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


BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

CHAPTER 3A. ALABAMA NONPROFIT CORPORATION LAW.

ARTICLE 1. GENERAL PROVISIONS.
DIVISION A. SHORT TITLE AND SAVINGS PROVISIONS.

§10A-3A-1.01. Short title and application of chapter.
(a) This chapter and the provisions of Chapter 1 to the extent applicable to nonprofit corporations may be cited as the Alabama Nonprofit Corporation Law.
(b) The provisions of this chapter relating to nonprofit corporations shall apply to:
(1) All nonprofit corporations organized hereunder; and
(2) All nonprofit corporations heretofore organized under any act hereby or heretofore repealed, for a purpose or purposes for which a nonprofit corporation might be organized under this chapter.
(c) The provisions of this chapter relating to foreign nonprofit corporations shall apply to all foreign nonprofit corporations conducting affairs in Alabama for a purpose or purposes for which a nonprofit corporation might be organized under this chapter.
(d) Beginning May 1, 2004, the Young Men's Christian Association (YMCA) of Mobile which was incorporated by Act 405 approved on February 18, 1895, shall be subject to this chapter. Prospectively from May 1, 2004, the YMCA of Mobile shall be entitled to all of the rights and privileges of a nonprofit corporation including, but not limited to, the right to amend its charter and bylaws as provided by this chapter.

§10A-3A-1.02. Chapter definitions.
As used in this chapter, unless otherwise specified or unless the context otherwise requires, the following terms have the following meanings:
(1) CERTIFICATE OF INCORPORATION means the certificate of incorporation described in Section 10A-3A-2.02, all amendments to the certificate of incorporation, and any other documents permitted or required to be delivered for filing by a nonprofit corporation with the Secretary of State under this chapter or Chapter 1 that modify, amend, supplement, restate, or replace the certificate of incorporation. After an amendment of the certificate of incorporation or any other document filed under this chapter or Chapter 1 that restates the certificate of incorporation in its entirety, the certificate of incorporation shall not include any prior documents. When used with respect to a nonprofit corporation incorporated and existing on December 31, 2023, under a predecessor law of this state, the term "certificate of incorporation" means articles of incorporation, charter, or similar incorporating document, and all amendments and restatements to the articles of incorporation, charter, or similar incorporating document. When used with respect to a foreign nonprofit corporation, a business corporation, or a foreign business corporation, the "certificate of incorporation" of that entity means the document of that entity that is equivalent to the certificate of incorporation of a corporation. The term "certificate of incorporation" as used in this chapter is synonymous to the term certificate of formation used in Chapter 1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(22) INTEREST means:

(a) a share;

(b) a membership or membership interests; or

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

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

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

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

(24) KNOWLEDGE is determined as follows:

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

(1) has actual knowledge of it; or

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

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

(1) knows of it;

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

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

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

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

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

(1) matters included in the certificate of incorporation upon filing;
(2) dissolution, 90 days after a certificate of dissolution under Section 10A-3A-11.05 becomes effective;

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

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

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

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

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

(25) MEANS denotes an exhaustive definition.

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

(27) MEMBERSHIP or MEMBERSHIP INTERESTS means the rights and any obligations of a member in a membership nonprofit corporation or a foreign membership nonprofit corporation.
corporation. (28) MEMBERSHIP NONPROFIT CORPORATION means, except as provided in Section 10A-3A-14.01(c)(1), a nonprofit corporation whose certificate of incorporation provides that it will have members.

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

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

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

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

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

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

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

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

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

(38) SHARES means the units into which the proprietary interests in a domestic or foreign business corporation are
(39) TYPE OF ENTITY means a generic form of entity: (i) recognized at common law; or (ii) formed under a governing statute, regardless of whether some entities formed under that law are subject to provisions of that law that create different categories of the form of entity.

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

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

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

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

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

§10A-3A-1.03. Notice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

or

(iii) the nonprofit corporation's principal office;

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

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

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

(ii) five days after it is deposited in the United States mail;
(4) if sent by a nationally recognized commercial carrier that issues a receipt or other confirmation of delivery, the earliest of when it is actually received or the date shown on the receipt or other confirmation of delivery issued by the commercial carrier;

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

(6) if oral, when communicated.

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

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

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

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

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

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

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

(n) Whenever a notice or communication is required to be given, under any provision of this chapter or of the certificate of incorporation or bylaws of any nonprofit
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corporation, to any person with whom notice to or
communication with is unlawful, the giving of the notice or
communication to that person shall not be required and there
shall be no duty to apply to any governmental authority or
agency for a license or permit to give the notice or
communication to that person. Any action or meeting which
shall be taken or held without notice or communication to the
person with whom notice to or communication with is unlawful
shall have the same force and effect as if the notice or
communication had been duly given. In the event that the
action taken by the nonprofit corporation requires the filing
of a certificate or other filing instrument under any of the
other sections of this chapter, the certificate or other
filing instrument shall state, if that is the fact and if
notice or communication is required, that notice or
communication was given to all persons entitled to receive
notice or communication except those persons with whom notice
to or communication with is unlawful.

§10A-3A-1.04. Requirements for filing instruments;
etrinsic facts.

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

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

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

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

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

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

(3) If the nonprofit corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.
(b) The person executing the filing instrument shall sign it and state beneath or opposite the person's signature the person's name and the capacity in which the filing instrument is signed. The filing instrument may, but need not, contain a corporate seal, attestation, acknowledgment, or verification.

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

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

(2) The facts may include:

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

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

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

(3) As used in this subsection (c), "plan" means a plan of conversion or merger.
(4) The following provisions of a plan or filing instrument may not be made dependent on facts outside the plan or filed document:

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

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

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

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

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

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

§10A-3A-1.05. Certificate of existence or registration.
(a) The Secretary of State, upon request and payment of
the requisite fee, shall furnish to any person a certificate
of existence for a nonprofit corporation if the writings filed
in the office of the Secretary of State show that the
nonprofit corporation has been incorporated under the laws of
this state. A certificate of existence shall reflect only the
information on file with the Secretary of State. A certificate
of existence must state:

(1) the nonprofit corporation's name;
(2) that the nonprofit corporation was incorporated
under the laws of this state, the date of incorporation, and
the filing office in which the certificate of incorporation
was filed;
(3) whether the nonprofit corporation has delivered to
the Secretary of State for filing a certificate of
dissolution;
(4) whether the nonprofit corporation has delivered to
the Secretary of State for filing a certificate of
reinstatement; and
(5) other facts of record in the office of the
Secretary of State that are specified by the person requesting
the certificate.

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

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

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

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

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

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

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

DIVISION B. RATIFICATION OF DEFECTIVE CORPORATE ACTIONS
§10A-3A-1.20. Division definitions.
In this Division:

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

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

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

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

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

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

(ii) membership interests of any class that is not then
authorized for issuance by the certificate of incorporation or
(6) "PUTATIVE MEMBERSHIP INTEREST" means a membership interest of any class (including a membership interest issued upon exercise of rights, options, warrants, or other securities convertible into a membership interest of the nonprofit corporation, or interests with respect to that membership interest) that was created or issued as a result of a defective corporate action, that (i) but for any failure of authorization would constitute a valid membership interest, or (ii) cannot be determined by the board of directors to be a valid membership interest.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) the date of the defective corporate action;

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

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

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

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

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

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

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

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

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


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

(b) If the ratification of the defective corporate action requires approval by the members under Section 10A-3A-1.22(c), and if the approval is to be given at a meeting, the membership nonprofit corporation shall notify each holder of valid and putative membership interests, regardless of whether entitled to vote, as of the record date for notice of the meeting and as of the date of the occurrence of defective corporate action, provided that notice shall not be required to be given to holders of valid or putative membership interests whose identities or addresses for notice cannot be determined from the records of the membership nonprofit corporation. The notice must state that the purpose, or one of the purposes, of the meeting, is to consider ratification of a defective corporate action and must be accompanied by (i) either a copy of the action taken by the board of directors in accordance with Section 10A-3A-1.22(a) or the information required by Section 10A-3A-1.22(a)(1) through (a)(4), and (ii) a statement that any claim that the ratification of the defective corporate action and any putative membership interest issued as a result of the defective corporate action should not be effective, or should be effective only on certain conditions, shall be brought within 120 days from the applicable validation effective time.

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

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

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

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

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


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

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

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

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

§10A-3A-1.25. Effect of ratification.

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

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

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

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


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

(b) The certificate of validation must set forth:

(1) the name of the nonprofit corporation;
(2) the unique identifying number or other designation as assigned by the Secretary of State;
(3) the defective corporate action that is the subject of the certificate of validation (including, in the case of
any defective corporate action involving the issuance of putative membership interests, the number and type of shares of putative membership interests issued and the date or dates upon which that putative membership interest was purported to have been issued);

(4) the date of the defective corporate action;

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

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

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

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

(1) if a filing was previously made in respect of the defective corporate action and no changes to that filing are required to give effect to the ratification of that defective corporate action in accordance with Section 10A-3A-1.22, the certificate of validation must set forth (i) the name, title, and filing date of the filing previously made and any certificate of correction to that filing, and (ii) a statement that a copy of the filing previously made, together with any certificate of correction to that filing, is attached as an
(2) if a filing was previously made in respect of the defective corporate action and that filing requires any change to give effect to the ratification of that defective corporate action in accordance with Section 10A-3A-1.22, the certificate of validation must set forth (i) the name, title, and filing date of the filing previously made and any certificate of correction to that filing, and (ii) a statement that a filing containing all of the information required to be included under the applicable section or sections of this chapter to give effect to that defective corporate action is attached as an exhibit to the certificate of validation, and (iii) the date and time that filing is deemed to have become effective; or

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

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

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

(1) determine the validity and effectiveness of any corporate action or defective corporate action;
(2) determine the validity and effectiveness of any ratification under Section 10A-3A-1.22;
(3) determine the validity of any putative membership interest; and
(4) modify or waive any of the procedures specified in Section 10A-3A-1.22 or Section 10A-3A-1.23 to ratify a defective corporate action.

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

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

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

DIVISION C. MISCELLANEOUS.

§10A-3A-1.60. Qualified director.

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

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

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

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

(b) For purposes of this section:

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

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

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

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

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

§10A-3A-1.61. Householding.

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

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

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

(3) each of those members consents to delivery of a single copy of the notice, report, or statement to the members' common address.
(b) A consent described in subsection (a)(2) or (a)(3) shall be revocable by any members who deliver written notice of revocation to the membership nonprofit corporation. If a written notice of revocation is delivered, the membership nonprofit corporation shall begin providing individual notices, reports, or other statements to the revoking member no later than 30 days after delivery of the written notice of revocation.

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


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

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

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

(3) the authority of the directors and officers of the foreign nonprofit corporation.
(b) A foreign nonprofit corporation is not precluded from registering to do business in this state because of any difference between the law of the foreign nonprofit corporation's jurisdiction of formation and the law of this state.

ARTICLE 2. INCORPORATION.

§10A-3A-2.01. Incorporators.

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


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

(a) The certificate of incorporation must set forth:

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

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

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

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

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

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

(b) The certificate of incorporation may set forth:

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

(2) provisions not inconsistent with law regarding:

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

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

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

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

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

(vi) the distribution of assets on dissolution;

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

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

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

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

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

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

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

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

(c) The certificate of incorporation need not set forth
any of the corporate powers enumerated in Sections 10A-1-2.11,

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

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

(i) the individual's spouse; (ii) a child, stepchild,
grandchild, parent, stepparent, grandparent, sibling,
stepsibling, half sibling, aunt, uncle, niece, or nephew (or
spouse of any such person) of the individual or of the
individual's spouse; (iii) a natural person living in the same
home as the individual; (iv) an entity (other than the
nonprofit corporation or an entity controlled by the nonprofit
corporation) controlled by the individual or any person
specified above in this definition; (v) a domestic or foreign
(A) business or nonprofit corporation (other than the
nonprofit corporation or an entity controlled by the nonprofit
corporation) of which the individual is a director, (B)
unincorporated entity of which the individual is a general
partner or a member of the governing authority, or (C)
individual, trust or estate for whom or of which the individual is a trustee, guardian, personal representative, or like fiduciary; or (vi) a person that is, or an entity that is, controlled by, an employer of the individual.

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

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

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

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


(a) After incorporation:

(1) if initial directors are named in the certificate of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the nonprofit corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting; or
(2) if initial directors are not named in the certificate of incorporation, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

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

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

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

§10A-3A-2.05. Bylaws.

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

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

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

§10A-3A-2.06. Emergency bylaws.

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

(1) procedures for calling a meeting of the board of directors;
(2) quorum requirements for the meeting; and
(3) designation of additional or substitute directors.

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

(c) Corporate action taken in good faith in accordance with the emergency bylaws:
(1) binds the nonprofit corporation; and
(2) may not be used to impose liability on a member, director, officer, employee, or agent of the nonprofit corporation.

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

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

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

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

(d) "Internal corporate claim" means, for the purposes of this section, (i) any claim that is based upon a violation of a duty under the laws of this state by a current or former director, officer, or member in their capacities as such, (ii) any action asserting a claim arising pursuant to any provision of this chapter or the certificate of incorporation or bylaws, or (iii) any action asserting a claim governed by the internal affairs doctrine that is not included in (i) through (ii) above.
ARTICLE 3. PURPOSES AND POWERS.

§10A-3A-3.01. Purposes.
(a) Every nonprofit corporation has the purpose of engaging in any lawful activity unless a more limited purpose is set forth in the certificate of incorporation.
(b) If a nonprofit corporation will engage in an activity that is subject to regulation under another statute of the state, the nonprofit corporation may incorporate under this chapter only if not prohibited by, and subject to all limitations of, the other statute.
(c) Labor unions, cooperative organizations, and organizations subject to any of the provisions of the insurance laws of Alabama may not be organized under this chapter.
(d) Whenever 10 or more retail merchants wish to form a nonprofit association, cooperative society, or corporation in the sense of paying interest or dividends on stock, but for mutual benefit through the application of cooperation or other economic principles, they may become a body corporate in the manner provided in this chapter.
(e) Whenever 10 or more wholesale merchants wish to form a nonprofit association, cooperative society, or corporation in the sense of paying interest or dividends on stock, but for mutual benefit through the application of cooperation or other economic principles, they may become a body corporate in the manner provided in this chapter.

§10A-3A-3.02. General powers.
Unless its certificate of incorporation provides
otherwise, every nonprofit corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its activities and affairs, including all entity powers provided in Section 10A-1-2.11, Section 10A-1-2.12, and Section 10A-1-2.13.

§10A-3A-3.03. Emergency powers.

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

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

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

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

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

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

(c) Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the nonprofit corporation:
(1) binds the nonprofit corporation; and
(2) may not be used to impose liability on a member, director, officer, employee, or agent.

