to the
7579 corporation.

7580 (d) If this chapter requires that notice of a proposed
7581 action be given to nonvoting stockholders and the action is to
7582 be taken by written consent of the voting stockholders, the
7583 corporation shall give its nonvoting stockholders written
7584 notice of the action not more than 10 days after (i) written
7585 consents sufficient to take the action have been delivered to
7586 the corporation, or (ii) any later date that tabulation of
7587 consents is completed pursuant to an authorization under
7588 subsection (c). The notice must reasonably describe the action
7589 taken and contain or be accompanied by the same material that,



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7590 under any provision of this chapter, would have been required
7591 to be sent to nonvoting stockholders in a notice of a meeting
7592 at which the proposed action would have been submitted to the
7593 stockholders for action.

7594 (e) If action is taken by less than unanimous written
7595 consent of the voting stockholders, the corporation shall give
7596 its nonconsenting voting stockholders written notice of the
7597 action not more than 10 days after (i) written consents
7598 sufficient to take the action have been delivered to the
7599 corporation, or (ii) any later date that tabulation of
7600 consents is completed pursuant to an authorization under
7601 subsection (c). The notice must reasonably describe the action
7602 taken and contain or be accompanied by the same material that,
7603 under any provision of this chapter, would have been required
7604 to be sent to voting stockholders in a notice of a meeting at
7605 which the action would have been submitted to the stockholders
7606 for action.

7607 (f) The notice requirements in subsections (d) and (e)
7608 shall not delay the effectiveness of actions taken by written
7609 consent, and a failure to comply with those notice
7610 requirements shall not invalidate actions taken by written
7611 consent, provided that this subsection shall not be deemed to
7612 limit judicial power to fashion any appropriate remedy in
7613 favor of a stockholder adversely affected by a failure to give
7614 the notice within the required time period."

7615 "§10A-2A-7.20

7616 (a) After fixing a record date for a meeting, a
7617 corporation shall prepare an alphabetical list of the names of



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7618 all its stockholders who are entitled to notice of the
7619 stockholders' meeting. If the board of directors fixes a
7620 different record date under Section 10A-2A-7.07(e) to
7621 determine the stockholders entitled to vote at the meeting, a
7622 corporation also shall prepare an alphabetical list of the
7623 names of all its stockholders who are entitled to vote at the
7624 meeting. Each list must be arranged by voting group (and
7625 within each voting group by class or series of stock) and
7626 contain the address of, and number and class or series of
7627 shares of stock held by, each stockholder, and if the notice
7628 or other communications regarding the meeting have been or
7629 will be sent by the corporation to a stockholder by electronic
7630 mail or other electronic transmission, the electronic mail or
7631 other electronic transmission address of that stockholder.

7632 (b) The list of stockholders entitled to notice and to
7633 vote shall be available for inspection by any stockholder,
7634 ~~beginning two business days after notice of~~ no later than the
7635 tenth day before each meeting of stockholders; provided,
7636 however, if the record date for determining the stockholders
7637 entitled to vote is less than 10 days before the meeting ~~is~~
7638 ~~given for which the list was prepared and continuing through~~
7639 ~~the meeting,~~ date, the list shall reflect the stockholders
7640 entitled to vote as of the tenth day before the meeting date.
7641 The list shall be available (i) at the corporation's principal
7642 office or at a place identified in the meeting notice in the
7643 city where the meeting will be held or (ii) on a reasonably
7644 accessible electronic network, provided that the information
7645 required to gain access to such list is provided with the

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7646 notice of the meeting. ~~The list of stockholders entitled to~~
7647 ~~vote shall be similarly available for inspection promptly~~
7648 ~~after the record date for voting.~~ In the event that the
7649 corporation determines to make a list of stockholders
7650 available on an electronic network, the corporation may take
7651 reasonable steps to ensure that such information is available
7652 only to stockholders of the corporation. A stockholder, or the
7653 stockholder's agent or attorney, is entitled on written demand
7654 to inspect and, subject to the requirements of Section
7655 10A-2A-16.02(c), to copy a list of stockholders, during
7656 regular business hours and at the stockholder's expense,
7657 during the period it is available for inspection. A
7658 corporation may satisfy the stockholder's right to copy a list
7659 of stockholders by furnishing a copy in the manner described
7660 in Section 10A-2A-16.03(b). A stockholder and the
7661 stockholder's agent or attorney who inspects or is furnished a
7662 copy of a list of stockholders under this subsection (b) ~~or~~
7663 ~~under subsection (c)~~ or who copies the list under this
7664 subsection (b) may use the information on that list only for
7665 purposes related to the meeting and its subject matter and
7666 must keep the information on that list confidential.

7667 ~~(c) If the meeting is to be held at a place, the~~
7668 ~~corporation shall make the list of stockholders entitled to~~
7669 ~~vote available at the meeting and any adjournment, and any~~
7670 ~~stockholder, or the stockholder's agent or attorney, is~~
7671 ~~entitled to inspect the list at any time during the meeting~~
7672 ~~and any adjournment. If the meeting is to be held solely by~~
7673 ~~means of remote communication, then such list shall also be~~

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7674 ~~available for such inspection during the meeting and any~~
7675 ~~adjournment on a reasonably accessible electronic network, and~~
7676 ~~the information required to access such list shall be provided~~
7677 ~~with the notice of the meeting. The corporation may satisfy~~
7678 ~~its obligation to make such list available for inspection~~
7679 ~~during a meeting by furnishing a copy of the list in the~~
7680 ~~manner described in Section 10A-2A-16.03(b) to the~~
7681 ~~stockholders prior to the meeting.~~

7682 ~~(d)~~ (c) If the corporation refuses to allow a
7683 stockholder, or the stockholder's agent or attorney, to
7684 inspect a list of stockholders before ~~or at~~ the meeting or any
7685 adjournment (or copy a list as permitted by subsection (b)),
7686 the designated court, and if none, the circuit court for the
7687 county in which the corporation's principal office is located
7688 in this state, and if none in this state, the circuit court
7689 for the county in which the corporation's most recent
7690 registered office is located, on application of the
7691 stockholder, may summarily order the inspection or copying at
7692 the corporation's expense and may postpone the meeting for
7693 which the list was prepared until the inspection or copying is
7694 complete.

7695 ~~(e)~~ (d) Refusal or failure to prepare or make available
7696 a list of stockholders does not affect the validity of action
7697 taken at the meeting.

7698 ~~(f)~~ (e) The stock transfer records of the corporation
7699 shall be prima facie evidence as to who are the stockholders
7700 entitled to examine the stockholders' list or transfer records
7701 or to vote at any meeting of stockholders."



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7702 "§10A-2A-7.32

7703 (a) An agreement among the stockholders of a
7704 corporation that complies with this section is effective among
7705 the stockholders and the corporation even though it is
7706 inconsistent with one or more other provisions of this chapter
7707 in that it:

7708 (1) eliminates the board of directors or restricts the
7709 discretion or powers of the board of directors;

7710 (2) governs the authorization or making of
7711 distributions, regardless of whether they are in proportion to
7712 ownership of stock, subject to the limitations in Section
7713 10A-2A-6.40;

7714 (3) establishes who shall be directors or officers of
7715 the corporation, or their terms of office or manner of
7716 selection or removal;

7717 (4) governs, in general or in regard to specific
7718 matters, the exercise or division of voting power by or
7719 between the stockholders and directors or by or among any of
7720 them, including use of weighted voting rights ~~or director~~
7721 ~~proxies~~;

7722 (5) establishes the terms and conditions of any
7723 agreement for the transfer or use of property or the provision
7724 of services between the corporation and any stockholder,
7725 director, officer, or employee of the corporation or among any
7726 of them;

7727 (6) transfers to one or more stockholders or other
7728 persons all or part of the authority to exercise the corporate
7729 powers or to manage the business and affairs of the



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7730 corporation, including the resolution of any issue about which
7731 there exists a deadlock among directors or stockholders;

7732 (7) requires dissolution of the corporation at the
7733 request of one or more of the stockholders or upon the
7734 occurrence of a specified event or contingency; or

7735 (8) otherwise governs the exercise of the corporate
7736 powers or the management of the business and affairs of the
7737 corporation or the relationship among the stockholders, the
7738 directors and the corporation, or among any of them, and is
7739 not contrary to public policy.

7740 (b) An agreement authorized by this section shall be:

7741 (1) as set forth (i) in the certificate of
7742 incorporation or bylaws and approved by all persons who are
7743 stockholders at the time of the agreement, or (ii) in a
7744 written agreement that is signed by all persons who are
7745 stockholders at the time of the agreement and is made known to
7746 the corporation; and

7747 (2) subject to amendment only by all persons who are
7748 stockholders at the time of the amendment, unless the
7749 agreement provides otherwise.

7750 (c) The existence of an agreement authorized by this
7751 section shall be noted conspicuously on the front or back of
7752 each certificate for outstanding stock or in the information
7753 required by Section 10A-1-3.45. If at the time of the
7754 agreement the corporation has stock outstanding represented by
7755 certificates, the corporation shall recall the outstanding
7756 certificates and issue substitute certificates that comply
7757 with this subsection. The failure to note the existence of the



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7758 agreement as required by this subsection shall not affect the
7759 validity of the agreement or any action taken pursuant to it.
7760 Any purchaser of stock who, at the time of purchase, did not
7761 have knowledge of the existence of the agreement shall be
7762 entitled to rescission of the purchase. A purchaser shall be
7763 deemed to have knowledge of the existence of the agreement if
7764 its existence is noted on the certificate or if the stock is
7765 not represented by a certificate, the information required by
7766 Section 10A-1-3.45 is delivered to the purchaser at or before
7767 the time of purchase of the stock. An action to enforce the
7768 right of rescission authorized by this subsection shall be
7769 commenced within the earlier of 90 days after discovery of the
7770 existence of the agreement or two years after the time of
7771 purchase of the stock.

7772 (d) If the agreement ceases to be effective for any
7773 reason, the board of directors may, if the agreement is
7774 contained or referred to in the corporation's certificate of
7775 incorporation or bylaws, adopt an amendment to the certificate
7776 of incorporation or bylaws, without stockholder action, to
7777 delete the agreement and any references to it.

7778 (e) An agreement authorized by this section that limits
7779 the discretion or powers of the board of directors shall
7780 relieve the directors of, and impose upon the person or
7781 persons in whom the discretion or powers are vested, liability
7782 for acts or omissions imposed by law on directors to the
7783 extent that the discretion or powers of the directors are
7784 limited by the agreement. An agreement authorized by this
7785 section that eliminates the board of directors shall impose on



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7786 the person or persons in whom the discretion or powers of the
7787 directors are vested the liability for acts or omissions as
7788 are imposed by law on directors.

7789 (f) The existence or performance of an agreement
7790 authorized by this section shall not be a ground for imposing
7791 personal liability on any stockholder for the acts or debts of
7792 the corporation even if the agreement or its performance
7793 treats the corporation as if it were a partnership or results
7794 in failure to observe the corporate formalities otherwise
7795 applicable to the matters governed by the agreement.

7796 (g) Incorporators or subscribers for stock may act as
7797 stockholders with respect to an agreement authorized by this
7798 section if no stock has been issued when the agreement is
7799 made.

7800 (h) Limits, if any, on the duration of an agreement
7801 authorized by this section must be set forth in the
7802 agreement."

7803 "§10A-2A-8.10

7804 (a) ~~Unless the certificate of incorporation provides~~
7805 ~~otherwise~~ Except as otherwise provided in Section
7806 10A-2A-8.10(b) or the certificate of incorporation, if a
7807 vacancy occurs on ~~a~~ the board of directors, including a
7808 vacancy resulting from an increase in the number of directors:
7809 (1) the stockholders may fill the vacancy;
7810 (2) the board of directors may fill the vacancy; or
7811 (3) if the directors remaining in office are less than
7812 a quorum, they may fill the vacancy by the affirmative vote of
7813 a majority of all the directors remaining in office.



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7814 (b) ~~If~~ Unless the certificate of incorporation provides
7815 otherwise, if the vacant office was held by a director elected
7816 by a voting group of stockholders, only the holders of stock
7817 of that voting group are entitled to vote to fill the vacancy
7818 if it is filled by the stockholders, and only the remaining
7819 directors elected by that voting group, even if less than a
7820 quorum, are entitled to fill the vacancy if it is filled by
7821 the directors.

7822 (c) A vacancy that will occur at a specific later date
7823 (by reason of a resignation effective at a later date under
7824 Section 10A-2A-8.07(b) or otherwise) may be filled before the
7825 vacancy occurs but the new director may not take office until
7826 the vacancy occurs."

7827 "§10A-2A-8.21

7828 (a) Except to the extent that the certificate of
7829 incorporation or bylaws require that action by the board of
7830 directors be taken at a meeting, action required or permitted
7831 by this chapter to be taken by the board of directors may be
7832 taken without a meeting if each director signs a consent
7833 describing the action to be taken and delivers it to the
7834 corporation.

7835 (b) Action taken under this section is the act of the
7836 board of directors when one or more consents signed by all the
7837 directors are delivered to the corporation. ~~The consent may~~
7838 ~~specify a later time as the time at which the action taken is~~
7839 ~~to be effective.~~ Any director executing a consent may provide,
7840 whether through instruction to an agent or otherwise, that
7841 such consent will be effective at a future time, including a

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7842 time determined upon the happening of an event, occurring not
7843 later than 60 days after such instruction is given or such
7844 provision is made, if evidence of the instruction or provision
7845 is provided to the corporation. A director's consent may be
7846 withdrawn by a revocation signed by the director and delivered
7847 to the corporation before delivery to the corporation of
7848 unrevoked written consents signed by all the directors.

7849 (c) A consent signed under this section has the effect
7850 of action taken at a meeting of the board of directors and may
7851 be described as such in any document."

7852 "§10A-2A-8.22

7853 (a) Unless the certificate of incorporation or bylaws
7854 provide otherwise, regular meetings of the board of directors
7855 may be held without notice of the place, if any, date, time,
7856 ~~place,~~ or purpose of the meeting.