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

§10A-3A-3.04. Lack of power.
(a) Except as provided in subsection (b), the validity of corporate action may not be challenged on the ground that the nonprofit corporation lacks or lacked power to act.
(b) The power of a nonprofit corporation to act may be challenged:
(1) in a proceeding by a member or director against the nonprofit corporation to enjoin the act;
(2) in a proceeding by the nonprofit corporation, directly, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the nonprofit corporation; or
(3) in a proceeding by the Attorney General.
(c) In a proceeding by a member or a director under subsection (b)(1) to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss (other than anticipated profits) suffered by the nonprofit corporation or another party because of enjoining the unauthorized corporate act.

ARTICLE 4. RECORDS AND REPORTS.
DIVISION A. RECORDS.
§10A-3A-4.01. Corporate records.

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

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

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

(3) its bylaws as currently in effect;

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

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

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

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

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

(d) A membership nonprofit corporation must maintain a
record of its current members in alphabetical order by class of membership showing the address for each member to which notices and other communications from the membership nonprofit corporation are to be sent. In addition if a member has provided an electronic mail address to the membership nonprofit corporation or has consented to receive notices or other communications by electronic mail or other electronic transmission, the record of members shall include the electronic mail or other electronic transmission address of the member if notices or other communications are being delivered by the membership nonprofit corporation to the member at that electronic mail or other electronic transmission address pursuant to Section 10A-3A-1.03(d). An electronic mail address of a member shall be deemed to be provided by a member if it is contained in a communication to the membership nonprofit corporation by or on behalf of the member, unless the communication expressly indicates that the electronic mail address may not be used to deliver notices or other communications.

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

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

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

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

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

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

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

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

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

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

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

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

(d) The membership nonprofit corporation may impose reasonable restrictions and conditions on access to and use of the records to be inspected and copied under subsections (a) and (b), including designating information confidential and imposing nondisclosure and safeguarding, and may further keep confidential from its members and other persons, for a period of time as the membership nonprofit corporation deems reasonable any information that the membership nonprofit corporation reasonably believes to be in the nature of a trade secret or other information the disclosure of which the membership nonprofit corporation in good faith believes is not in the best interest of the membership nonprofit corporation or could damage the membership nonprofit corporation or its activities or affairs, or that the membership nonprofit corporation is required by law or by agreement with a third party to keep confidential. In any dispute concerning the reasonableness of a restriction under this subsection, the membership nonprofit corporation has the burden of proving reasonableness.

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

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

(g) This section does not affect:

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

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

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

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

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

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

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


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

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

(c) If the court orders inspection and copying of the records demanded under Section 10A-3A-4.02(b), it may impose reasonable restrictions on their confidentiality, use or distribution by the demanding member and it shall also order the membership nonprofit corporation to pay the member's expenses incurred to obtain the order unless the membership nonprofit corporation establishes that it refused inspection in good faith because the membership nonprofit corporation had:
(1) a reasonable basis for doubt about the right of the
member to inspect the records demanded; or
(2) required reasonable restrictions on the
confidentiality, use, or distribution of the records demanded
to which the demanding member had been unwilling to agree.

§10A-3A-4.05. Inspection rights of directors.
(a) A director of a nonprofit corporation is entitled
to inspect and copy the books, records, and documents of the
nonprofit corporation at any reasonable time to the extent
reasonably related to the performance of the director's duties
as a director, including duties as a member of a board
committee, but not for any other purpose or in any manner that
would violate any duty to the nonprofit corporation.
(b) The designated court, and if none, the circuit
court for the county in which the nonprofit corporation's
principal office is located in this state, and if none in this
state, the circuit court for the county in which the nonprofit
corporation's most recent registered office is located may
order inspection and copying of the books, records, and
documents at the nonprofit corporation's expense, upon
application of a director who has been refused inspection
rights, unless the nonprofit corporation establishes that the
director is not entitled to inspection rights. The court shall
dispose of an application under this subsection on an
expedited basis.
(c) If an order is issued, the court may include
provisions protecting the nonprofit corporation from undue
burden or expense, and prohibiting the director from using
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information obtained upon exercise of the inspection rights in a manner that would violate a duty to the nonprofit corporation, and may also order the nonprofit corporation to reimburse the director for the director's expenses incurred in connection with the application.

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

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

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

(2) for any commercial purpose; or

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

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

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

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

DIVISION B. FINANCIAL STATEMENTS FOR MEMBERS.

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

(a) Upon the written request of a member, a membership nonprofit corporation shall deliver or make available to the requesting member by posting on its website or by other generally recognized means annual financial statements for the most recent fiscal year of the membership nonprofit corporation for which annual financial statements have been prepared for the membership nonprofit corporation. If financial statements have been prepared for the membership nonprofit corporation on the basis of generally accepted accounting principles for that specified period, the membership nonprofit corporation shall deliver or make available those financial statements to the requesting member. If the annual financial statements to be delivered or made available to the requesting member are audited or otherwise reported upon by a public accountant, the report shall also be delivered or made available to the requesting member.

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

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

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

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

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

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

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

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

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

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

ARTICLE 6. MEMBERSHIPS AND FINANCIAL PROVISIONS.
DIVISION A. ADMISSION OF MEMBERS.
§10A-3A-6.01. Members.

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

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

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

§10A-3A-6.02. Membership status.
(a) A person may not be admitted as a member of a
nonprofit corporation without that person's consent.
(b) If a membership nonprofit corporation provides
certificates of membership to the members, the certificates
shall not be registered or transferable except as provided in
the certificate of incorporation or bylaws. Each certificate
of membership shall comply with Sections 10A-1-3.42,
10A-1-3.43(b), and 10A-1-3.44. No membership certificate shall
be issued in bearer form.
(c) A person is not a member of a nonprofit corporation
unless (i) the nonprofit corporation is a membership nonprofit
corporation and (ii) the person meets the definition of a
"member" in Section 10A-3A-1.02, regardless of whether the
nonprofit corporation designates or refers to the person as a
member.
(d) A person is not a member of a nonmembership
nonprofit corporation, regardless of whether the nonmembership
nonprofit corporation designates or refers to the person as a
member.

§10A-3A-6.03. Admission of members.
Unless otherwise provided by law or in the certificate
of incorporation or bylaws of a membership nonprofit
corporation, the board of directors shall establish conditions
for admission of members (for such contribution, if any, as
the board of directors may determine), admit members, and
issue memberships.

DIVISION B. RIGHTS AND OBLIGATIONS OF MEMBERS.

§10A-3A-6.10. Differences in rights and obligations of
groups.

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

§10A-3A-6.11. Transfers.

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

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

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

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

§10A-3A-6.13. Member's liability for dues, assessments,
and fees.
(a) A membership nonprofit corporation may levy dues, assessments, fees, fines, late charges, interest, penalties, and other such sums on its members to the extent authorized in the certificate of incorporation or bylaws. Dues, assessments, fees, fines, late charges, interest, penalties, and other such sums may be imposed on members of the same class either alike or in different amounts or proportions, and may be imposed on a different basis on different classes of members. Members of a class may be made exempt from dues, assessments, fees, fines, late charges, interest, penalties, and other such sums to the extent provided in the certificate of incorporation or bylaws.

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

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

DIVISION C. RESIGNATION AND TERMINATION.


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

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


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

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

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

DIVISION D. FINANCIAL PROVISIONS.


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

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

(c) No distribution may be made if, after giving it
effect:
(1) the nonprofit corporation would not be able to pay its debts as they become due in the usual course of its activities and affairs; or

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

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

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

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

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


A nonprofit corporation may pay reasonable compensation, reasonable payments made in the ordinary course of the nonprofit corporation's activities and affairs, or
§10A-3A-6.42. Capital contributions of members.

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

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

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

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

ARTICLE 7. MEMBER MEETINGS.

DIVISION A. PROCEDURES.

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

(a) Unless otherwise provided in the certificate of incorporation, a membership nonprofit corporation shall hold a meeting of members annually at a time stated in or fixed in
(b) A membership nonprofit corporation may hold regular meetings of the members at times stated in or fixed in accordance with the certificate of incorporation or bylaws.

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

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

§10A-3A-7.02. Special meetings.

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

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

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

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

§10A-3A-7.03. Court-ordered meetings.

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

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

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

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

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

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

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

(b) If not otherwise fixed under Section 10A-3A-7.07 and if prior action by the board of directors is not required respecting the action to be taken without a meeting, the record date for determining the members entitled to take action without a meeting shall be the first date on which a signed written consent is delivered to the membership nonprofit corporation. If not otherwise fixed under Section 10A-3A-7.07 and if prior action by the board of directors is required respecting the action to be taken without a meeting, the record date shall be the close of business on the day the resolution of the board of directors taking the prior action is adopted. No written consent shall be effective to take the
corporate action referred to therein unless, within 60 days of the earliest date on which a consent is delivered to the membership nonprofit corporation as required by this section, written consents signed by sufficient members to take the action have been delivered to the membership nonprofit corporation. Any person executing a consent may provide, whether through instruction to an agent or otherwise, that the consent will be effective at a future time, including a time determined upon the happening of an event, occurring not later than 60 days after the instruction is given or the provision is made, if evidence of the instruction or provision is provided to the membership nonprofit corporation. A written consent may be revoked by a writing to that effect delivered to the membership nonprofit corporation before unrevoked written consents sufficient in number to take the corporate action have been delivered to the membership nonprofit corporation.

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

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

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

§10A-3A-7.05. Notice of meetings.

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

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

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

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

(e) Unless the certificate of incorporation or bylaws
require otherwise, if an annual, regular, or special meeting
of the members is adjourned to a different place, if any,
date, or time, notice need not be given of the new place, if
any, date, or time if the new place, if any, date, or time is
announced at the meeting before adjournment. If a new record
date for the adjourned meeting is or must be fixed under
Section 10A-3A-7.07, however, notice of the adjourned meeting
shall be given under this section to members entitled to vote
at the adjourned meeting as of the record date fixed for
§10A-3A-7.06. Waiver of notice.
(a) A member may waive any notice required by this chapter or the certificate of incorporation or bylaws, before or after the date and time stated in the notice. The waiver must be in writing, be signed by the member entitled to the notice, and be delivered to the membership nonprofit corporation for filing by the membership nonprofit corporation with the minutes or corporate records.

(b) A member's attendance at a meeting:
(1) waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

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

§10A-3A-7.07. Record date.
(a) The certificate of incorporation or bylaws may fix or provide the manner of fixing the record date or dates for one or more voting groups of members to determine the members entitled to notice of a members' meeting, to demand a special meeting, to vote, or to take any other action. If the certificate of incorporation or bylaws do not fix or provide for fixing a record date, the board of directors may fix the record date.

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

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

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

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

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

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

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

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

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

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

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

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

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

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


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

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

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

(1) to verify that each person participating remotely as a member is a member; and
(2) to provide the members participating remotely a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members, including an opportunity to communicate, and to read or hear the proceedings of the meeting, substantially concurrently with the proceedings.

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

§10A-3A-7.10. Action by ballot.

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

(b) A ballot must:

(1) be in writing;

(2) set forth each proposed action;

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

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

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

(d) All solicitations for votes by ballot must:

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

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

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

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

DIVISION B. VOTING.

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

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

(b) The list of members entitled to notice shall be
available for inspection by any member no later than the tenth
day before each meeting of members; provided, however, if the
record date for determining the members entitled to vote is
less than 10 days before the meeting date, the list shall
reflect the members entitled to vote as of the tenth day
before the meeting date. The list shall be available (i) at
the membership nonprofit corporation's principal office or at
a place identified in the meeting notice in the city where the
meeting will be held or (ii) on a reasonably accessible
electronic network, provided that the information required to
gain access to the list is provided with the notice of the
meeting. In the event that the membership nonprofit
corporation determines to make a list of members available on
an electronic network, the membership nonprofit corporation
may take reasonable steps to ensure that such information is
available only to members of the membership nonprofit
corporation. A member, or the member's agent or attorney, is
entitled on written demand to inspect and, subject to the
requirements of Section 10A-3A-4.02(c), to copy a list of
members, during regular business hours and at the member's
expense, during the period it is available for inspection. A
membership nonprofit corporation may satisfy the member's
right to copy a list of members by furnishing a copy in the
manner described in Section 10A-3A-4.03(b). A member and the
member's agent or attorney who inspects or is furnished a copy
of a list of members under this subsection (b) or who copies
the list under this subsection (b) may use the information on
that list only for purposes related to the meeting and its
subject matter and must keep the information on that list
confidential.

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

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

(e) Instead of making the list of members available as
provided in subsection (b), a membership nonprofit corporation
may state in a notice of meeting that the membership nonprofit
corporation has elected to proceed under this subsection (e).
If a membership nonprofit corporation has elected to proceed
under this subsection (e), a member of that membership
nonprofit corporation must state in that member's demand for inspection a proper purpose for which inspection is demanded. Within three business days after receiving a demand under this subsection (e), the membership nonprofit corporation must deliver to the member making the demand an offer of a reasonable alternative method of achieving the purpose identified in the demand without providing access to or a copy of the list of members. An alternative method that reasonably and in a timely manner accomplishes the proper purpose set forth in the demand relieves the membership nonprofit corporation from making the list of members available under subsection (b), unless within a reasonable time after acceptance of the offer the membership nonprofit corporation fails to do the things it offered to do. Any rejection of the membership nonprofit corporation's offer must be in writing and must indicate the reasons the alternative proposed by the membership nonprofit corporation does not meet the proper purpose of the demand.

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

The right of the members, or any class or classes of members, to vote may be limited, enlarged, or denied as provided in the membership nonprofit corporation's certificate of incorporation or bylaws. Unless so limited, enlarged, or denied, each member, regardless of class, shall be entitled to
(a) Except as otherwise provided in the certificate of incorporation or bylaws, a member may vote in person or by proxy.
(b) A member or the member's agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the member by signing an appointment form, or by an electronic transmission. An electronic transmission must contain or be accompanied by information from which the recipient can determine the date of the transmission and that the transmission was authorized by the sender or the sender's agent or attorney-in-fact.
(c) An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspector of election or the officer or agent of the membership nonprofit corporation authorized to count votes. An appointment is valid for the term provided in the appointment form, and, if no term is provided, is valid for 11 months unless the appointment is irrevocable under subsection (d).
(d) An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest.
(e) The death or incapacity of the member appointing a proxy does not affect the right of the membership nonprofit corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy
exercises authority under the appointment.

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

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

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

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

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

(b) If the name signed on a vote, ballot, consent, 
waiver, member demand, or proxy appointment does not 
correspond to the name of its member, the membership nonprofit 
corporation, if acting in good faith, is nevertheless entitled 
to accept the vote, ballot, consent, waiver, member demand, or 
proxy appointment and give it effect as the act of the member 
if:
(1) the member is an entity and the name signed
purports to be that of an officer or agent of the entity;

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

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

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

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

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

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

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

(f) If an inspector of election has been appointed under Section 10A-2A-7.28, the inspector of election also has the authority to request information and make determinations under subsections (a), (b), and (c). Unless otherwise provided in the certificate of incorporation or bylaws, any determination made by the inspector of election under those subsections is controlling.
§10A-3A-7.24. Quorum and voting requirements for voting groups.