7857 (b) Unless the certificate of incorporation or bylaws
7858 provide for a longer or shorter period, special meetings of
7859 the board of directors shall be preceded by at least two days'
7860 notice of the place, if any, date, and time, ~~and place~~ of the
7861 meeting. The notice need not describe the purpose of the
7862 special meeting unless required by the certificate of
7863 incorporation or bylaws."

7864 "§10A-2A-8.24

7865 (a) Unless the certificate of incorporation or bylaws
7866 provide for a greater or lesser number or unless otherwise
7867 expressly provided in this chapter, a quorum of a board of
7868 directors consists of a majority of the number of directors
7869 specified in or fixed in accordance with the certificate of



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7870 incorporation or bylaws.

7871 (b) The quorum of the board of directors specified in
7872 or fixed in accordance with the certificate of incorporation
7873 or bylaws may not consist of less than one-third of the
7874 specified or fixed number of directors.

7875 (c) If a quorum is present when a vote is taken, the
7876 affirmative vote of a majority of directors present is the act
7877 of the board of directors unless the certificate of
7878 incorporation or bylaws require the vote of a greater number
7879 of directors or unless otherwise expressly provided in this
7880 chapter.

7881 (d) A director who is present at a meeting of the board
7882 of directors or a committee when corporate action is taken is
7883 deemed to have assented to the action taken unless: (i) the
7884 director objects at the beginning of the meeting (or promptly
7885 upon arrival) to holding it or transacting business at the
7886 meeting; (ii) the dissent or abstention from the action taken
7887 is entered in the minutes of the meeting; or (iii) the
7888 director delivers written notice of the director's dissent or
7889 abstention to the presiding officer of the meeting before its
7890 adjournment or to the corporation immediately after
7891 adjournment of the meeting. The right of dissent or abstention
7892 is not available to a director who votes in favor of the
7893 action taken."

7894 ~~(e) A director, in that person's capacity as a~~
7895 ~~director, may not appoint an agent or proxy to vote, consent,~~
7896 ~~approve, attend, act, or otherwise carry out the duties of~~
7897 ~~that director for any purpose."~~



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7898 "§10A-2A-8.59

7899 ~~Division A of Article 6 of Chapter 1 shall not apply to~~
7900 ~~this chapter. Instead, a A corporation may provide~~
7901 indemnification or advance expenses to a director or an
7902 officer only as permitted by this Division E of this Article
7903 8."

7904 "§10A-2A-10.06

7905 ~~Division B of Article 3 of Chapter 1 shall not apply to~~
7906 ~~this chapter. Instead:~~

7907 (a) After an amendment to the certificate of
7908 incorporation has been adopted and approved in the manner
7909 required by this chapter and by the certificate of
7910 incorporation, the corporation shall deliver to the Secretary
7911 of State for filing a certificate of amendment, which must set
7912 forth:

7913 (1) the name of the corporation;

7914 (2) the text of each amendment adopted, or the
7915 information required by Section 10A-2A-1.20(c) (5);

7916 (3) if an amendment provides for an exchange,
7917 reclassification, or cancellation of issued stock, provisions
7918 for implementing the amendment if not contained in the
7919 amendment itself, (which may be made dependent upon facts
7920 objectively ascertainable outside the certificate of amendment
7921 in accordance with Section 10A-2A-1.20(c) (5));

7922 (4) the date of each amendment's adoption;

7923 (5) if an amendment:

7924 (i) was adopted by the incorporators or board of
7925 directors without stockholder approval, a statement that the



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7926 amendment was duly adopted by the incorporators or by the
7927 board of directors, as the case may be, and that stockholder
7928 approval was not required;

7929 (ii) required approval by the stockholders, a statement
7930 that the amendment was duly approved by the stockholders in
7931 the manner required by this chapter and by the certificate of
7932 incorporation; or

7933 (iii) is being filed pursuant to Section
7934 10A-2A-1.20(c)(5), a statement to that effect; and

7935 (6) the unique identifying number or other designation
7936 as assigned by the Secretary of State.

7937 (b) A certificate of amendment shall take effect at the
7938 effective date determined in accordance with Article 4 of
7939 Chapter 1."

7940 "§10A-2A-10.07

7941 ~~Division B of Article 3 of Chapter 1 shall not apply to~~
7942 ~~this chapter. Instead:~~

7943 (a) A corporation's board of directors may restate its
7944 certificate of incorporation at any time, without stockholder
7945 approval, to consolidate all amendments into a single
7946 document.

7947 (b) If the restated certificate of incorporation
7948 includes one or more new amendments that require stockholder
7949 approval, the amendments shall be adopted and approved as
7950 provided in Section 10A-2A-10.03.

7951 (c) A corporation that restates its certificate of
7952 incorporation shall deliver to the Secretary of State for
7953 filing a certificate of restatement setting forth:



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7954 (1) the name of the corporation;

7955 (2) the text of the restated certificate of
7956 incorporation;

7957 (3) a statement that the restated certificate of
7958 incorporation consolidates all amendments into a single
7959 document;

7960 (4) if a new amendment is included in the restated
7961 certificate of incorporation, the statements required under
7962 Section 10A-2A-10.06 with respect to the new amendment; and

7963 (5) the unique identifying number or other designation
7964 as assigned by the Secretary of State.

7965 (d) The duly adopted restated certificate of
7966 incorporation supersedes the original certificate of
7967 incorporation and all amendments to the certificate of
7968 incorporation.

7969 ~~(e) The Secretary of State may certify the restated~~
7970 ~~certificate of incorporation as the certificate of~~
7971 ~~incorporation currently in effect, without including the~~
7972 ~~statements required by subsection (c) (4)."~~

7973 "§10A-2A-10.08

7974 ~~Division B of Article 3 of Chapter 1 shall not apply to~~
7975 ~~this chapter. Instead:~~

7976 (a) A corporation's certificate of incorporation may be
7977 amended without action by the board of directors or
7978 stockholders to carry out a plan of reorganization ordered or
7979 decreed by a court of competent jurisdiction under the
7980 authority of a law of the United States if the certificate of
7981 incorporation after the amendment only contains provisions



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7982 required or permitted by Section 10A-2A-2.02.

7983 (b) The individual or individuals designated by the
7984 court shall deliver to the Secretary of State for filing a
7985 certificate of amendment setting forth:

7986 (1) the name of the corporation;

7987 (2) the text of each amendment approved by the court;

7988 (3) the date of the court's order or decree approving
7989 the certificate of amendment;

7990 (4) the title of the reorganization proceeding in which
7991 the order or decree was entered;

7992 (5) a statement that the court had jurisdiction of the
7993 proceeding under federal statute; and

7994 (6) the unique identifying number or other designation
7995 as assigned by the Secretary of State.

7996 (c) Stockholders of a corporation undergoing
7997 reorganization do not have dissenters' rights except as and to
7998 the extent provided in the reorganization plan.

7999 (d) This section does not apply after entry of a final
8000 decree in the reorganization proceeding even though the court
8001 retains jurisdiction of the proceeding for limited purposes
8002 unrelated to consummation of the reorganization plan."

8003 "§10A-2A-11.02

8004 (a) A corporation may merge with one or more other
8005 constituent organizations pursuant to this article, and a plan
8006 of merger, if:

8007 (1) the governing statute of each of the other
8008 organizations authorizes the merger;

8009 (2) the merger is not prohibited by the law of a



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8010 jurisdiction that enacted any of those governing statutes; and

8011 (3) each of the other organizations complies with its
8012 governing statute in effecting the merger.