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

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

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

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

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

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

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

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


(a) The certificate of incorporation or bylaws may provide for a higher or lower quorum or voting requirement for members (or voting groups of members) than is provided for by this chapter.
(b) An amendment to the certificate of incorporation or bylaws that adds, changes, or deletes a quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

§10A-3A-7.27. Voting for directors.

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

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


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

(b) The inspectors must:

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

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

(3) count all votes;

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

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

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

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

(1) the proxy appointment forms and any other
information provided in accordance with Section 10A-3A-7.22;
(2) any envelope or related writing submitted with
those appointment forms;
(3) any ballots;
(4) any evidence or other information specified in
Section 10A-3A-7.23; and
(5) the relevant books and records of the membership
nonprofit corporation relating to its members and their
entitlement to vote.
(e) The inspectors also may consider other information
that they believe is relevant and reliable for the purpose of
performing any of the duties assigned to them pursuant to
subsection (b).
(f) An inspector and any person appointed by an
inspector to assist with the inspector's duties may, but need
not, be a director, member, officer, or employee of the
membership nonprofit corporation. A person who is a candidate
for office to be filled at the meeting may not be an inspector
or a person so appointed.
DIVISION C. VOTING AGREEMENTS.
(a) Except as provided in the certificate of
incorporation or bylaws, two or more members may provide for
the manner in which they will vote by signing a written
agreement for that purpose. A voting agreement is valid for
the period provided in the agreement.
(b) A voting agreement created under this section is
specifically enforceable, except that a voting agreement is
not enforceable to the extent that enforcement of the agreement would violate the purposes of the membership nonprofit corporation.

ARTICLE 8. DIRECTORS AND OFFICERS.

DIVISION A. BOARD OF DIRECTORS.

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

All corporate powers shall be exercised by or under authority of, and the activities and affairs of a nonprofit corporation shall be managed by or under the direction and subject to the oversight of, the board of directors except as may be otherwise provided in this chapter or the certificate of incorporation. If the certificate of incorporation provides that some of the corporate powers are to be exercised by or under the authority of, or some of the activities and affairs of the nonprofit corporation are to be managed by or under the authority of, a person or group of persons other than the board of directors, then the powers and duties conferred or imposed upon the board of directors by this chapter with respect to those corporate powers, activities and affairs shall be exercised and performed by that person or group of persons as provided in the certificate of incorporation.


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

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

(c) A qualification for nomination, election, or
appointment for director prescribed before the earlier of a
person's nomination, election, or appointment shall apply to
that person at the time of the earlier of that person's
nomination, election, or appointment and shall apply to that
director during that director's term. A qualification for
nomination, election, or appointment for director prescribed
after the earlier of a person's nomination, election, or
appointment shall not apply to that person with respect to
that person's nomination, election, or appointment and shall
not apply to that director during that director's term.

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

§10A-3A-8.03. Number of directors.

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

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

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

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

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

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

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

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

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

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

§10A-3A-8.06. Staggered terms for directors.
The certificate of incorporation or bylaws may provide
for staggering the terms of directors by dividing the total
number of directors into groups of one or more directors. The
terms of office and number of directors in each group do not
need to be uniform.

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

(b) A resignation is effective as provided in Section
10A-3A-1.03(i) unless the resignation provides for a delayed
effectiveness, including effectiveness determined upon a
future event or events.
§10A-3A-8.08. Removal of directors by members or other persons.

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

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

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

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

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

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

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


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

§10A-3A-8.10. Vacancy on board.
(a) Except as otherwise provided in subsection (b), the certificate of incorporation, or the bylaws, if a vacancy occurs on the board of directors, including a vacancy resulting from an increase in the number of directors:

(1) the members may fill the vacancy;
(2) the board of directors may fill the vacancy; or
(3) if the directors remaining in office are less than a quorum, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

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

(1) elected by a voting group of members, only the members of that voting group are entitled to vote to fill the vacancy if it is filled by the members, and only the remaining directors elected by that voting group, even if less than a quorum, are entitled to fill the vacancy if it is filled by the directors;
(2) appointed by a person or group of persons specified in the certificate of incorporation, may be filled only by that person or that group of persons; or
(3) designated in the certificate of incorporation or bylaws, may only be filled as specified in the certificate of incorporation or bylaws.

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


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

DIVISION B. MEETINGS AND ACTIONS OF THE BOARD.


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

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


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

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

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

§10A-3A-8.22. Notice of meeting.
(a) Unless the certificate of incorporation or bylaws
provide otherwise, regular meetings of the board of directors
may be held without notice of the place, if any, date, time,
or purpose of the meeting.

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

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

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


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

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

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

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

§10A-3A-8.25. Board and advisory committees.
(a) A committee of the board of directors composed
exclusively of one or more directors may be established to
perform functions of the board:
   (1) by the certificate of incorporation or bylaws; or
   (2) except as restricted by the certificate of
   incorporation or bylaws, by the board of directors.
(b) Unless this chapter, the certificate of
incorporation, or the bylaws provide otherwise, the
establishment of a committee and appointment of directors to
it must be approved by the greater of:
   (1) a majority of all the directors in office when the
   action is taken; or
   (2) the number of directors required by the certificate
   of incorporation or bylaws to take action under Section
(c) Sections 10A-3A-8.20 through 10A-3A-8.24 apply to board committees and their members.

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

(1) in the case of a membership nonprofit corporation, approve or propose to members action that this chapter requires be approved by members;
(2) remove a director from office;
(3) fill a vacancy on the board of directors; or, subject to subsection (e), on any committee of the board; or
(4) adopt, amend, or repeal a provision of the certificate of incorporation or bylaws.

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

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

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

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

DIVISION C. DIRECTORS.


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

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

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

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

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

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

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

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

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

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

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


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

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

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

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

(i) action not in good faith; or

(ii) a decision:

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Nothing contained in this section shall:

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

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

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

(4) affect any rights to which the nonprofit
corporation or a member may be entitled under another statute
of this state or the United States.
§10A-3A-8.32. Directors' liability for unlawful distributions.

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

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

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

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

(c) A proceeding to enforce:

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

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

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

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

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

DIVISION D. OFFICERS.


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

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

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

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

§10A-3A-8.41. Functions of officers.

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

§10A-3A-8.42. Standards of conduct for officers.
Division C of Article 3 of Chapter 1 shall not apply to
this chapter. Instead:

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

(1) in good faith;

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

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

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

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

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

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

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

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

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

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

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

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

(b) An officer may be removed at any time with or
without cause by (i) the board of directors; (ii) the
appointing officer, unless the certificate of incorporation,
bylaws, or the board of directors provide otherwise; or (iii)
any other officer if authorized by the certificate of
incorporation, bylaws, or the board of directors.
In this section, "appointing officer" means the officer (including any successor to that officer) who appointed the officer resigning or being removed.

§10A-3A-8.44. Contract rights of officers.
(a) The election or appointment of an officer does not itself create contract rights.
(b) An officer's removal does not affect the officer's contract rights, if any, with the nonprofit corporation. An officer's resignation does not affect the nonprofit corporation's contract rights, if any, with the officer.

DIVISION E. INDEMNIFICATION AND ADVANCEMENT OF EXPENSES.

§10A-3A-8.50. Division definitions.
In this division:
(1) "DIRECTOR" or "OFFICER" means an individual who is or was a director or officer, respectively, of a nonprofit corporation or who, while a director or officer of the nonprofit corporation, is or was serving at the nonprofit corporation's request as a director, officer, manager, member, partner, trustee, employee, or agent of another entity or employee benefit plan. A director or officer is considered to be serving an employee benefit plan at the nonprofit corporation's request if the individual's duties to the nonprofit corporation also impose duties on, or otherwise involve services by, the individual to the plan or to participants in or beneficiaries of the plan. "Director" or "officer" includes, unless the context requires otherwise (i) the estate or personal representative of a director or officer
and (ii) with respect to a director, an individual designated, elected, or appointed by that or any other name or title.

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

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

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

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

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


(a) Except as otherwise provided in this section, a nonprofit corporation may indemnify an individual who is a party to a proceeding because the individual is a director against liability incurred in the proceeding if:
(1)(i) the director conducted himself or herself in good faith; and  

(ii) the director reasonably believed:  

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

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

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

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

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

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

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

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

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

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

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


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

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

(c) Authorizations under this section shall be made:

(1) by the board of directors:
   (i) if there are two or more qualified directors, by a majority vote of all the qualified directors (a majority of whom shall for that purpose constitute a quorum) or by a majority of the members of a committee consisting solely of two or more qualified directors appointed by a majority vote of qualified directors; or
   (ii) if there are fewer than two qualified directors, by the vote necessary for action by the board of directors in accordance with Section 10A-3A-8.24(c), in which authorization directors who are not qualified directors may participate; or

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

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

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

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

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

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

(b) If the court determines that the director is entitled to indemnification under subsection (a)(1) or to indemnification or advance for expenses under subsection (a)(2), it shall also order the nonprofit corporation to pay the director's expenses incurred in connection with obtaining court-ordered indemnification or advance for expenses. If the court determines that the director is entitled to
§10A-3A-8.55. Determination and authorization of indemnification.

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

(b) The determination shall be made:

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

(2) by special legal counsel:

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

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

(3) by the members, but membership interests owned by or voted under the control of a director who at the time is not a qualified director may not be voted on the
(c) Authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible except that if there are fewer than two qualified directors, or if the determination is made by special legal counsel, authorization of indemnification shall be made by those entitled to select special legal counsel under subsection (b)(2)(ii).

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

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

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

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

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

   (ii) liability arising out of conduct that constitutes

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

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

   (C) an intentional violation of criminal law.
(b) Subsection (a)(2) shall apply to an officer who is also a director if the person is made a party to the proceeding based on an act or omission solely as an officer.

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

§10A-3A-8.57. Insurance.

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

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

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

(b) A right of indemnification or to advances for expenses created by this Division E of this Article 8 or under subsection (a) and in effect at the time of an act or omission shall not be eliminated or impaired with respect to the act or omission by an amendment of the certificate of incorporation, bylaws, or a resolution of the board of directors or members, adopted after the occurrence of the act or omission, unless, in the case of a right created under subsection (a), the provision creating the right and in effect at the time of the act or omission explicitly authorizes elimination or impairment after the act or omission has occurred.
(c) Any provision pursuant to subsection (a) shall not obligate the nonprofit corporation to indemnify or advance expenses to a director of a predecessor of the nonprofit corporation, pertaining to conduct with respect to the predecessor, unless otherwise expressly provided. Any provision for indemnification or advance for expenses in the certificate of incorporation, bylaws, or a resolution of the board of directors or other similar governing authority of a predecessor of the nonprofit corporation in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, shall be governed by Section 10A-3A-12.06(a)(4).

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

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

(f) This Division E of this Article 8 does not limit a nonprofit corporation's power to indemnify, advance expenses to or provide or maintain insurance on behalf of an employee, agent, or volunteer.


A nonprofit corporation may provide indemnification or advance expenses to a director or an officer only as permitted
DIVISION F. CONFLICTING INTEREST TRANSACTIONS.

§10A-3A-8.60. Interested directors; quorum.

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

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

(2) The material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to (i) the members in a membership nonprofit corporation entitled to vote thereon or (ii) the qualified directors of the board of directors in a membership nonprofit corporation, and the contract or
transaction is specifically approved in good faith by vote of
the members in a membership nonprofit corporation or the
qualified directors of the board of directors in a membership
nonprofit corporation; or

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

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

ARTICLE 9. AMENDMENT OF CERTIFICATE OF INCORPORATION
AND BYLAWS.

DIVISION A. AMENDMENT OF CERTIFICATE OF INCORPORATION.
§10A-3A-9.00. Applicability of Division B of Article 3
of Chapter 1.
Division B of Article 3 of Chapter 1 shall not apply to
this chapter.

§10A-3A-9.01. Authority to amend.

(a) A nonprofit corporation may amend its certificate
of incorporation at any time to add or change a provision that
is required or permitted in the certificate of incorporation
as of the effective date of the amendment or to delete a
provision that is not required to be contained in the
certificate of incorporation. Whether a provision is required
or permitted in the certificate of incorporation is determined
as of the effective date of the amendment.
(b) Neither (i) a member of a membership nonprofit corporation nor (ii) a person having rights under the certificate of incorporation, has a vested property right resulting from any provision in the certificate of incorporation, including provisions relating to management, control, purpose, or duration of the nonprofit corporation.

§10A-3A-9.02. Amendment of certificate of incorporation of membership nonprofit corporation before admission of members.

Subject to Section 10A-3A-9.30, if a membership nonprofit corporation has not yet admitted any members, the board of directors, or its incorporators if it has no board of directors, may adopt one or more amendments to the membership nonprofit corporation's certificate of incorporation.

§10A-3A-9.03. Amendment of certificate of incorporation of membership nonprofit corporation after members have been admitted.

If a membership nonprofit corporation has admitted any members, an amendment to the certificate of incorporation shall be adopted in the following manner:

(a) The proposed amendment shall first be adopted by the board of directors.

(b) Except as provided in subsection (g) and Sections 10A-3A-9.07 and 10A-3A-9.08, the amendment shall then be approved by the members entitled to vote on the amendment. In submitting the proposed amendment to the members for approval, the board of directors shall recommend that the members approve the amendment, unless the board of directors makes a
determination that because of conflicts of interest or other
special circumstances it should not make such a
recommendation, in which case the board of directors must
inform the members of the basis for that determination.

(c) The board of directors may set conditions for the
approval of the amendment by the members or the effectiveness
of the amendment.

(d) If the amendment is required to be approved by the
members, and the approval is to be given at a meeting, the
membership nonprofit corporation shall notify each member
entitled to vote on the amendment of the meeting of members at
which the amendment is to be submitted for approval. The
notice must state that the purpose, or one of the purposes, of
the meeting is to consider the amendment. The notice must
contain or be accompanied by a copy of the amendment.

(e) Unless the certificate of incorporation, or the
board of directors acting pursuant to subsection (c), requires
a greater vote or a greater quorum, approval of the amendment
requires the approval of the members at a meeting at which a
quorum consisting of a majority of the votes entitled to be
cast on the amendment exists, and, if any class of members is
entitled to vote as a separate group on the amendment, except
as provided in Section 10A-3A-9.04(d), the approval of each
separate voting group at a meeting at which a quorum of the
voting group exists consisting of a majority of the votes
entitled to be cast on the amendment by that voting group.

(f) In addition to the adoption and approval of an
amendment by the board of directors and members as required by
this section, an amendment must also be approved by a person or group of persons, if any, whose approval is required by the certificate of incorporation in accordance with Section 10A-3A-9.30.

(g) Unless the certificate of incorporation provides otherwise, the board of directors of a membership nonprofit corporation may adopt amendments to the membership nonprofit corporation's certificate of incorporation without approval of the members to:

(1) extend the duration of the membership nonprofit corporation if it was incorporated at a time when limited duration was required by law;

(2) delete the names and addresses of the incorporators or initial directors;

(3) delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the Secretary of State;

(4) delete a class of members from the certificate of incorporation when there are no members in that class; or

(5) change the membership nonprofit corporation name, provided that the name complies with Article 5 of Chapter 1. §10A-3A-9.04. Voting on amendments by voting groups.

Exempt as provided in the certificate of incorporation or bylaws:

(a) If a membership nonprofit corporation has more than one class of members, the members of each class are entitled to vote as a separate voting group (if member voting is otherwise required by this chapter) on a proposed amendment to
the certificate of incorporation if the amendment would:

(1) effect an exchange or reclassification of all or part of the memberships of the class into memberships of another class;

(2) effect an exchange or reclassification, or create the right of exchange, of all or part of the memberships of another class into memberships of the class;

(3) change the rights, preferences, or limitations of all or part of the memberships of the class;

(4) change the rights, preferences, or limitations of all or part of the memberships of the class by changing the rights, preferences, or limitations of another class;

(5) create a new class of memberships having rights or preferences that are prior or superior to the other memberships;

(6) increase or decrease the number of memberships authorized for the class;

(7) increase or decrease the number of memberships authorized for another class; or

(8) authorize a new class of memberships.

(b) If a class of members will be divided into two or more classes by an amendment to the certificate of incorporation, the amendment must be approved by a majority of the members of each class that will be created.

(c) If a proposed amendment would affect less than all of the members of a class in one or more of the ways described in subsection (a), the members so affected are entitled to vote as a separate voting group on the proposed amendment.
(d) If a proposed amendment that entitles the holders of two or more classes of memberships to vote as separate voting groups under this section would affect those two or more classes in the same or a substantially similar way, the holders of the memberships of all the classes so affected shall vote together as a single voting group on the proposed amendment, unless added as a condition by the board of directors pursuant to Section 10A-3A-9.03(c).

§10A-3A-9.05. Amendment of certificate of incorporation of nonmembership nonprofit corporation.

Except as otherwise provided in the certificate of incorporation:

(1) the board of directors of a nonmembership nonprofit corporation may adopt amendments to the nonmembership nonprofit corporation's certificate of incorporation; and

(2) an amendment adopted by the board of directors under this section must also be approved by that person or group of persons, if any, whose approval is required by the certificate of incorporation in accordance with Section 10A-3A-9.30.


(a) After an amendment to the certificate of incorporation has been adopted and approved in the manner required by this chapter, the certificate of incorporation, and bylaws, the nonprofit corporation must deliver to the Secretary of State, for filing, a certificate of amendment, which must set forth:

(1) the name of the nonprofit corporation;
(2) the text of each amendment adopted or the
information required by Section 10A-3A-1.04(c)(5);

(3) if an amendment provides for an exchange,
reclassification, or cancellation of memberships, provisions
for implementing the amendment if not contained in the
amendment itself (which may be made dependent upon facts
objectively ascertainable outside the articles of amendment in
accordance with Section 10A-3A-1.04(c)(5));

(4) the date of each amendment's adoption;

(5) a statement that the amendment was adopted:

(i) in accordance with Sections 10A-3A-9.02, if the
nonprofit corporation is a membership nonprofit corporation
which has not yet admitted one or more members;

(ii) in accordance with Sections 10A-3A-9.03 and
10A-3A-9.04, if the nonprofit corporation is a membership
nonprofit corporation which has admitted one or more members;

(iii) in accordance with Section 10A-3A-9.05, if the
nonprofit corporation is a nonmembership nonprofit
corporation; or

(iv) in accordance with Section 10A-3A-1.04(c)(5);

(6) a statement that the amendment was adopted in
accordance with Section 10A-9A-9.30, if applicable; and

(7) the unique identifying number or other designation
as assigned by the Secretary of State.

(b) A certificate of amendment shall take effect at the
effective date and time determined in accordance with Article
4 of Chapter 1.

(a) A membership nonprofit corporation's board of directors may restate its certificate of incorporation at any time, without member approval, to consolidate all amendments into a single document. A nonmembership nonprofit corporation's board of directors may restate its certificate of incorporation at any time to consolidate all amendments into a single document.

(b) If the restated certificate of incorporation includes one or more new amendments, the amendments must be adopted and approved as provided in (i) Sections 10A-3A-9.03 and 10A-3A-9.04 or (ii) Section 10A-3A-9.05.

(c) A nonprofit corporation that restates its certificate of incorporation shall deliver to the Secretary of State for filing a certificate of restatement setting forth:

   (1) the name of the nonprofit corporation;
   (2) the text of the restated certificate of incorporation;
   (3) a statement that the restated certificate of incorporation consolidates all amendments into a single document;
   (4) if a new amendment is included in the restated certificate of incorporation, the statements required under Section 10A-3A-9.06 with respect to the new amendment; and
   (5) the unique identifying number or other designation as assigned by the Secretary of State.

(d) The duly adopted restated certificate of incorporation supersedes the original certificate of incorporation and all amendments to the certificate of incorporation.
§10A-3A-9.08. Amendment pursuant to reorganization.

(a) A nonprofit corporation's certificate of incorporation may be amended without action by the board of directors, the members, if any, or a person or group of persons, if any, whose approval is required by the certificate of incorporation in accordance with Section 10A-3A-9.30, to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under the authority of a law of the United States if the certificate of incorporation after the amendment only contains provisions required or permitted by Section 10A-3A-2.02.

(b) The individual or individuals designated by the court shall deliver to the Secretary of State for filing a certificate of amendment setting forth:

(1) the name of the nonprofit corporation;
(2) the text of each amendment approved by the court;
(3) the date of the court's order or decree approving the certificate of amendment;
(4) the title of the reorganization proceeding in which the order or decree was entered;
(5) a statement that the court had jurisdiction of the proceeding under federal statute; and
(6) the unique identifying number or other designation as assigned by the Secretary of State.

(c) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes.
§10A-3A-9.09. Effect of amendment to certificate of incorporation.

(a) An amendment to the certificate of incorporation does not affect:

(1) a cause of action existing against or in favor of the nonprofit corporation;

(2) a proceeding to which the nonprofit corporation is a party; or

(3) the existing rights of persons other than (i) members of the nonprofit corporation, if any, or (ii) a person or group of persons, if any, specified in the certificate of incorporation as having approval rights under Section 10A-3A-9.30.

(b) An amendment changing a nonprofit corporation's name does not affect a proceeding brought by or against the nonprofit corporation in its former name.


(a) A restated certificate of incorporation takes effect when the filing of the restated certificate of incorporation takes effect as provided by Article 4 of Chapter 1.

(b) On the date and time the restated certificate of incorporation takes effect, the original certificate of incorporation and each prior amendment or restatement of the certificate of incorporation is superseded and the restated certificate of incorporation is the effective certificate of
incorporation.

(c) Section 10A-3A-9.09 applies to an amendment effected by a restated certificate of incorporation.

DIVISION B. AMENDMENT OF BYLAWS.

§10A-3A-9.20. Authority to amend.

(a) The members of a membership nonprofit corporation may amend or repeal the membership nonprofit corporation's bylaws except as provided in the certificate of incorporation or bylaws.

(b) The board of directors of a membership nonprofit corporation or nonmembership nonprofit corporation may amend or repeal the nonprofit corporation's bylaws, except as provided in the certificate of incorporation, bylaws, Section 10A-3A-9.21, or Section 10A-3A-9.22.

(c) Neither (i) a member of a membership nonprofit corporation nor (ii) a person or group of persons having rights under the certificate of incorporation, has a vested property right resulting from any provision in the bylaws, including provisions relating to management, control, or purpose of the nonprofit corporation.

§10A-3A-9.21. Bylaw increasing quorum or voting requirement for directors or requiring a meeting place in a membership nonprofit corporation.

In a membership nonprofit corporation:

(a) A bylaw that increases a quorum or voting requirement for the board of directors or that requires a meeting of the members to be held at a place may be amended or repealed:
(1) if originally adopted by the members, only by the members, unless the bylaw otherwise provides;
(2) if adopted by the board of directors, either by the members or the board of directors.

(b) A bylaw adopted or amended by the members that increases a quorum or voting requirement for the board of directors may provide that it can be amended or repealed only by a specified vote of either the members or the board of directors.

(c) Action by the board of directors under subsection (a) to amend or repeal a bylaw that changes a quorum or voting requirement for the board of directors shall meet the same quorum requirement and be adopted by the same vote required to take action under the quorum.

§10A-3A-9.22. Bylaw amendments requiring member approval.

In a membership nonprofit corporation, except as provided in the certificate of incorporation or bylaws:

(a) The board of directors of a membership nonprofit corporation that has one or more members at the time may not adopt or amend a bylaw under:

(1) Section 10A-3A-6.10 providing that some of the members shall have different rights or obligations than other members with respect to voting, dissolution, transfer of memberships, or other matters;

(2) Section 10A-3A-6.13 levying dues, assessments, or fees on some or all of the members;

(3) Section 10A-3A-6.21 relating to the termination or
suspension of members;

(4) Section 10A-3A-8.08(a):
   (i) requiring cause to remove a director; or
   (ii) specifying what constitutes cause to remove a director; or

(5) Section 10A-3A-8.08(e) relating to the removal of a director who is designated in a manner other than election or appointment.

(b) The board of directors of a membership nonprofit corporation may not amend the certificate of incorporation or bylaws to vary the application of subsection (a) to the membership nonprofit corporation.

(c) If a membership nonprofit corporation has more than one class of members, the members of a class are entitled to vote as a separate voting group on an amendment to the bylaws that:
   (1) is described in subsection (a) if the amendment would affect the members of that class differently than the members of another class; or
   (2) has any of the effects described in Section 10A-3A-9.04.

(d) If a class of members will be divided into two or more classes by an amendment to the bylaws, the amendment must be approved by a majority of the members of each class that will be created.

DIVISION C. SPECIAL RIGHTS.
§10A-3A-9.30. Approval by specified person or group of persons.
(a) The certificate of incorporation of a membership nonprofit corporation may require that an amendment to the certificate of incorporation, including amendments under Section 10A-3A-9.03(g), be approved in writing by a specified person or group of persons in addition to the board of directors and members. The certificate of incorporation of a nonmembership nonprofit corporation may require that an amendment to the certificate of incorporation be approved in writing by a specified person or group of persons in addition to the board of directors.

(b) The certificate of incorporation or bylaws of a membership nonprofit corporation may require that an amendment to the bylaws be approved in writing by a specified person or group of persons in addition to the board of directors and members. The certificate of incorporation or bylaws of a nonmembership nonprofit corporation may require that an amendment to the bylaws be approved in writing by a specified person or group of persons in addition to the board of directors.

(c) A requirement in the certificate of incorporation or bylaws described in Section 10A-3A-9.30(a) or (b) may only be amended with the approval in writing of the specified person or group of persons.

ARTICLE 10. DISPOSITION OF ASSETS.

§10A-3A-10.01. Disposition of assets not requiring member approval in membership nonprofit corporation.

In a membership nonprofit corporation, no approval of the members is required, unless the certificate of
incorporation otherwise provides:

(a) to sell, lease, exchange, or otherwise dispose of any or all of the membership nonprofit corporation's assets in the usual and regular course of the membership nonprofit corporation's activities;

(b) to mortgage, pledge, dedicate to the repayment of indebtedness (whether with or without recourse), or otherwise encumber any or all of the membership nonprofit corporation's assets, regardless of whether in the usual and regular course of its activities; or

(c) to transfer any or all of the membership nonprofit corporation's assets to one or more corporations or other entities all of the memberships or interests of which are owned by the membership nonprofit corporation.

§10A-3A-10.02. Member approval of certain dispositions in membership nonprofit corporation.

(a) A sale, lease, exchange, or other disposition of assets, other than a disposition described in Section 10A-3A-10.01, requires approval of the membership nonprofit corporation's members if the disposition would leave the membership nonprofit corporation without a significant continuing activity. A membership nonprofit corporation will conclusively be deemed to have retained a significant continuing activity if it retains an activity that represented, for the membership nonprofit corporation and its subsidiaries on a consolidated basis, at least (i) 25 percent of total assets at the end of the most recently completed fiscal year, and (ii) either 25 percent of either income from
continuing operations before taxes or 25 percent of revenues from continuing operations, in each case for the most recently completed fiscal year.

(b) To obtain the approval of the members under subsection (a) the board of directors shall first adopt a resolution authorizing the disposition. The disposition shall then be approved by the members. In submitting the disposition to the members for approval, the board of directors shall recommend that the members approve the disposition, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make a recommendation, in which case the board of directors must inform the members of the basis for that determination.

(c) The board of directors may set conditions for the approval by the members of a disposition or the effectiveness of the disposition.

(d) If a disposition is required to be approved by the members under subsection (a), and if the approval is to be given at a meeting, the membership nonprofit corporation shall notify each member entitled to vote on the matter of the meeting of members at which the disposition is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the disposition and must contain a description of the disposition, including the terms and conditions of the disposition and the consideration to be received by the membership nonprofit corporation.
(e) Unless the certificate of incorporation, bylaws, or the board of directors acting pursuant to subsection (c) requires a greater vote or a greater quorum, the approval of a disposition by the members shall require the approval of the members at a meeting at which a quorum exists consisting of a majority of the votes entitled to be cast on the disposition.

(f) After a disposition has been approved by the members under this Article 10, and at any time before the disposition has been consummated, it may be abandoned by the membership nonprofit corporation without action by the members, subject to any contractual rights of other parties to the disposition.

(g) A disposition of assets in the course of dissolution under Article 11 is not governed by this section.

(h) For purposes of this section only, the property and assets of the membership nonprofit corporation include the property and assets of any subsidiary of the membership nonprofit corporation. As used in this subsection, "subsidiary" means any entity wholly owned and controlled, directly or indirectly, by the membership nonprofit corporation and includes, without limitation, nonprofit corporations, business corporations, partnerships (including limited liability partnerships), limited partnerships (including limited liability limited partnerships), limited liability companies, and/or statutory trusts, whether domestic or foreign.

(i) In addition to the approval of a disposition of assets by the board of directors and members as required by
this section, the disposition must also be approved in writing
by a person or group of persons whose approval is required
under the certificate of incorporation in accordance with
Section 10A-3A-10.04.

§10A-3A-10.03. Disposition of assets in a nonmembership
nonprofit corporation.

Except as otherwise provided in the certificate of
incorporation:

(1) a sale, lease, exchange, mortgage, pledge, or other
disposition of all, or substantially all, the property and
assets of the nonmembership nonprofit corporation may be
approved by the board of directors; and

(2) a sale, lease, exchange, mortgage, pledge, or other
disposition of all, or substantially all, of the property and
assets of the nonmembership nonprofit corporation approved by
the board of directors under this section must also be
approved by that person or group of persons whose approval is
required by the certificate of incorporation in accordance
with Section 10A-3A-10.04.