8013 (b) A plan of merger must be in writing and must
8014 include:

8015 (1) the name, type of organization, and mailing address
8016 of the principal office of each constituent organization, the
8017 jurisdiction of the governing statute of each constituent
8018 organization, and the respective unique identifying number or
8019 other designation as assigned by the Secretary of State, if
8020 any, of each constituent organization;

8021 (2) the name, type of organization, and mailing address
8022 of the principal office of the surviving organization, the
8023 unique identifying number or other designation as assigned by
8024 the Secretary of State, if any, of the surviving organization,
8025 the jurisdiction of the governing statute of the surviving
8026 organization, and, if the surviving organization is created
8027 pursuant to the merger, a statement to that effect;

8028 (3) the terms and conditions of the merger, including
8029 the manner and basis for converting the stock or eligible
8030 interests in each constituent organization into any
8031 combination of money, stock, eligible interests in the
8032 surviving organization, and other consideration as allowed by
8033 subsection (c);

8034 (4) if the surviving organization is to be created
8035 pursuant to the merger, the surviving organization's
8036 organizational documents; and

8037 (5) if the surviving organization is not to be created



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8038 pursuant to the merger, any amendments to be made by the
8039 merger to the surviving organization's organizational
8040 documents.

8041 (c) In connection with a merger, rights, securities,
8042 stock, or eligible interests, if any, in a constituent
8043 organization may be exchanged for or converted into cash,
8044 property, rights, securities, stock, or eligible interests, if
8045 any, in the surviving organization, or, in addition to or in
8046 lieu thereof, may be exchanged for or converted into cash,
8047 property, rights, securities, stock, or eligible interests, if
8048 any, in another organization, or may be cancelled.

8049 (d) In addition to the requirements of subsection (b),
8050 a plan of merger may contain any other provision not
8051 prohibited by law.

8052 (e) Terms of a plan of merger may be made dependent on
8053 facts objectively ascertainable outside the plan in accordance
8054 with Section 10A-2A-1.20(c).

8055 (f) A plan of merger may be amended only with the
8056 consent of each constituent organization, except as provided
8057 in the plan. A domestic constituent organization may approve
8058 an amendment to a plan:

8059 (1) in the same manner as the plan was approved, if the
8060 plan does not provide for the manner in which it may be
8061 amended; or

8062 (2) in the manner provided in the plan, except that if
8063 the plan has been approved by the stockholders, members, or
8064 interest holders that were entitled to vote on, consent to, or
8065 approve of, the plan, then those stockholders, members, or



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8066 interest holders are entitled to vote on, consent to, or
8067 approve of any amendment of the plan that will change:

8068 (i) the amount or kind of stock or other securities,
8069 eligible interests, obligations, rights to acquire stock,
8070 other securities or eligible interests, cash, or other
8071 property to be received under the plan by the stockholders,
8072 members, or interest holders of a constituent organization;

8073 (ii) the certificate of incorporation of any
8074 corporation, foreign corporation, nonprofit corporation,
8075 foreign nonprofit corporation or the organizational documents
8076 of any unincorporated entity or foreign unincorporated entity,
8077 that will be the surviving organization, except for changes
8078 permitted by Section 10A-2A-10.05 or by comparable provisions
8079 of the governing statute of the foreign corporation, nonprofit
8080 corporation, foreign nonprofit corporation, unincorporated
8081 entity, or foreign unincorporated entity; or

8082 (iii) any of the other terms or conditions of the plan
8083 if the change would adversely affect the stockholders,
8084 members, or interest holders in any material respect."

8085 "§10A-2A-11.06

8086 (a) After a plan of merger has been adopted and
8087 approved as required by this article, then a statement of
8088 merger shall be signed by each party to the merger except as
8089 provided in Section 10A-2A-11.05(a). The statement of merger
8090 must set forth:

8091 (1) the name, type of organization, and mailing address
8092 of the principal office of each constituent organization, the
8093 jurisdiction of the governing statute of each constituent



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8094 organization, and the respective unique identifying number or
8095 other designation as assigned by the Secretary of State, if
8096 any, of each constituent organization;

8097 (2) the name, type of organization, and mailing address
8098 of the principal office of the surviving organization, the
8099 unique identifying number or other designation as assigned by
8100 the Secretary of State, if any, of the surviving organization,
8101 the jurisdiction of the governing statute of the surviving
8102 organization, and, if the surviving organization is created
8103 pursuant to the merger, a statement to that effect;

8104 ~~(3) the date of the filing of the certificate of~~
8105 ~~formation, if any, and all prior amendments and the filing~~
8106 ~~office or offices, if any, and where the certificate of~~
8107 ~~formation is filed of each constituent organization which was~~
8108 ~~formed under the laws of this state;~~

8109 ~~(4)~~ (3) the date the merger is effective under the
8110 governing statute of the surviving organization;

8111 ~~(5)~~ (4) if the surviving organization is to be created
8112 pursuant to the merger:

8113 (A) if it will be a corporation, the corporation's
8114 certificate of incorporation; or

8115 (B) if it will be an organization other than a
8116 corporation, any organizational document that creates the
8117 organization that is required to be in a public writing or in
8118 the case of a limited liability partnership, its statement of
8119 limited liability partnership;

8120 ~~(6)~~ (5) if the surviving organization exists before the
8121 merger, any amendments provided for in the plan of merger for



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8122 the organizational document that created the organization that
8123 are in a public writing;

8124 ~~(7)~~ (6) a statement as to each constituent organization
8125 that the merger was approved as required by the organization's
8126 governing statute;

8127 ~~(8)~~ (7) if the surviving organization is a foreign
8128 organization not authorized to conduct activities and affairs
8129 in this state, the street and mailing address of an office for
8130 the purposes of Section 10A-2A-11.07(c);

8131 ~~(9)~~ (8) any additional information required by the
8132 governing statute of any constituent organization;

8133 ~~(10)~~ (9) if the plan of merger required approval by the
8134 stockholders of a corporation that is a constituent
8135 organization, a statement that the plan was duly approved by
8136 the stockholders and, if voting by any separate voting group
8137 was required, by each separate voting group, in the manner
8138 required by this chapter and the certificate of incorporation;

8139 ~~(11)~~ (10) if the plan of merger did not require approval
8140 by the stockholders of a corporation that is a constituent
8141 organization, a statement to that effect; and

8142 ~~(12)~~ (11) a statement that the plan of merger will be
8143 furnished by the surviving organization, on request and
8144 without cost, to any owner of any constituent organization
8145 which is a party to the merger.