§10A-3A-10.04. Approval by specified person or group of
persons.

(a) The certificate of incorporation of a membership
nonprofit corporation may require that a disposition of assets
under Section 10A-3A-10.02 be approved in writing by a
specified person or group of persons in addition to the board
of directors and members.

(b) The certificate of incorporation of a nonmembership
nonprofit corporation may require that a disposition of assets
under Section 10A-3A-10.03 be approved in writing by a specified person or group of persons in addition to the board of directors.

(c) A requirement in the certificate of incorporation described in subsection (a) or (b) of this section may only be approved by the written approval of the specified person or group of persons.

ARTICLE 11. DISSOLUTION.
DIVISION A. VOLUNTARY DISSOLUTION.
§10A-3A-11.01. Dissolution by incorporators or directors.

A majority of the incorporators or initial directors of a nonprofit corporation that has not commenced activity may dissolve the nonprofit corporation by delivering to the Secretary of State for filing a certificate of dissolution that sets forth:

(1) the name of the nonprofit corporation;
(2) the date of its incorporation;
(3) that the nonprofit corporation has not commenced activity;
(4) that no debt of the nonprofit corporation remains unpaid;
(5) that the net assets of the nonprofit corporation remaining after winding up have been distributed;
(6) that a majority of the incorporators or directors authorized the dissolution; and
(7) the unique identifying number or other designation as assigned by the Secretary of State.
§10A-3A-11.02. Approval of dissolution of membership nonprofit corporations.

(a) The board of directors of a membership nonprofit corporation may propose dissolution for submission to the members by first adopting a resolution authorizing the dissolution.

(b) For a proposal to dissolve to be adopted, it shall then be approved by the members entitled to vote thereon. In submitting the proposal to dissolve to the members for approval, the board of directors shall recommend that the members approve the dissolution, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation in which case the board of directors must inform the members of the basis for that determination.

(c) The board of directors may set conditions for the approval of the proposal for dissolution by the members or the effectiveness of the dissolution.

(d) If the approval of the members is to be given at a meeting, the membership nonprofit corporation shall notify each member entitled to vote on the dissolution, of the meeting of members at which the dissolution is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider dissolving the membership nonprofit corporation and how the assets of the membership nonprofit corporation will be distributed after all creditors have been paid, or how the distribution of assets will be determined.
(e) Unless the certificate of incorporation, the bylaws, or the board of directors acting pursuant to subsection (c), requires a greater vote, a greater quorum, or a vote by voting groups, adoption of the proposal to dissolve shall require the approval of the members at a meeting at which a quorum exists consisting of a majority of the votes entitled to be cast on the proposal to dissolve.

(f) Dissolution of a membership nonprofit corporation may also be authorized without action of the directors if all the members entitled to vote thereon shall consent in writing and a certificate of dissolution shall be delivered to the Secretary of State for filing pursuant to Section 10A-3A-11.05.

(g) In addition to the approval of the dissolution of a membership nonprofit corporation as set forth in subsections (a) through (f), the dissolution must also be approved in writing by a person or group of persons whose approval is required under the certificate of incorporation in accordance with Section 10A-3A-11.04.

§10A-3A-11.03. Approval of dissolution of nonmembership nonprofit corporations.

Except as otherwise provided in the certificate of incorporation:

(1) the dissolution of a nonmembership nonprofit corporation may be approved by the board of directors; and

(2) the dissolution of the nonmembership nonprofit corporation approved by the board of directors under this section must also be approved by those persons whose approval
is required by the certificate of incorporation in accordance with Section 10A-3A-11.04.

§10A-3A-11.04. Approval by specified person or group of persons.

(a) The certificate of incorporation of a membership nonprofit corporation may require that a dissolution of a membership nonprofit corporation under Section 10A-3A-11.02 be approved in writing by a specified person or group of persons in addition to the board of directors and members.

(b) The certificate of incorporation of a nonmembership nonprofit corporation may require that a dissolution of a nonmembership nonprofit corporation under Section 10A-3A-11.03 be approved in writing by a specified person or group of persons in addition to the board of directors.

(c) A requirement in the certificate of incorporation described in subsection (a) or (b) of this section may only be approved by the written approval of the specified person or group of persons.

§10A-3A-11.05. Certificate of dissolution.

(a) At any time after dissolution is authorized, the nonprofit corporation may dissolve by delivering to the Secretary of State for filing a certificate of dissolution setting forth:

(1) the name of the nonprofit corporation;

(2) the date that dissolution was authorized;

(3) if dissolution of a membership nonprofit corporation was approved in accordance with Section 10A-3A-11.02, a statement that the proposal to dissolve was
duly approved in the manner required by this chapter and by the certificate of incorporation;

(4) if dissolution of a nonmembership nonprofit corporation was approved in accordance with Section 10A-3A-11.03, a statement that the proposal to dissolve was duly approved in the manner required by this chapter and by the certificate of incorporation;

(5) if dissolution of a nonprofit corporation was approved in accordance with Section 10A-3A-11.02 or Section 10A-3A-11.03, and the certificate of incorporation required the dissolution to also be approved by a specified person or group of persons in accordance with Section 10A-3A-11.04, a statement that the proposal to dissolve was duly approved by the manner required by this chapter and by the certificate of incorporation; and

(6) the unique identifying number or other designation as assigned by the Secretary of State.

(b) The certificate of dissolution shall take effect at the effective date determined in accordance with Article 4 of Chapter 1. A nonprofit corporation is dissolved upon the effective date of its certificate of dissolution.

(c) For purposes of this Division A of this Article 11, "dissolved nonprofit corporation" means a nonprofit corporation whose certificate of dissolution has become effective and includes a successor entity to which the remaining assets of the nonprofit corporation are transferred subject to its liabilities for purposes of liquidation.

§10A-3A-11.06. Revocation of dissolution.
(a) A nonprofit corporation may revoke its dissolution within 120 days after its effective date and be reinstated.

(b) Revocation of dissolution and reinstatement shall be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation and reinstatement by action of the board of directors alone, in which event the board of directors may revoke the dissolution and effect the reinstatement without member action and without the action of the specified person or group of persons set forth in the certificate of incorporation in accordance with Section 10A-3A-11.04.

(c) After the revocation of dissolution and reinstatement is authorized, the nonprofit corporation may revoke the dissolution and effect the reinstatement by delivering to the Secretary of State for filing a certificate of revocation of dissolution and reinstatement, together with a copy of its certificate of dissolution, that sets forth:

1. the name of the nonprofit corporation;
2. the effective date of the dissolution that was revoked;
3. the date that the revocation of dissolution and reinstatement was authorized;
4. if the nonprofit corporation's board of directors (or incorporators) revoked the dissolution and effected the reinstatement, a statement to that effect;
5. if the nonprofit corporation's board of directors revoked a dissolution and effected the reinstatement as authorized by the members and any specified person or group of
persons set forth in the certificate of incorporation in accordance with Section 10A-3A-11.04, a statement that revocation and reinstatement was permitted by action by the board of directors alone pursuant to that authorization;

(6) if member action was required to revoke the dissolution and effect the reinstatement, a statement that the revocation and reinstatement was duly approved by the members in the manner required by this chapter and by the certificate of incorporation;

(7) if the action of a specified person or group of persons set forth in the certificate of incorporation in accordance with Section 10A-3A-11.04 was required to revoke the dissolution and effect the reinstatement, a statement that the revocation and reinstatement was duly approved by that specified person or group of persons in the manner required by this chapter and by the certificate of incorporation; and

(8) the unique identifying number or other designation as assigned by the Secretary of State.

(d) The certificate of revocation of dissolution and reinstatement shall take effect at the effective date determined in accordance with Article 4 of Chapter 1. Revocation of dissolution and reinstatement is effective upon the effective date of the certificate of revocation of dissolution and reinstatement.

(e)(1) Subject to subsection (e)(2), upon revocation and reinstatement, the nonprofit corporation shall be deemed for all purposes to have continued its activities and affairs as if dissolution had never occurred; and each right inuring
to, and each debt, obligation, and liability incurred by, the
nonprofit corporation after the dissolution shall be
determined as if the dissolution had never occurred.

(2) The rights of persons acting in reliance on the
dissolution before those persons had notice of the revocation
and reinstatement shall not be adversely affected by the
revocation and reinstatement.

(f) If the nonprofit corporation is listed in the
Secretary of State's records as a nonprofit corporation that
has been dissolved, then the name of the nonprofit corporation
following revocation and reinstatement shall be that nonprofit
corporation name at the time of revocation and reinstatement
if that nonprofit corporation name complies with Article 5 of
Chapter 1 at the time of revocation and reinstatement. If that
nonprofit corporation name does not comply with Article 5 of
Chapter 1, the name of the nonprofit corporation following
revocation and reinstatement shall be that nonprofit
corporation name followed by the word "reinstated."


(a) A dissolved nonprofit corporation continues its
existence as a nonprofit corporation but may not carry on any
activity except as is appropriate to wind up and liquidate its
activities and affairs, including:

(1) collecting its assets;

(2) disposing of its properties that will not be
distributed in kind;

(3) discharging or making provisions for discharging
its liabilities;
(4) distributing its remaining property among as required by law, its certificate of incorporation, bylaws, and as approved when the dissolution was authorized; and
(5) doing every other act necessary to wind up and liquidate its activities and affairs.

(b) In winding up its activities and affairs, a dissolved nonprofit corporation may:
(1) preserve the nonprofit corporation's activities and affairs and property as a going concern for a reasonable time;
(2) prosecute, defend, or settle actions or proceedings whether civil, criminal, or administrative;
(3) transfer the nonprofit corporation's assets;
(4) resolve disputes by mediation or arbitration; and
(5) merge or convert in accordance with Article 12 or 13 of this chapter or Article 8 of Chapter 1.

(c) Dissolution of a nonprofit corporation does not:
(1) transfer title to the nonprofit corporation's property;
(2) subject its directors or officers to standards of conduct different from those prescribed in Article 8;
(3) change:
  (i) quorum or voting requirements for its board of directors or members;
  (ii) provisions for selection, resignation, or removal of its directors or officers or both; or
  (iii) provisions for amending its bylaws;
(4) prevent commencement of a proceeding by or against the nonprofit corporation in its corporate name;
(5) abate or suspend a proceeding pending by or against
the nonprofit corporation on the effective date of
dissolution; or

(6) terminate the authority of the registered agent of
the nonprofit corporation.

(d) A distribution in liquidation under this section
may only be made by a dissolved nonprofit corporation.

§10A-3A-11.08. Known claims against dissolved nonprofit
corporation.

(a) A dissolved nonprofit corporation may dispose of
any known claims against it by following the procedures
described in subsection (b) at any time after the effective
date of the dissolution of the nonprofit corporation.

(b) A dissolved nonprofit corporation may give written
notice of the dissolution to the holder of any known claim.
The notice must:

(1) identify the dissolved nonprofit corporation;

(2) describe the information required to be included in
a claim;

(3) provide a mailing address to which the claim is to
be sent;

(4) state the deadline, which may not be fewer than 120
days from the effective date of the notice, by which the
dissolved nonprofit corporation must receive the claim; and

(5) state that if not sooner barred, the claim will be
barred if not received by the deadline.

(c) Unless sooner barred by any other statute limiting
actions, a claim against a dissolved nonprofit corporation is
barred:

(1) if a claimant who was given notice under subsection (b) does not deliver the claim to the dissolved nonprofit corporation by the deadline; or

(2) if a claimant whose claim was rejected by the dissolved nonprofit corporation does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejection notice.

(d) For purposes of this section, "known claim" or "claim" includes unliquidated claims, but does not include a contingent liability that has not matured so that there is no immediate right to bring suit or a claim based on an event occurring after the effective date of dissolution.

(e) Nothing in this section shall be deemed to extend any otherwise applicable statute of limitations.

§10A-3A-11.09. Other claims against dissolved nonprofit corporation.

(a) A dissolved nonprofit corporation may publish notice of its dissolution and request that persons with claims against the dissolved nonprofit corporation present them in accordance with the notice.

(b) The notice authorized by subsection (a) must:

(1) be published at least one time in a newspaper of general circulation in the county in which the dissolved nonprofit corporation's principal office is located or, if it has none in this state, in the county in which the nonprofit corporation's most recent registered office is located;

(2) describe the information that must be included in a
claim and provide a mailing address to which the claim is to be sent; and

(3) state that if not sooner barred, a claim against the dissolved nonprofit corporation will be barred unless a proceeding to enforce the claim is commenced within two years after the publication of the notice.

(c) If a dissolved nonprofit corporation publishes a newspaper notice in accordance with subsection (b), unless sooner barred by any other statute limiting actions, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved nonprofit corporation within two years after the publication date of the newspaper notice:

(1) a claimant who was not given notice under Section 10A-3A-11.08;

(2) a claimant whose claim was timely sent to the dissolved nonprofit corporation but not acted on by the dissolved nonprofit corporation; and

(3) a claimant whose claim is contingent at the effective date of the dissolution of the nonprofit corporation, or is based on an event occurring after the effective date of the dissolution of the nonprofit corporation.

(d) A claim that is not barred under this section, any other statute limiting actions, or Section 10A-3A-11.08 may be enforced:

(1) against a dissolved nonprofit corporation, to the extent of its undistributed assets; and
(2) except as provided in subsection (h), if the assets of a dissolved nonprofit corporation have been distributed after dissolution, against any person, other than a creditor of the dissolved nonprofit corporation, to whom the nonprofit corporation distributed its property to the extent of the distributee's pro rata share of the claim or the corporate assets distributed to the distributee in liquidation, whichever is less, but a distributee's total liability for all claims under this section may not exceed the total amount of assets distributed to the distributee.

(e) A dissolved nonprofit corporation that published a notice under this section may file an application with the circuit court for the county in which the dissolved nonprofit corporation's principal office is located in this state and if the dissolved nonprofit corporation does not have a principal office within this state, with the circuit court for the county in which the dissolved nonprofit corporation's most recent registered office is located, for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved nonprofit corporation or that are based on an event occurring after the effective date of the dissolution of the nonprofit corporation but that, based on the facts known to the dissolved nonprofit corporation, are reasonably estimated to arise after the effective date of the dissolution of the nonprofit corporation. Provision need not be made for any claim that is or is reasonably anticipated to be barred under subsection (c).
(f) Within 10 days after the filing of the application provided for in subsection (e), notice of the proceeding shall be given by the dissolved nonprofit corporation to each potential claimant as described in subsection (e).

(g) The circuit court under subsection (e) may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, shall be paid by the dissolved nonprofit corporation.

(h) Provision by the dissolved nonprofit corporation for security in the amount and the form ordered by the circuit court under subsection (e) shall satisfy the dissolved nonprofit corporation's obligation with respect to claims that are contingent, have not been made known to the dissolved nonprofit corporation, or are based on an event occurring after the effective date of the dissolution of the nonprofit corporation, and those claims may not be enforced against a distributee to whom assets have been distributed by the dissolved nonprofit corporation after the effective date of the dissolution of the nonprofit corporation.

(i) Nothing in this section shall be deemed to extend any otherwise applicable statute of limitations.

(j) If a claim has been satisfied, disposed of, or barred under Section 10A-3A-11.08, this section, or other law, the person or persons designated to wind up the affairs of a dissolved nonprofit corporation, and the distributees receiving assets from the dissolved nonprofit corporation,

(a) Directors shall cause the dissolved nonprofit corporation to discharge or make reasonable provision for the payment of claims and make distributions in liquidation of assets to the persons designated to receive the assets of the dissolved nonprofit corporation after payment or provision for claims.

(b) Directors of a dissolved nonprofit corporation which has disposed of claims under Section 10A-3A-11.08 or Section 10A-3A-11.09 shall not be liable for breach of Section 10A-3A-11.10(a) with respect to claims against the dissolved nonprofit corporation that are barred or satisfied under Section 10A-3A-11.08 or Section 10A-3A-11.09.

DIVISION B. JUDICIAL DISSOLUTION.


The circuit court for the county in which the nonprofit corporation's principal office is located in this state, and if none in this state, the circuit court for the county in which the nonprofit corporation's most recent registered office is located may dissolve a nonprofit corporation:

(1) in a proceeding by the Attorney General if it is established that:

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

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

(2) in a proceeding by a director, or members holding
at least 25 percent of the aggregate voting power of all of
the members entitled to vote on dissolution, unless the
certificate of incorporation reduces or eliminates that
percentage requirement, if it is established that:

(i) the directors are deadlocked in the management of
the corporate affairs, the members, if any, are unable to
break the deadlock, and irreparable injury to the nonprofit
corporation or its mission is threatened or being suffered,
because of the deadlock;

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

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

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

(v) the nonprofit corporation has insufficient assets
to continue its activities and affairs;

(vi) the nonprofit corporation is not able to assemble
a quorum of directors or members; or

(vii) the nonprofit corporation has abandoned its
activities and affairs and has failed within a reasonable time
to liquidate and distribute its assets and dissolve; or

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

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

(ii) the nonprofit corporation has admitted in writing that the creditor's claim is due and owing and the nonprofit corporation is insolvent;

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

(5) in a proceeding by an interested person, as determined by the court, if it is established that:

(i) there is not at least one member or director of the nonprofit corporation; and

(ii) a member or director cannot be elected in accordance with the certificate of incorporation or bylaws of the nonprofit corporation.


(a) Venue for a proceeding by the Attorney General to dissolve a nonprofit corporation lies in circuit court for the county in which the nonprofit corporation's principal office is located in this state, and if none in this state, in the circuit court for the county in which the nonprofit corporation's most recent registered office is located. Venue for a proceeding brought by any other party named in Section 10A-3A-11.20 lies in circuit court for the county in which the nonprofit corporation's principal office is located in this state, and if none in this state, in the circuit court for the county in which the nonprofit corporation's most recent registered office is located.
(b) It is not necessary to make members or directors parties to a proceeding to dissolve a nonprofit corporation unless relief is sought against them individually.

(c) A court in a proceeding brought to dissolve a nonprofit corporation may issue injunctions, appoint a receiver or custodian during the proceeding with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the activities and affairs of the nonprofit corporation until a full hearing can be held.

§10A-3A-11.22. Receivership; custodianship; continuation.

(a) A court in a judicial proceeding brought to dissolve a nonprofit corporation may (i) appoint one or more receivers to wind up and liquidate, (ii) appoint one or more custodians to manage the activities and affairs of the nonprofit corporation, or (iii) appoint one or more custodians to determine whether the nonprofit corporation should be dissolved. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has jurisdiction over the nonprofit corporation and all of its property wherever located.

(b) The court may appoint an individual, nonprofit corporation, or other entity as a receiver or custodian, which, if a foreign entity, must be registered to do business in this state. The court may require the receiver or custodian
to post bond, with or without sureties, in an amount the court
directs.

(c) The court shall describe the powers and duties of
the receiver or custodian in its appointing order, which may
be amended from time to time. Among other powers:

(1) the receiver: (i) may dispose of all or any part of
the assets of the nonprofit corporation wherever located, at a
public or private sale; and (ii) may sue and defend in the
receiver's own name as receiver of the nonprofit corporation
in all courts of this state.

(2) the custodian may exercise all of the powers of the
nonprofit corporation, through or in place of its board of
directors, to the extent necessary to manage the affairs of
the nonprofit corporation in the best interests of the mission
of the nonprofit corporation and in the best interests of the
nonprofit corporation, its members, if any, and creditors.

(3) in lieu of dissolution, the court may authorize a
custodian in a proceeding brought under Section 10A-3A-11.20,
to determine whether the nonprofit corporation should be
dissolved. If the custodian determines that the nonprofit
corporation should not be dissolved, the custodian shall
prepare and present to the court a plan of operation which
shall set forth:

(i) the reasons that it is in the best interest of the
nonprofit corporation to continue its activities and affairs
and not be dissolved;

(ii) that the continuation of the activities and
affairs of the nonprofit corporation will not be in
contravention of the certificate of incorporation or bylaws of
the nonprofit corporation;

(iii) any amendments to the certificate of
incorporation or bylaws necessary for the nonprofit
corporation to continue its activities and affairs in
accordance with the plan of operation;

(iv) for a membership nonprofit corporation that does
not have any members, the name of at least one person proposed
to be a member; and

(v) for a nonmembership nonprofit corporation that does
not have any directors, the name of at least one person
proposed to be a director.

(4) the receiver or custodian shall have any other
powers and duties as the court may provide in the appointing
order, which may be amended from time to time.

(d) The court during a receivership may redesignate the
receiver a custodian and during a custodianship may
redesignate the custodian a receiver.

(e) The court from time to time during the receivership
or custodianship may order compensation paid and expenses paid
or reimbursed to the receiver or custodian from the assets of
the nonprofit corporation or proceeds from the sale of the
assets.

§10A-3A-11.23. Decree of dissolution or continuation.

(a) If after a hearing the court determines that one or
more grounds for judicial dissolution described in Section
10A-3A-11.20 exist, the court may enter a decree dissolving
the nonprofit corporation and specifying the effective date of
the dissolution. If the court enters a decree dissolving the
nonprofit corporation, then the clerk of the court shall
deliver a certified copy of the decree to the Secretary of
State for filing.

(b) After entering the decree of dissolution, the court
shall direct the winding up and liquidation of the nonprofit
corporation's activities and affairs in accordance with
Section 10A-3A-11.07 and the notification of claimants in
accordance with Sections 10A-3A-11.08 and 10A-3A-11.09.

(c) If after a hearing the court determines pursuant to
Section 10A-3A-11.22(c)(3) that a nonprofit corporation should
not be dissolved, but should continue its activities and
affairs, the court shall issue a decree naming at least one
person as a member of the nonprofit corporation if it is a
membership nonprofit corporation, naming at least one director
if the nonprofit corporation is a nonmembership nonprofit
corporation, and such other matters as the court may
determine. If the court approves an amendment to the
certificate of incorporation in accordance with Section
10A-3A-11.22(c)(3), then the court's decree shall also set
forth that amendment, specifying the effective date of that
amendment, and the clerk of the court shall deliver a
certified copy of the decree to the Secretary of State for
filing.


Assets of a dissolved nonprofit corporation that should
be transferred to a creditor, claimant, or a person designated
to receive the assets of the nonprofit corporation who cannot
be found or who is not competent to receive them shall be reduced to cash and deposited with the State Treasurer or other appropriate state official for safekeeping. When the creditor, claimant, or person designated to receive the assets of the nonprofit corporation furnishes satisfactory proof of entitlement to the amount deposited, the State Treasurer or other appropriate state official shall pay that person or that person's representative that amount.

ARTICLE 12. MERGERS.
§10A-3A-12.01. Definitions.
As used in this article, unless the context otherwise requires, the following terms mean:

(1) CONSTITUENT CORPORATION means a constituent organization that is a nonprofit corporation.
(2) CONSTITUENT ORGANIZATION means an organization that is party to a merger under this article.
(3) GOVERNING STATUTE of an organization means the statute that governs the organization's internal affairs.
(4) ORGANIZATION means a general partnership, including a limited liability partnership; limited partnership,
including a limited liability limited partnership; limited liability company; business trust; business corporation;
nonprofit corporation; professional corporation; or any other person having a governing statute. The term includes domestic and foreign organizations whether or not organized for profit.
(5) ORGANIZATIONAL DOCUMENTS means:
(A) for a general partnership or foreign general partnership, its partnership agreement and if applicable, its
registration as a limited liability partnership or a foreign limited liability partnership;

(B) for a limited partnership or foreign limited partnership, its certificate of formation and partnership agreement, or comparable writings as provided in its governing statute;

(C) for a limited liability company or foreign limited liability company, its certificate of formation and limited liability company agreement, or comparable writings as provided in its governing statute;

(D) for a business or statutory trust or foreign business or statutory trust its agreement of trust and declaration of trust, or comparable writings as provided in its governing statute;

(E) for a business corporation or foreign business corporation, its certificate of incorporation, bylaws, and other agreements among its stockholders that are authorized by its governing statute, or comparable writings as provided in its governing statute;

(F) for a nonprofit corporation or foreign nonprofit corporation, its certificate of incorporation, bylaws, and other agreements that are authorized by its governing statute, or comparable writings as provided in its governing statute;

(G) for a professional corporation or foreign professional corporation, its certificate of incorporation, bylaws, and other agreements among its stockholders that are authorized by its governing statute, or comparable writings as provided in its governing statute; and
(H) for any other organization, the basic writings that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it, or are members of it.

(6) SURVIVING ORGANIZATION means an organization into which one or more other organizations are merged under this article, whether the organization pre-existed the merger or was created pursuant to the merger.


(a) A nonprofit corporation may merge with one or more other constituent organizations pursuant to this article, and a plan of merger, if:

(1) the governing statute of each of the other organizations authorizes the merger;

(2) the merger is not prohibited by the law of a jurisdiction that enacted any of those governing statutes; and

(3) each of the other organizations complies with its governing statute in effecting the merger.

(b) A plan of merger must be in writing and must include:

(1) the name, type of organization, and mailing address of the principal office of each constituent organization, the jurisdiction of the governing statute of each constituent organization, and the respective unique identifying number or other designation as assigned by the Secretary of State, if any, of each constituent organization;

(2) the name, type of organization, and mailing address of the principal office of the surviving organization, the
unique identifying number or other designation as assigned by the Secretary of State, if any, of the surviving organization, the jurisdiction of the governing statute of the surviving organization, and, if the surviving organization is created pursuant to the merger, a statement to that effect;

(3) the terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, securities, interests in the surviving organization, and other consideration as allowed by subsection (c);

(4) if the surviving organization is to be created pursuant to the merger, the surviving organization's organizational documents; and

(5) if the surviving organization is not to be created pursuant to the merger, any amendments to be made by the merger to the surviving organization's organizational documents.

(c) In connection with a merger, rights, securities, or interests, if any, in a constituent organization may be exchanged for or converted into cash, property, rights, securities, or interests, if any, in the surviving organization, or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights, securities, or interests, if any, in another organization, or may be cancelled.

(d) In addition to the requirements of subsection (b), a plan of merger may contain any other provision not prohibited by law.
(e) Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with Section 10A-3A-1.04(c)(5).

(f) A plan of merger may be amended only with the consent of each constituent organization, except as provided in the plan. A domestic constituent organization may approve an amendment to a plan:

(1) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) in the manner provided in the plan, except that if the plan has been approved by the interest holders that were entitled to vote on, consent to, or approve of, the plan, then those interest holders are entitled to vote on, consent to, or approve of any amendment of the plan that will change:

(i) the amount or kind of securities, interests, obligations, rights to acquire other interests or securities, cash, or other property to be received under the plan by the interest holders of a constituent organization;

(ii) the certificate of incorporation of any nonprofit corporation, foreign nonprofit corporation, business corporation, foreign business corporation or the organizational documents of any other organization, that will be the surviving organization, except for changes permitted by Section 10A-3A-9.03(g) or by comparable provisions of the governing statute of the foreign nonprofit corporation, business corporation, foreign business corporation, or other organization; or
(iii) any of the other terms or conditions of the plan if the change would adversely affect the interest holders in any material respect.

§10A-3A-12.03. Action on a plan of merger in a membership nonprofit corporation.

In the case of a membership nonprofit corporation that is a constituent organization, the plan of merger shall be adopted in the following manner:

(a) The plan of merger shall first be adopted by the board of directors.

(b) Except as provided in subsection (h), the plan of merger shall then be approved by the members entitled to vote thereon. In submitting the plan of merger to the members for approval, the board of directors shall recommend that the members approve the plan of merger, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make a recommendation, in which case the board of directors shall inform the members of the basis for its so proceeding.

(c) The board of directors may set conditions for the approval of the plan of merger by the members or the effectiveness of the plan of merger.

(d) If the plan of merger is required to be approved by the members, and if the approval is to be given at a meeting, the membership nonprofit corporation shall notify each member who is entitled to vote, of the meeting of the members at which the plan of merger is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of
the meeting is to consider the plan of merger and must contain
or be accompanied by a copy or summary of the plan of merger.
If the membership nonprofit corporation is to be merged into
an existing nonprofit corporation, foreign nonprofit
corporation, or other organization, the notice must also
include or be accompanied by a copy or summary of the
certificate of incorporation and bylaws or the organizational
documents of that nonprofit corporation, foreign nonprofit
corporation, or other organization. If the membership
nonprofit corporation is to be merged with a nonprofit
corporation, foreign nonprofit corporation, or other
organization and a new nonprofit corporation, foreign
nonprofit corporation, or organization is to be created
pursuant to the merger, the notice must include or be
accompanied by a copy or a summary of the certificate of
incorporation and bylaws or the organizational documents of
the new nonprofit corporation, foreign nonprofit corporation,
or other organization.

(e) Unless the certificate of incorporation, or the
board of directors acting pursuant to subsection (c), requires
a greater vote or a greater quorum, approval of the plan of
merger requires the approval of the members entitled to vote
at a meeting at which a quorum exists consisting of a majority
of the votes entitled to be cast on the plan of merger, and,
if any class of membership interests entitled to vote as a
separate group on the plan of merger, the approval of each
separate voting group at a meeting at which a quorum of the
voting group is present consisting of a majority of the votes
entitled to be cast on the merger by that voting group.

(f) Subject to subsection (g), separate voting by voting groups is required:

(1) on a plan of merger, by each class of membership interests that:

(i) are to be converted under the plan of merger into securities, interests, obligations, rights to acquire other securities or interests, cash, other property, or any combination of the foregoing; or

(ii) are entitled to vote as a separate group on a provision in the plan of merger that constitutes a proposed amendment to the certificate of incorporation of a surviving nonprofit corporation that requires action by separate voting groups under Section 10A-3A-9.04; and

(2) on a plan of merger, if the voting group is entitled under the certificate of incorporation or bylaws to vote as a voting group to approve a plan of merger, respectively.