8146 (b) After a plan of stock exchange in which the
8147 acquired entity is a corporation has been adopted and approved
8148 as required by this chapter, a statement of stock exchange
8149 shall be signed by the acquired entity and the acquiring



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8150 entity. The statement of stock exchange shall set forth:

8151 (1) the name and mailing address of the principal
8152 office of the acquired entity, and the jurisdiction of its
8153 governing statute, and its unique identifying number or other
8154 designation as assigned by the Secretary of State, if any;

8155 (2) the name, jurisdiction of formation, and type of
8156 entity of the corporation or foreign corporation that is the
8157 acquiring entity;

8158 (3) a statement that the plan of stock exchange was
8159 duly approved by the acquired entity by:

8160 (i) the required vote or consent of each class or
8161 series of stock included in the exchange; and

8162 (ii) the required vote or consent of each other class
8163 or series of stock entitled to vote on approval of the
8164 exchange by the certificate of incorporation of the acquired
8165 entity; and

8166 (4) if the stock exchange did not require the approval
8167 by the stockholders of a corporation that is a party to the
8168 stock exchange, a statement to that effect.

8169 (c) In addition to the requirements of subsection (a)
8170 or subsection (b), a statement of merger or stock exchange may
8171 contain any other provision not prohibited by law.

8172 (d) The statement of merger or stock exchange shall be
8173 delivered to the Secretary of State for filing and, subject to
8174 subsection (e), the merger or stock exchange shall take effect
8175 at the effective date determined in accordance with Article 4
8176 of Chapter 1.

8177 (e) With respect to a merger in which one or more



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8178 foreign organizations is a constituent organization or a
8179 foreign organization created by the merger is the surviving
8180 organization, the merger itself shall become effective at the
8181 later of:

8182 (1) when all documents required to be filed in foreign
8183 jurisdictions to effect the merger have become effective, or

8184 (2) when the statement of merger takes effect.

8185 (f) A statement of merger filed under this section may
8186 be combined with any filing required under the governing
8187 statute governing any domestic organization involved in the
8188 transaction if the combined filing satisfies the requirements
8189 of this section, the other governing statute, and Article 4 of
8190 Chapter 1.

8191 ~~(g) After a merger becomes effective, if the surviving~~
8192 ~~organization is a corporation, then, except for certified~~
8193 ~~copies of the statement of merger permitted to be delivered to~~
8194 ~~the judge of probate for filing pursuant to subsection (h),~~
8195 ~~all filing instruments required to be filed under this title~~
8196 ~~regarding that surviving organization shall be delivered for~~
8197 ~~filing to the Secretary of State.~~

8198 ~~(h)~~ (g) A certified copy of the statement of merger
8199 required to be filed under this section may be filed in the
8200 real estate records in the office of the judge of probate in
8201 any county in which any constituent organization owned real
8202 property, without payment and without collection by the judge
8203 of probate of any deed or other transfer tax or fee. The judge
8204 of probate, however, shall be entitled to collect the filing
8205 fee of five dollars (\$5). Any filing shall evidence chain of



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8206 title, but lack of filing shall not affect the surviving
8207 organization's title to real property."

8208 "§10A-2A-12.02

8209 (a) A sale, lease, exchange, or other disposition of
8210 assets, other than a disposition described in Section
8211 10A-2A-12.01, requires approval of the corporation's
8212 stockholders if the disposition would leave the corporation
8213 without a significant continuing business activity. A
8214 corporation will conclusively be deemed to have retained a
8215 significant continuing business activity if it retains a
8216 business activity that represented, for the corporation and
8217 its subsidiaries on a consolidated basis, at least (i) 25
8218 percent of total assets at the end of the most recently
8219 completed fiscal year, and (ii) either 25 percent of either
8220 income from continuing operations before taxes or 25 percent
8221 of revenues from continuing operations, in each case for the
8222 most recently completed fiscal year.

8223 (b) To obtain the approval of the stockholders under
8224 subsection (a) the board of directors shall first adopt a
8225 resolution authorizing the disposition. The disposition shall
8226 then be approved by the stockholders. In submitting the
8227 disposition to the stockholders for approval, the board of
8228 directors shall recommend that the stockholders approve the
8229 disposition, unless (i) the board of directors makes a
8230 determination that because of conflicts of interest or other
8231 special circumstances it should not make a recommendation, or
8232 (ii) Section 10A-2A-8.26 applies. If either (i) or (ii)
8233 applies, the board of directors shall inform the stockholders



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8234 of the basis for its so proceeding.

8235 (c) The board of directors may set conditions for the
8236 approval by the stockholders of a disposition or the
8237 effectiveness of the disposition.

8238 (d) If a disposition is required to be approved by the
8239 stockholders under subsection (a), and if the approval is to
8240 be given at a meeting, the corporation shall notify each
8241 stockholder, regardless of whether entitled to vote, of the
8242 meeting of stockholders at which the disposition is to be
8243 submitted for approval. The notice must state that the
8244 purpose, or one of the purposes, of the meeting is to consider
8245 the disposition and must contain a description of the
8246 disposition, including the terms and conditions of the
8247 disposition and the consideration to be received by the
8248 corporation.

8249 (e) Unless the certificate of incorporation or the
8250 board of directors acting pursuant to subsection (c) requires
8251 a greater vote or a greater quorum, the approval of a
8252 disposition by the stockholders shall require the approval of
8253 the stockholders at a meeting at which a quorum exists
8254 consisting of a majority of the votes entitled to be cast on
8255 the disposition.

8256 (f) After a disposition has been approved by the
8257 stockholders under this Article 12, and at any time before the
8258 disposition has been consummated, it may be abandoned by the
8259 corporation without action by the stockholders, subject to any
8260 contractual rights of other parties to the disposition.

8261 (g) A disposition of assets in the course of



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8262 dissolution under Article 14 is not governed by this section.

8263 (h) For purposes of this section only, the property and
8264 assets of the corporation include the property and assets of
8265 any subsidiary of the corporation. As used in this subsection,
8266 "subsidiary" means any entity wholly owned and controlled,
8267 directly or indirectly, by the corporation and includes,
8268 without limitation, corporations, partnerships, limited
8269 partnerships, limited liability partnerships, limited
8270 liability companies, and/or statutory trusts. ~~Notwithstanding~~
8271 ~~subsection (a) of this section, except to the extent the~~
8272 ~~certificate of incorporation otherwise provides, no vote by~~
8273 ~~stockholders shall be required for a sale, lease, or exchange~~
8274 ~~of property and assets of the corporation to a subsidiary."~~

8275 "§10A-2A-14.13

8276 (a) If after a hearing the court determines that one or
8277 more grounds for judicial dissolution described in Section
8278 10A-2A-14.10 exist, ~~it~~ the court may enter a decree dissolving
8279 the corporation and specifying the effective date of the
8280 dissolution, ~~and~~. If the court enters a decree dissolving the
8281 corporation, then the clerk of the court shall deliver a
8282 certified copy of the decree to the Secretary of State for
8283 filing.

8284 (b) After entering the decree of dissolution, the court
8285 shall direct the winding-up and liquidation of the
8286 corporation's business and affairs in accordance with Section
8287 10A-2A-14.05 and the notification of claimants in accordance
8288 with Sections 10A-2A-14.06 and 10A-2A-14.07."

8289 Section 4. Sections 10A-2A-10.00 and 10A-2A-10.10 are



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8290 added to the Code of Alabama 1975, to read as follows:

8291 §10A-2A-10.00. Applicability of Chapter 1.

8292 Division B of Article 3 of Chapter 1 shall not apply to
8293 this chapter.

8294 §10A-2A-10.10. Effect of filing of restated certificate
8295 of incorporation.

8296 (a) A restated certificate of incorporation takes
8297 effect when the filing of the restated certificate of
8298 incorporation takes effect as provided by Article 4 of Chapter
8299 1.

8300 (b) On the date and time the restated certificate of
8301 incorporation takes effect, the original certificate of
8302 incorporation and each prior amendment or restatement of the
8303 certificate of incorporation is superseded and the restated
8304 certificate of incorporation is the effective certificate of
8305 incorporation.

8306 (c) Section 10A-2A-10.09 applies to an amendment
8307 effected by a restated certificate of incorporation.

8308 Section 5. Sections 10A-5A-2.03 and 10A-5A-10.07 of the
8309 Code of Alabama 1975, are amended to read as follows:

8310 "§10A-5A-2.03

8311 ~~(a) The filing of a certificate of amendment to the~~
8312 ~~certificate of formation shall have the effect, and shall take~~
8313 ~~effect, as provided in Section 10A-1-3.14.~~

8314 ~~(b) The filing of a restated certificate of formation~~
8315 ~~shall have the effect, and shall take effect, as provided in~~
8316 ~~Section 10A-1-3.18.~~

8317 (a) (1) An amendment to a certificate of formation takes



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8318 effect when the filing of the certificate of amendment takes
8319 effect as provided by Article 4 of Chapter 1.

8320 (2) An amendment to a certificate of formation does not
8321 affect:

8322 (i) an existing cause of action in favor of or against
8323 the limited liability company for which the certificate of
8324 amendment is sought;

8325 (ii) a pending suit to which the limited liability
8326 company is a party; or

8327 (iii) an existing right of a person other than an
8328 existing member.

8329 (3) If the name of a limited liability company is
8330 changed by amendment, an action brought by or against the
8331 limited liability company in the former name of that limited
8332 liability company does not abate because of the name change.

8333 (b) (1) A restated certificate of formation takes effect
8334 when the filing of the restated certificate of formation takes
8335 effect as provided by Article 4 of Chapter 1.

8336 (2) On the date and time the restated certificate of
8337 formation takes effect, the original certificate of formation
8338 and each prior amendment or restatement of the certificate of
8339 formation is superseded and the restated certificate of
8340 formation is the effective certificate of formation.

8341 (3) Subsections (b) (1) and (2) apply to an amendment
8342 effected by a restated certificate of formation."

8343 "§10A-5A-10.07

8344 (a) After each constituent organization has approved
8345 the plan of merger, a statement of merger must be signed on



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8346 behalf of:

8347 (1) each constituent limited liability company, as
8348 provided in Section 10A-5A-2.04(a); and

8349 (2) each other constituent organization, as provided by
8350 its governing statute.

8351 (b) A statement of merger under this section must
8352 include:

8353 (1) the name, type of organization, and mailing address
8354 of the principal office of each constituent organization, the
8355 jurisdiction of the governing statute of each constituent
8356 organization, and the respective unique identifying number or
8357 other designation as assigned by the Secretary of State, if
8358 any, of each constituent organization;

8359 (2) the name, type of organization, and mailing address
8360 of the principal office of the surviving organization, the
8361 unique identifying number or other designation as assigned by
8362 the Secretary of State, if any, of the surviving organization,
8363 the jurisdiction of the governing statute of the surviving
8364 organization, and, if the surviving organization is created
8365 pursuant to the merger, a statement to that effect;

8366 ~~(3) the date of the filing of the certificate of~~
8367 ~~formation, if any, and all prior amendments and the filing~~
8368 ~~office or offices, if any, and where such is filed of each~~
8369 ~~constituent organization which was formed under the laws of~~
8370 ~~this state;~~

8371 ~~(4)~~ (3) the date the merger is effective under the
8372 governing statute of the surviving organization;

8373 ~~(5)~~ (4) if the surviving organization is to be created



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8374 pursuant to the merger:

8375 (A) if it will be a limited liability company, the
8376 limited liability company's certificate of formation; or

8377 (B) if it will be an organization other than a limited
8378 liability company, any organizational document that creates
8379 the organization that is required to be in a public writing;

8380 ~~(6)~~ (5) if the surviving organization exists before the
8381 merger, any amendments provided for in the plan of merger for
8382 the organizational document that created the organization that
8383 are required to be in a public writing;

8384 ~~(7)~~ (6) a statement as to each constituent organization
8385 that the merger was approved as required by the organization's
8386 governing statute;

8387 ~~(8)~~ (7) a statement that a copy of the plan of merger
8388 will be furnished by the surviving organization, on request
8389 and without cost, to any owner of any constituent organization
8390 which is a party to the merger;

8391 ~~(9)~~ (8) if the surviving organization is a foreign
8392 organization not authorized to conduct activities and affairs
8393 in this state, the street and mailing address of an office for
8394 the purposes of Section 10A-5A-10.08(b); and

8395 ~~(10)~~ (9) any additional information required by the
8396 governing statute of any constituent organization.

8397 (c) The statement of merger shall be delivered for
8398 filing to the Secretary of State.

8399 (d) A merger becomes effective under this article:

8400 (1) if the surviving organization is a limited
8401 liability company, upon the later of:



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8402 (A) the filing of the statement of merger with the
8403 Secretary of State; or

8404 (B) as specified in the statement of merger; or

8405 (2) if the surviving organization is not a limited
8406 liability company, as provided by the governing statute of the
8407 surviving organization.

8408 ~~(e) After a merger becomes effective, if the surviving~~
8409 ~~organization is a limited liability company, then, except for~~
8410 ~~certified copies of the statement of merger permitted to be~~
8411 ~~delivered to the judge of probate for filing pursuant to~~
8412 ~~subsection (f), all filing instruments required to be filed~~
8413 ~~under this title regarding that surviving organization shall~~
8414 ~~be delivered for filing to the Secretary of State.~~

8415 ~~(f)~~ (e) A certified copy of the statement of merger
8416 required to be filed under this section may be filed in the
8417 real estate records in the office of the judge of probate in
8418 any county in which any constituent organization owned real
8419 property, without payment and without collection by the judge
8420 of probate of any deed or other transfer tax or fee. The judge
8421 of probate, however, shall be entitled to collect the filing
8422 fee of five dollars (\$5). Any such filing shall evidence chain
8423 of title, but lack of filing shall not affect the surviving
8424 organization's title to such real property.

8425 ~~(g)~~ (f) A statement of merger is a filing instrument
8426 under Chapter 1.

8427 ~~(h)~~ (g) The filing fees for a statement of merger shall
8428 be as set forth in Chapter 1."

8429 Section 6. Section 10A-8A-9.08 of the Code of Alabama



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8430 1975, is amended to read as follows:

8431 "§10A-8A-9.08

8432 (a) After each constituent organization has approved
8433 the plan of merger, a statement of merger must be signed on
8434 behalf of:

8435 (1) each constituent partnership, as provided in
8436 Section 10A-8A-2.03(a); and

8437 (2) each other constituent organization, as provided by
8438 its governing statute.