(g) The certificate of incorporation may expressly limit or eliminate the separate voting rights provided in subsection (f)(1)(i) and subsection (f)(2) as to any class of membership, except when the plan of merger includes what is or would be in effect an amendment subject to subsection (f)(1)(ii).

(h) Unless the certificate of incorporation otherwise provides, approval by the membership nonprofit corporation's members of a plan of merger is not required if:

(1) the membership nonprofit corporation will survive
the merger;

(2) except for amendments that do not require member approval under Section 10A-3A-9.03(g) or the approval of a person or group of persons under Section 10A-3A-9.30, its certificate of incorporation will not be changed;

(3) except for amendments that do not require member approval under Section 10A-3A-9.22 or the approval of a person or group of persons under Section 10A-3A-9.30, its bylaws will not be changed; and

(4) each member of the membership nonprofit corporation whose membership interest was outstanding immediately before the effective date of the merger will hold the same number of membership interests, with identical preferences, rights, and limitations, immediately after the effective date of the merger.

(i) In addition to the adoption and approval of the plan of merger as required by this section, the plan must also be approved in writing by a person or group of persons, if any, whose approval is required under Section 10A-3A-12.08.


In the case of a merger of a nonmembership nonprofit corporation the plan of merger shall be adopted in the following manner:

(a) The plan of merger shall be adopted by the board of directors; and

(b) A plan of merger adopted by the board of directors under this section must also be approved in writing by a
person or group of persons, if any, whose approval is required under Section 10A-3A-12.08.

§10A-3A-12.05. Statement of merger.

(a) After a plan of merger has been adopted and approved as required by this article, then a statement of merger shall be signed by each party to the merger. The statement of merger must set forth:

(1) the name, type of organization, and mailing address of the principal office of each constituent organization, the jurisdiction of the governing statute of each constituent organization, and the respective unique identifying number or other designation as assigned by the Secretary of State, if any, of each constituent organization;

(2) the name, type of organization, and mailing address of the principal office of the surviving organization, the unique identifying number or other designation as assigned by the Secretary of State, if any, of the surviving organization, the jurisdiction of the governing statute of the surviving organization, and, if the surviving organization is created pursuant to the merger, a statement to that effect;

(3) the date the merger is effective under the governing statute of the surviving organization;

(4) if the surviving organization is to be created pursuant to the merger:

(A) if it will be a nonprofit corporation, the nonprofit corporation's certificate of incorporation; or

(B) if it will be an organization other than a nonprofit corporation, any organizational document that
creates the organization that is required to be in a public writing or in the case of a limited liability partnership, its statement of limited liability partnership;

(5) if the surviving organization exists before the merger, any amendments provided for in the plan of merger for the organizational document that created the organization that are in a public writing;

(6) a statement as to each constituent organization that the merger was approved as required by the organization's governing statute;

(7) if the surviving organization is a foreign organization not authorized to conduct activities and affairs in this state, the street and mailing address of an office for the purposes of Section 10A-3A-12.06(b);

(8) any additional information required by the governing statute of any constituent organization;

(9) if the plan of merger required approval by the members of a membership nonprofit corporation that is a constituent organization, a statement that the plan was duly approved by the members and, if voting by any separate voting group was required, by each separate voting group, in the manner required by this chapter, the certificate of incorporation or bylaws;

(10) if the plan of merger required approval by a person or group of persons as specified in the certificate of incorporation pursuant to Section 10A-3A-12.08, a statement that the plan was duly approved by that person or group of persons;
(11) if the plan of merger did not require approval by
the members of a membership nonprofit corporation that is a
constituent organization, a statement to that effect; and
(12) a statement that the plan of merger will be
furnished by the surviving organization, on request and
without cost, to any member or owner of any constituent
organization which is a party to the merger.

(b) In addition to the requirements of subsection (a),
a statement of merger may contain any other provision not
prohibited by law.

(c) The statement of merger shall be delivered to the
Secretary of State for filing and, subject to subsection (d),
the merger shall take effect at the effective date and time
determined in accordance with Article 4 of Chapter 1.

(d) With respect to a merger in which one or more
foreign organizations is a constituent organization or a
foreign organization created by the merger is the surviving
organization, the merger itself shall become effective at the
later of:

(1) when all documents required to be filed in foreign
jurisdictions to effect the merger have become effective, or
(2) when the statement of merger takes effect.

(e) A statement of merger filed under this section may
be combined with any filing required under the governing
statute governing any domestic organization involved in the
transaction if the combined filing satisfies the requirements
of this section, the other governing statute, and Article 4 of
Chapter 1.
(f) A certified copy of the statement of merger required to be filed under this section may be filed in the real estate records in the office of the judge of probate in any county in which any constituent organization owned real property, without payment and without collection by the judge of probate of any deed or other transfer tax or fee. The judge of probate, however, shall be entitled to collect the filing fee of five dollars ($5). Any filing shall evidence chain of title, but lack of filing shall not affect the surviving organization's title to real property.

(g) A statement of conversion is a filing instrument under Chapter 1.

(h) The filing fees for a statement of conversion shall be as set forth in Chapter 1.

§10A-3A-12.06. Effect of merger.

(a) When a merger becomes effective:

(1) the surviving organization continues or, in the case of a surviving organization created pursuant to the merger, comes into existence;

(2) each constituent organization that merges into the surviving organization ceases to exist as a separate entity;

(3) except as provided in the plan of merger, all property owned by, and every contract right possessed by, each constituent organization that ceases to exist vests in the surviving organization without transfer, reversion, or impairment and the title to any property and contract rights vested by deed or otherwise in the surviving organization shall not revert, be in any way impaired, or be deemed to be a
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5041 transfer by reason of the merger;
5042 (4) all debts, obligations, and other liabilities of
5043 each constituent organization, other than the surviving
5044 organization, are debts, obligations, and liabilities of the
5045 surviving organization, and neither the rights of creditors,
5046 nor any liens upon the property of any constituent
5047 organization, shall be impaired by the merger;
5048 (5) an action or proceeding pending by or against any
5049 constituent organization continues as if the merger had not
5050 occurred and the name of the surviving organization may, but
5051 need not be, substituted in any pending proceeding for the
5052 name of any constituent organization whose separate existence
5053 ceased in the merger;
5054 (6) except as prohibited by law other than this chapter
5055 or as provided in the plan of merger, all the rights,
5056 privileges, franchises, immunities, powers, and purposes of
5057 each constituent organization, other than the surviving
5058 organization, vest in the surviving organization;
5059 (7) except as otherwise provided in the plan of merger,
5060 the terms and conditions of the plan of merger take effect;
5061 (8) except as otherwise agreed, if a constituent
5062 organization that is a nonprofit corporation ceases to exist,
5063 the merger does not dissolve the nonprofit corporation;
5064 (9) if the surviving organization is created pursuant
5065 to the merger:
5066 (A) if it is a nonprofit corporation, the certificate
5067 of incorporation and bylaws become effective; or
5068 (B) if it is an organization other than a nonprofit
corporation, the organizational documents that create the organization becomes effective;

(10) if the surviving organization existed before the merger, any amendments provided for in the statement of merger for the organizational documents of that organization become effective;

(11) the membership interests, if any, of each nonprofit corporation or foreign nonprofit corporation that is a constituent organization to the merger, and the interests in an organization that is a constituent organization, that are to be converted in accordance with the terms of the merger into securities, interests, obligations, rights to acquire other securities or interests, cash, other property, or any combination of the foregoing, are converted, and the former holders of membership interests, if any, or interests are entitled only to the rights provided to them by those terms or to any rights they may have under the governing statute governing that constituent organization;

(12) if the surviving organization exists before the merger:

(A) except as provided in the plan of merger, all property and contract rights of the surviving organization remain its property and contract rights without transfer, reversion, or impairment;

(B) the surviving organization remains subject to all its debts, obligations, and other liabilities; and

(C) except as provided by law other than this chapter or the plan of merger, the surviving organization continues to
hold all of its rights, privileges, franchises, immunities, powers and purposes.

(b) A surviving organization that is a foreign organization:

(1) consents to the jurisdiction of this state to enforce any debt, obligation, or other liability owed by a constituent organization, if before the merger the constituent organization was subject to suit in this state on the debt, obligation, or other liability; and

(2) consents that if it fails to designate or maintain a registered agent, or the designated registered agent cannot with reasonable diligence be served, then the service of process on that surviving organization for the purposes of enforcing a debt, obligation, or other liability under this subsection and for enforcing the rights, if any, of members of each nonprofit corporation that is a constituent organization may be made in the same manner and has the same consequences as provided in Section 10A-1-5.35.


(a) After a plan of merger has been adopted and approved as required by this Article 12, and before the statement of merger has become effective, the plan may be abandoned by a nonprofit corporation that is a party to the plan without action by its members, if any, or a person or group of persons under Section 10A-3A-12.08, if any, in accordance with any procedures set forth in the plan of merger or, if no procedures are set forth in the plan, in the manner determined by the board of directors.
(b) If a merger is abandoned under subsection (a) after the statement of merger has been delivered to the Secretary of State for filing but before the merger has become effective, a statement of abandonment signed by all the parties that signed the statement of merger shall be delivered to the Secretary of State for filing before the statement of merger becomes effective. The statement shall take effect on filing and the merger shall be deemed abandoned and shall not become effective. The statement of abandonment must contain:

1. the name of each party to the merger;
2. the date on which the statement of merger was filed by the Secretary of State; and
3. a statement that the merger has been abandoned in accordance with this section.

§10A-3A-12.08. Approval by specified person or group of persons.

(a) The certificate of incorporation of a membership nonprofit corporation may require that a merger under this article or under Article 8 of Chapter 1 be approved in writing by a specified person or group of persons in addition to the board of directors and members.

(b) The certificate of incorporation of a nonmembership nonprofit corporation may require that a merger under this article or under Article 8 of Chapter 1 be approved in writing by a specified person or group of persons in addition to the board of directors.

(c) A requirement in the certificate of incorporation described in subsections (a) or (b) of this section may only
This article is not exclusive. This article does not preclude a nonprofit corporation from merging under law other than this chapter.

ARTICLE 13. CONVERSIONS.
As used in this article, unless the context otherwise requires, the following terms mean:

(1) CONVERTED ORGANIZATION means the organization into which a converting organization converts pursuant to this article.

(2) CONVERTING NONPROFIT CORPORATION means a converting organization that is a nonprofit corporation.

(3) CONVERTING ORGANIZATION means an organization that converts into another organization pursuant to this article.

(4) GOVERNING STATUTE of an organization means the statute that governs the organization's internal affairs.

(5) ORGANIZATION means a general partnership, including a limited liability partnership; limited partnership, including a limited liability limited partnership; limited liability company; business trust; business corporation; nonprofit corporation; professional corporation; or any other person having a governing statute. The term includes domestic and foreign organizations whether or not organized for profit.

(6) ORGANIZATIONAL DOCUMENTS means:

(A) for a general partnership or foreign general
partnership, its partnership agreement and if applicable, its
registration as a limited liability partnership or a foreign
limited liability partnership;

(B) for a limited partnership or foreign limited
partnership, its certificate of formation and partnership
agreement, or comparable writings as provided in its governing
statute;

(C) for a limited liability company or foreign limited
liability company, its certificate of formation and limited
liability company agreement, or comparable writings as
provided in its governing statute;

(D) for a business or statutory trust or foreign
business or statutory trust, its agreement of trust and
declaration of trust, or comparable writings as provided in
its governing statute;

(E) for a business corporation or foreign business
corporation, its certificate of incorporation, bylaws, and
other agreements among its stockholders that are authorized by
its governing statute or comparable writings as provided in
its governing statute;

(F) for a nonprofit corporation or foreign nonprofit
corporation, its certificate of incorporation, bylaws, and
other agreements that are authorized by its governing statute,
or comparable writings as provided in its governing statute;

(G) for a professional corporation or foreign
professional corporation, its certificate of incorporation,
bylaws, and other agreements among its stockholders that are
authorized by its governing statute or comparable writings as
(H) for any other organization, the basic writings that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it, or are members of it.


(a) An organization other than a nonprofit corporation may convert to a nonprofit corporation, and a nonprofit corporation may convert to an organization other than a nonprofit corporation pursuant to this article, and a plan of conversion, if:

(1) the governing statute of the organization that is not a nonprofit corporation authorizes the conversion;

(2) the law of the jurisdiction governing the converting organization and the converted organization does not prohibit the conversion; and

(3) the converting organization and the converted organization each comply with the governing statute and organizational documents applicable to that organization in effecting the conversion.

(b) A plan of conversion must be in writing and must include:

(1) the name, type of organization, and mailing address of the principal office of the converting organization and its unique identifying number or other designation as assigned by the Secretary of State, if any, before conversion;

(2) the name, type of organization, and mailing address of the principal office of the converted organization after
conversion;

(3) the terms and conditions of the conversion, including the manner and basis for converting interests, if any, in the converting organization into any combination of money, interests in the converted organization, and other consideration allowed in subsection (c); and

(4) the organizational documents of the converted organization.

(c) In connection with a conversion, rights or securities of or interests, if any, in the converting organization may be exchanged for or converted into cash, property, or rights or securities of or interests, if any, in the converted organization, or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights, securities, or interests, if any, in another organization, or may be cancelled.

(d) In addition to the requirements of subsection (b), a plan of conversion may contain any other provision not prohibited by law.

(e) Terms of a plan of conversion may be made dependent on facts objectively ascertainable outside the plan in accordance with Section 10A-3A-1.04(c).


In the case of a conversion of a membership nonprofit corporation the plan of conversion shall be adopted in the following manner:

(a) The plan of conversion shall first be adopted by
(b) The plan of conversion shall then be approved by the members entitled to vote thereon. In submitting the plan of conversion to the members for their approval, the board of directors must recommend that the members approve the plan of conversion, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make a recommendation, in which case the board of directors shall inform the members of the basis for its so proceeding.

(c) The board of directors may set conditions for the approval of the plan of conversion by the members or the effectiveness of the plan of conversion.

(d) If the approval of the members is to be given at a meeting, the nonprofit corporation shall notify each member entitled to vote of the meeting of members at which the plan of conversion is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan of conversion and must contain or be accompanied by a copy or summary of the plan of conversion. The notice must include or be accompanied by a copy of the organizational documents of the converted organization which are to be in writing as they will be in effect immediately after the conversion.

(e) Unless the certificate of incorporation or the board of directors acting pursuant to subsection (c), requires a greater vote or a greater quorum, approval of the plan of conversion requires (i) the approval of the members entitled
to vote at a meeting at which a quorum exists consisting of a majority of the votes entitled to be cast on the plan of conversion, and (ii) the approval of each class of members voting as a separate voting group at a meeting at which a quorum of the voting group exists consisting of a majority of the votes entitled to be cast on the plan of conversion by that voting group.