8439 (b) A statement of merger under this section must
8440 include:

8441 (1) the name, type of organization, and mailing address
8442 of the principal office of each constituent organization, the
8443 jurisdiction of the governing statute of each constituent
8444 organization, and the respective unique identifying numbers or
8445 other designations as assigned by the Secretary of State, if
8446 any, of each constituent organization;

8447 (2) the name, type of organization, and mailing address
8448 of the principal office of the surviving organization, the
8449 unique identifying number or other designation as assigned by
8450 the Secretary of State, if any, of the surviving organization,
8451 the jurisdiction of the governing statute of the surviving
8452 organization, and, if the surviving organization is created
8453 pursuant to the merger, a statement to that effect;

8454 ~~(3) the date of the filing of the certificate of~~
8455 ~~formation, if any, and all prior amendments and the filing~~
8456 ~~office or offices, if any, and where such is filed of each~~
8457 ~~constituent organization which was formed under the laws of~~



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8458 ~~this state;~~

8459 ~~(4)~~ (3) the date of the filing of the statement of
8460 partnership, statement of not for profit partnership, or
8461 statement of limited liability partnership, if any, and all
8462 prior amendments and the filing office or offices, if any, and
8463 where such is filed of each constituent organization which is
8464 a partnership;

8465 ~~(5)~~ (4) the date the merger is effective under the
8466 governing statute of the surviving organization;

8467 ~~(6)~~ (5) if the surviving organization is to be created
8468 pursuant to the merger:

8469 (A) if it will be a partnership, the partnership's
8470 statement of partnership, statement of not for profit
8471 partnership, or statement of limited liability partnership; or

8472 (B) if it will be an organization other than a
8473 partnership, any organizational document that creates the
8474 organization that is required to be in a public writing;

8475 ~~(7)~~ (6) if the surviving organization exists before the
8476 merger, any amendments provided for in the plan of merger for
8477 the organizational document that are required to be in a
8478 public writing;

8479 ~~(8)~~ (7) a statement as to each constituent organization
8480 that the merger was approved as required by the organization's
8481 governing statute;

8482 ~~(9)~~ (8) a statement that a copy of the plan of merger
8483 will be furnished by the surviving organization, on request
8484 and without cost, to any owner of any constituent organization
8485 which is a party to the merger;



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8486 ~~(10)~~ (9) if the surviving organization is a foreign
8487 organization not authorized to conduct business or not for
8488 profit activity in this state, the street and mailing address
8489 of an office for the purposes of Section 10A-8A-9.09(b); and
8490 ~~(11)~~ (10) any additional information required by the
8491 governing statute of any constituent organization.

8492 (c) Prior to the statement of merger being delivered
8493 for filing to the Secretary of State in accordance with
8494 subsection (d), all constituent organizations that are
8495 partnerships, other than a partnership that is created
8496 pursuant to the merger, must have on file with the Secretary
8497 of State a statement of partnership, statement of not for
8498 profit partnership, or statement of limited liability
8499 partnership.

8500 (d) The statement of merger shall be delivered for
8501 filing to the Secretary of State.

8502 (e) A merger becomes effective under this article:

8503 (1) if the surviving organization is a partnership,
8504 upon the later of:

8505 (A) the filing of the statement of merger with the
8506 Secretary of State; or

8507 (B) as specified in the statement of merger; or

8508 (2) if the surviving organization is not a partnership,
8509 as provided by the governing statute of the surviving
8510 organization.

8511 ~~(f) After a merger becomes effective, if the surviving~~
8512 ~~organization is a partnership, then, except (1) the statement~~
8513 ~~of merger permitted to be delivered to the judge of probate~~



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8514 ~~for filing pursuant to subsection (g) and (II) certified~~
8515 ~~copies of statements of authority, denial, and cancellations~~
8516 ~~thereof permitted to be delivered to the judge of probate for~~
8517 ~~filing pursuant to Sections 10A-8A-3.03 and 10A-8A-3.04 for~~
8518 ~~certified copies of, all filing instruments required to be~~
8519 ~~filed under this title regarding that surviving organization~~
8520 ~~shall be delivered for filing to the Secretary of State.~~

8521 ~~(g)~~ (f) A certified copy of the statement of merger
8522 required to be filed under this section may be filed in the
8523 real estate records in the office of the judge of probate in
8524 any county in which any constituent organization owned real
8525 property, without payment and without collection by the judge
8526 of probate of any deed or other transfer tax or fee. The judge
8527 of probate, however, shall be entitled to collect the filing
8528 fee of five dollars (\$5). Any such filing shall evidence chain
8529 of title, but lack of filing shall not affect the surviving
8530 organization's title to such real property.

8531 ~~(h)~~ (g) A statement of merger is a filing instrument
8532 under Chapter 1.

8533 ~~(i)~~ (h) The filing fees for a statement of merger shall
8534 be as set forth in Chapter 1."

8535 Section 7. Sections 10A-9A-2.02 and 10A-9A-10.08 of the
8536 Code of Alabama 1975, are amended to read as follows:

8537 "§10A-9A-2.02

8538 Division B of Article 3 of Chapter 1 shall not apply to
8539 this chapter. Instead:

8540 (a) A certificate of formation may be amended at any
8541 time.



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8542 (b) A certificate of formation may be restated with or
8543 without amendment at any time.

8544 (c) To amend its certificate of formation, a limited
8545 partnership must deliver a certificate of amendment for filing
8546 to the Secretary of State which certificate of amendment shall
8547 state:

8548 (1) the name of the limited partnership;

8549 (2) the unique identifying number or other designation
8550 as assigned by the Secretary of State; and

8551 (3) the changes the amendment makes to the certificate
8552 of formation as most recently amended or restated.

8553 (d) Prior to a statement of dissolution being delivered
8554 to the Secretary of State for filing, a limited partnership
8555 shall promptly deliver a certificate of amendment for filing
8556 with the Secretary of State to reflect:

8557 (1) the admission of a new general partner; or

8558 (2) the dissociation of a person as a general partner.

8559 (e) Prior to a statement of dissolution being delivered
8560 to the Secretary of State for filing, if a general partner
8561 knows that any information in a filed certificate of formation
8562 was inaccurate when the certificate of formation was filed or
8563 has become inaccurate due to changed circumstances and if such
8564 information is required to be set forth in a newly filed
8565 certificate of formation under this chapter, the general
8566 partner shall promptly:

8567 (1) cause the certificate of formation to be amended;

8568 or

8569 (2) if appropriate, deliver for filing with the



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8570 Secretary of State a certificate of correction in accordance
8571 with Chapter 1.

8572 (f) A certificate of formation may be amended at any
8573 time pursuant to this section for any other proper purpose as
8574 determined by the limited partnership. A certificate of
8575 formation may also be amended in a statement of merger
8576 pursuant to Article 8 of Chapter 1 or Article 10 of this
8577 chapter.

8578 (g) In order to restate its certificate of formation, a
8579 limited partnership must deliver a restated certificate of
8580 formation for filing with the Secretary of State. A restated
8581 certificate of formation must:

8582 (1) be designated as such in the heading;

8583 (2) state the name of the limited partnership;

8584 (3) state the unique identifying number or other
8585 designation as assigned by the Secretary of State;

8586 (4) set forth any amendment or change effected in
8587 connection with the restatement of the certificate of
8588 formation. Any such restatement that effects an amendment
8589 shall be subject to any other provision of this chapter not
8590 inconsistent with this section, which would apply if a
8591 separate certificate of amendment were filed to effect the
8592 amendment or change;

8593 (5) set forth the text of the restated certificate of
8594 formation; and

8595 (6) state that the restated certificate of formation
8596 consolidates all amendments into a single document.

8597 (h) The original certificate of formation, as



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8598 theretofore amended, shall be superseded by the restated
8599 certificate of formation and thenceforth, the restated
8600 certificate of formation, including any further amendment or
8601 changes made thereby, shall be the certificate of formation of
8602 the limited partnership, but the original effective date of
8603 formation shall remain unchanged.

8604 (i) An amended or restated certificate of formation may
8605 contain only the provisions that would be permitted at the
8606 time of the amendment if the amended or restated certificate
8607 of formation were a newly filed original certificate of
8608 formation.

8609 ~~(j) The filing of a certificate of amendment to the~~
8610 ~~certificate of formation shall have the effect, and shall take~~
8611 ~~effect, as provided in Section 10A-1-3.14.~~

8612 ~~(k) The filing of a restated certificate of formation~~
8613 ~~shall have the effect, and shall take effect, as provided in~~
8614 ~~Section 10A-1-3.18.~~

8615 (j) (1) An amendment to a certificate of formation takes
8616 effect when the filing of the certificate of amendment takes
8617 effect as provided by Article 4 of Chapter 1.

8618 (2) An amendment to a certificate of formation does not
8619 affect:

8620 (i) an existing cause of action in favor of or against
8621 the limited partnership for which the certificate of amendment
8622 is sought;

8623 (ii) a pending suit to which the limited partnership is
8624 a party; or

8625 (iii) an existing right of a person other than an



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8626 existing partner.

8627 (3) If the name of a limited partnership is changed by
8628 amendment, an action brought by or against the limited
8629 partnership in the former name of that limited partnership
8630 does not abate because of the name change.

8631 (k) (1) A restated certificate of formation takes effect
8632 when the filing of the restated certificate of formation takes
8633 effect as provided by Article 4 of Chapter 1.

8634 (2) On the date and time the restated certificate of
8635 formation takes effect, the original certificate of formation
8636 and each prior amendment or restatement of the certificate of
8637 formation is superseded and the restated certificate of
8638 formation is the effective certificate of formation.

8639 (3) Subsections (j) (2) and (3) apply to an amendment
8640 effected by a restated certificate of formation."

8641 "§10A-9A-10.08

8642 (a) After each constituent organization has approved
8643 the plan of merger, a statement of merger must be signed on
8644 behalf of:

8645 (1) each constituent limited partnership, as provided
8646 in Section 10A-9A-2.03(a); and

8647 (2) each other constituent organization, as provided by
8648 its governing statute.

8649 (b) A statement of merger under this section must
8650 include:

8651 (1) the name, type of organization, and mailing address
8652 of the principal office of each constituent organization, the
8653 jurisdiction of the governing statute of each constituent



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8654 organization, and the respective unique identifying numbers or
8655 other designations as assigned by the Secretary of State, if
8656 any, of each constituent organization;

8657 (2) the name, type of organization, and mailing address
8658 of the principal office of the surviving organization, the
8659 unique identifying number or other designation as assigned by
8660 the Secretary of State, if any, of the surviving organization,
8661 the jurisdiction of the governing statute of the surviving
8662 organization, and, if the surviving organization is created
8663 pursuant to the merger, a statement to that effect;

8664 ~~(3) the date of the filing of the certificate of~~
8665 ~~formation, if any, and all prior amendments and the filing~~
8666 ~~office or offices, if any, and where such is filed of each~~
8667 ~~constituent organization which was formed under the laws of~~
8668 ~~this state;~~

8669 ~~(4)~~ (3) the date the merger is effective under the
8670 governing statute of the surviving organization;

8671 ~~(5)~~ (4) if the surviving organization is to be created
8672 pursuant to the merger:

8673 (A) if it will be a limited partnership, the limited
8674 partnership's certificate of formation; or

8675 (B) if it will be an organization other than a limited
8676 partnership, any organizational document that creates the
8677 organization that is required to be in a public writing;

8678 ~~(6)~~ (5) if the surviving organization exists before the
8679 merger, any amendments provided for in the plan of merger for
8680 the organizational document that created the organization that
8681 are required to be in a public writing;



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8682 ~~(7)~~ (6) a statement as to each constituent organization
8683 that the merger was approved as required by the organization's
8684 governing statute;

8685 ~~(8)~~ (7) a statement that a copy of the plan of merger
8686 will be furnished by the surviving organization, on request
8687 and without cost, to any owner of any constituent organization
8688 which is a party to the merger;

8689 ~~(9)~~ (8) if the surviving organization is a foreign
8690 organization not authorized to conduct activities and affairs
8691 in this state, the street and mailing address of an office for
8692 the purposes of Section 10A-9A-10.09(b); and

8693 ~~(10)~~ (9) any additional information required by the
8694 governing statute of any constituent organization.

8695 (c) The statement of merger shall be delivered for
8696 filing to the Secretary of State.

8697 (d) A merger becomes effective under this article:

8698 (1) if the surviving organization is a limited
8699 partnership, upon the later of:

8700 (A) the filing of the statement of merger with the
8701 Secretary of State; or

8702 (B) as specified in the statement of merger; or

8703 (2) if the surviving organization is not a limited
8704 partnership, as provided by the governing statute of the
8705 surviving organization.

8706 ~~(e) After a merger becomes effective, if the surviving~~
8707 ~~organization is a limited partnership, then, except for~~
8708 ~~certified copies of the statement of merger permitted to be~~
8709 ~~delivered to the judge of probate for filing pursuant to~~



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8710 ~~subsection (f), all filing instruments required to be filed~~
8711 ~~under this title regarding that surviving organization shall~~
8712 ~~be delivered for filing to the Secretary of State.~~

8713 ~~(f)~~ (e) A certified copy of the statement of merger
8714 required to be filed under this section may be filed in the
8715 real estate records in the office of the judge of probate in
8716 any county in which any constituent organization owned real
8717 property, without payment and without collection by the judge
8718 of probate of any deed or other transfer tax or fee. The judge
8719 of probate, however, shall be entitled to collect the filing
8720 fee of five dollars (\$5). Any such filing shall evidence chain
8721 of title, but lack of filing shall not affect the surviving
8722 organization's title to such real property.

8723 ~~(g)~~ (f) A statement of merger is a filing instrument
8724 under Chapter 1.

8725 ~~(h)~~ (g) The filing fees for a statement of merger shall
8726 be as set forth in Chapter 1."

8727 Section 8. This act shall become effective January 1,
8728 2024, following its passage and approval by the Governor, or
8729 its otherwise becoming law.



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House of Representatives

8733 Read for the first time and referred06-Apr-23
8734 to the House of Representatives
8735 committee on Judiciary
8736
8737 Read for the second time and placed27-Apr-23
8738 on the calendar:
8739 1 amendment
8740
8741 Read for the third time and passed24-May-23
8742 as amended
8743 Yeas 99
8744 Nays 0
8745 Abstains 2
8746
8747
8748 John Treadwell
8749 Clerk
8750