(f) In addition to the adoption and approval of the plan of conversion as required by this section, the plan of conversion must also be approved in writing by a person or group of persons, if any, whose approval is required under Section 10A-3A-13.08.


In the case of a conversion of a nonmembership nonprofit corporation the plan of conversion shall be adopted in the following manner:

(a) The plan of conversion shall be adopted by the board of directors; and

(b) A plan of conversion adopted by the board of directors under this section must also be approved in writing by a person or group of persons, if any, whose approval is required under Section 10A-3A-13.08.

§10A-3A-13.05. Statement of conversion; effectiveness.

(a) After a plan of conversion is approved:

(1) if the converting organization is an organization formed under, or its internal affairs are governed by, the laws of this state, the converting organization shall file a
statement of conversion in accordance with subsection (c), which statement of conversion must be signed in accordance with Section 10A-1-4.01 and which must include:

(A) the name, type of organization, and mailing address of the principal office of the converting organization, and its unique identifying number or other designation as assigned by the Secretary of State, if any;

(B) a statement that the converting organization has been converted into the converted organization;

(C) the name and type of organization of the converted organization and the jurisdiction of its governing statute;

(D) the street and mailing address of the principal office of the converted organization;

(E) the date the conversion is effective under the governing statute of the converted organization;

(F) a statement that the conversion was approved as required by this chapter;

(G) a statement that the conversion was approved as required by the governing statute of the converted organization;

(H) a statement that a copy of the plan of conversion will be furnished by the converted organization, on request and without cost, to any owner of the converting organization; and

(I) if the converted organization is a foreign organization not authorized to conduct activities and affairs in this state, the street and mailing address of an office for the purposes of Section 10A-3A-13.07(b); and
(2) if the converted organization is a nonprofit corporation, the converting organization shall deliver for filing a certificate of incorporation in accordance with subsection (d), which certificate of incorporation must include, in addition to the information required by Section 10A-3A-2.02:

(A) a statement that the nonprofit corporation was converted from the converting organization;

(B) the name and type of organization of the converting organization, the jurisdiction of the converting organization's governing statute, and the converting organization's unique identifying number or other designation as assigned by the Secretary of State, if any; and

(C) a statement that the conversion was approved in a manner that complied with the converting organization's governing statute.

(b) A conversion becomes effective:

(1) if the converted organization is a nonprofit corporation, when the certificate of incorporation takes effect; and

(2) if the converted organization is not a nonprofit corporation, as provided by the governing statute of the converted organization.

(c) If the converting organization is an organization formed under, or its internal affairs are governed by, the laws of this state, then the converting organization shall deliver for filing the statement of conversion required under subsection (a)(1) to the Secretary of State.
(d) If the converted organization is a nonprofit corporation, then, the converting organization shall deliver for filing the certificate of incorporation required under subsection (a)(2) to the Secretary of State.

(e) If the converting organization is required to deliver for filing a statement of conversion and a certificate of formation or a certificate of incorporation to the Secretary of State, then the converting organization shall deliver for filing the statement of conversion and the certificate of formation or certificate of incorporation to the Secretary of State simultaneously.

(f) If:

(1) the converting organization is a filing entity or a foreign filing entity registered to conduct activities and affairs in this state;

(2) the converted organization will be a filing entity or a foreign filing entity registered to conduct activities and affairs in this state;

(3) the name of the converting organization and the converted organization are to be the same, other than words, phrases, or abbreviations indicating the type of entity; and

(4) the name of the converted organization complies with Division A of Article 5 of Chapter 1 or Section 10A-1-7.07, as the case may be; then notwithstanding Division B of Article 5 of Chapter 1, no name reservation shall be required and the converted organization shall for all purposes of this title be entitled to utilize the name of the converting organization without any further action by the
converting organization or the converted organization.

(g) A certified copy of any document required to be filed under this section may be filed in the real estate records in the office of the judge of probate in any county in which the converting organization owned real property, without payment and without collection by the judge of probate of any deed or other transfer tax or fee. The judge of probate shall, however, be entitled to collect a filing fee of five dollars ($5). Any such filing with the judge of probate shall evidence chain of title, but lack of filing shall not affect the converted organization's title to such real property.

(h) A statement of conversion is a filing instrument under Chapter 1.

(i) The filing fees for a statement of conversion shall be as set forth in Chapter 1.

§10A-3A-13.06. Amendment of plan of conversion; abandonment.

(a) A plan of conversion of a converting organization that is a nonprofit corporation may be amended:

(1) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) in the manner provided in the plan, except that if the plan has been approved by the members that were entitled to vote on, consent to, or approve of the plan, then those members are entitled to vote on, consent to, or approve of any amendment of the plan that will change:

(i) the amount or kind of interests, if any, or other
(ii) the organizational documents of the converted
organization that will be in effect immediately after the
conversion becomes effective, except for changes that do not
require approval of the interest holders of the converted
organization under its governing statute or organizational
documents; or

(iii) any other terms or conditions of the plan, if the
change would adversely affect the members in any material
respect.

(b) After a plan of conversion has been approved by a
converting organization that is a nonprofit corporation in the
manner required by this article and before the statement of
conversion becomes effective, the plan may be abandoned by the
nonprofit corporation without action by its members, if any,
or a person or group of persons under Section 10A-3A-13.08, in
accordance with any procedures set forth in the plan or, if no
procedures are set forth in the plan, in the manner determined
by the board of directors.

(c) If a conversion is abandoned after the statement of
conversion has been delivered to the Secretary of State for
filing and before the statement of conversion becomes
effective, a statement of abandonment, signed by the
converting organization, must be delivered to the Secretary of
State for filing before the statement of conversion becomes
The statement of abandonment takes effect on filing, and the conversion is abandoned and does not become effective. The statement of abandonment must contain:

1. the name of the converting organization;
2. the date on which the statement of conversion was filed by the Secretary of State; and
3. a statement that the conversion has been abandoned in accordance with this section.


(a) When a conversion takes effect:

1. all property and contract rights owned by the converting organization remain vested in the converted organization without transfer, reversion, or impairment, and the title to any property vested by deed or otherwise in the converting organization shall not revert or be in any way impaired by reason of the conversion;
2. all debts, obligations, or other liabilities of the converting organization continue as debts, obligations, or other liabilities of the converted organization and neither the rights of creditors, nor the liens upon the property of the converting organization shall be impaired by the conversion;
3. an action or proceeding pending by or against the converting organization continues as if the conversion had not occurred and the name of the converted organization may, but need not, be substituted for the name of the converting organization in any pending action or proceeding;
4. except as prohibited by law other than this
chapter, all of the rights, privileges, immunities, powers, and purposes of the converting organization remain vested in the converted organization;

(5) except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect;

(6) except as otherwise agreed, for all purposes of the laws of this state, the converting organization shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of the converting organization;

(7) for all purposes of the laws of this state, the rights, privileges, powers, interests in property, debts, liabilities, and duties of the converting organization, shall be the rights, privileges, powers, interests in property, debts, liabilities, and duties of the converted organization, and shall not be deemed as a consequence of the conversion, to have been transferred to the converted organization;

(8) if the converted organization is a nonprofit corporation, for all purposes of the laws of this state, the nonprofit corporation shall be deemed to be the same organization as the converting organization, and the conversion shall constitute a continuation of the existence of the converting organization in the form of a nonprofit corporation;

(9) if the converted organization is a nonprofit corporation, the existence of the nonprofit corporation shall be deemed to have commenced on the date the converting
organization commenced its existence in the jurisdiction in which the converting organization was first created, formed, organized, incorporated, or otherwise came into being;

(10) the conversion shall not affect the choice of law applicable to matters arising prior to conversion;

(11) if the Secretary of State has assigned a unique identifying number or other designation to the converting organization and (i) the converted organization is formed pursuant to, or its internal affairs are governed by, the laws of this state, or (ii) the converted organization is, within 30 days after the effective date of the conversion, registered to transact business in this state, then that unique identifying number or other designation shall continue to be assigned to the converted organization; and

(12) the interests, if any, of the converting organization are reclassified into interests or other securities, obligations, rights to acquire interests or other securities, cash, or other property in accordance with the terms of the conversion, and the interest holders, if any, of the converting organization are entitled only to the rights provided to them by those terms and to any rights they may have under the governing statute of the converting organization.

(b) A converted organization that is a foreign entity consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability for which the converting nonprofit corporation, is liable if, before the conversion, the converting nonprofit corporation was subject
to suit in this state on the debt, obligation, or other liability. If a converted organization is a foreign entity and fails to designate or maintain a registered agent, or the designated registered agent cannot with reasonable diligence be served, then service of process on that converted organization for the purposes of enforcing a debt, obligation, or other liability under this subsection may be made in the same manner and has the same consequences as provided in Section 10A-1-5.35.

§10A-3A-13.08. Approval by specified person or group of persons.

(a) The certificate of incorporation of a membership nonprofit corporation may require that a conversion under this article or under Article 8 of Chapter 1 be approved in writing by a specified person or group of persons in addition to the board of directors and members.

(b) The certificate of incorporation of a nonmembership nonprofit corporation may require that a conversion under this article or under Article 8 of Chapter 1 be approved in writing by a specified person or group of persons in addition to the board of directors.

(c) A requirement in the certificate of incorporation described in subsections (a) or (b) of this section may only be approved by the written approval of the specified person or group of persons.


This article is not exclusive. This article does not preclude a nonprofit corporation from converting under law
ARTICLE 14. TRANSITIONAL PROVISIONS.

§10A-3A-14.01. Application to existing nonprofit corporations.

(a) Before January 1, 2025, this chapter governs only:

(1) a nonprofit corporation incorporated on or after January 1, 2024; and

(2) a nonprofit corporation incorporated before January 1, 2024, which elects, by amending or restating that nonprofit corporation's certificate of incorporation, to be governed by this chapter.

(b) On and after January 1, 2025, this chapter governs all existing nonprofit corporations incorporated under:

(1) any general or special law of this state providing for the incorporation of nonprofit corporations for a purpose or purposes for which a nonprofit corporation might be incorporated under this chapter, where the power has been reserved to amend, repeal, or modify the law under which the nonprofit corporation was incorporated; and

(2) any predecessor statute hereto.

(c) For purposes of applying this chapter to a nonprofit corporation incorporated before January 1, 2024:

(1) the nonprofit corporation is not required to amend its certificate of incorporation to comply with Section 10A-3A-2.02(a)(5); but once amended or restated, the certificate of incorporation must comply with Section 10A-3A-2.02(a)(5); and

(2) if on December 31, 2023, the certificate of
incorporation or bylaws of a nonprofit corporation in existence on that date provides members with the right to cumulate their votes for the election of directors, that right to cumulate their votes shall continue unless the certificate of incorporation or bylaws of the nonprofit corporation are amended to deny that right. Notwithstanding the foregoing, no such members may cumulate their votes for the election of directors by utilizing an action by written consent.

(3) the nonprofit corporation's incorporation document, whether a certificate of incorporation, certificate of formation, charter, or articles of incorporation is deemed to be the nonprofit corporation's certificate of incorporation;

(4) the nonprofit corporation's bylaws are deemed to be the nonprofit corporation's bylaws;

(5) any amendment or restatement of a nonprofit corporation's certificate of incorporation or bylaws on or after January 1, 2024, shall conform with this chapter; and

(d) No nonprofit corporation may be incorporated after December 31, 2023, pursuant to Sections 10A-3-1.01 to 10A-3-8.02, inclusive.

§10-3A-14.02. Application to existing foreign nonprofit corporations.

A foreign nonprofit corporation registered or authorized to transact business in this state on January 1, 2024, is subject to this chapter and is deemed to be registered to transact business in this state, and is not required to renew its registration to transact business under Article 7 of Chapter 1, except as required by Article 7 of

(a) Except as provided in subsection (b), the repeal of a statute by this chapter does not affect:

(1) the operation of the statute or any action taken under it before its repeal;

(2) any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;

(3) any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation before its repeal; or

(4) any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed.

(b) If a penalty or punishment imposed for violation of a statute repealed by this chapter is reduced by this chapter, the penalty or punishment, if not already imposed, shall be imposed in accordance with this chapter.


If any provision of this chapter or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to
this end the provisions of this chapter are severable.

§10A-3A-14.05. Relation to electronic signatures in global and national commerce act.

This chapter modifies, limits, and supersedes the Federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. § 7003(b).

§10A-3A-14.06. Interstate application.

A nonprofit corporation formed and existing under this chapter may conduct its activities and affairs, carry on its operations, and have and exercise the powers granted by this chapter in any state, foreign country, or other jurisdiction.

Section 2. Sections 10A-1-1.03, 10A-1-1.08, 10A-1-3.32, 10A-1-8.01, 10A-1-8.02, and 10A-1-9.01 of the Code of Alabama 1975, are amended to read as follows:

"§10A-1-1.03

(a) If a term, including a term that is defined in subsection (b) of this section, is defined in a chapter of this title, then, when used in that chapter, the term shall have the meaning set forth in that chapter.

(b) As used in this title, except as provided in subsection (a) of this section or where the context otherwise requires, the following terms mean:

(1) AFFILIATE. A person who controls, is controlled by, or is under common control with another person. An affiliate of an individual includes the spouse, or a parent or sibling
thereof, of the individual, or a child, grandchild, sibling, parent, or spouse of any thereof, of the individual, or an individual having the same home as the individual, or an trust or estate of which an individual specified in this sentence is a substantial beneficiary; a trust, estate, incompetent, conservatee, protected person, or minor of which the individual is a fiduciary; or an entity of which the individual is director, general partner, agent, employee or the governing authority or member of the governing authority.

(2) ASSOCIATE. When used to indicate a relationship with:

(A) a domestic or foreign entity for which the person is:

(i) an officer or governing person; or

(ii) a beneficial owner of 10 percent or more of a class of voting ownership interests or similar securities of the entity;

(B) a trust or estate in which the person has a substantial beneficial interest or for which the person serves as trustee or in a similar fiduciary capacity;

(C) the person's spouse or a relative of the person related by consanguinity or affinity within the fifth degree who resides with the person; or

(D) a governing person or an affiliate or officer of the person.

(3) ASSOCIATION. Includes, but is not limited to, an unincorporated nonprofit association as defined in Chapter 17 and an unincorporated professional association as defined in
Article 1 of Chapter 30.

(4) BENEFIT CORPORATION. A benefit corporation as defined in Chapter 2A.

(5) BUSINESS CORPORATION. A corporation or foreign corporation as defined in Chapter 2A. The term includes a benefit corporation as defined in Chapter 2A.

(6) BUSINESS TRUST. A business trust as defined in Chapter 16.

(7) CERTIFICATE OF DISSOLUTION. Any document such as a certificate of dissolution, statement of dissolution, or articles of dissolution, required or permitted to be filed publicly with respect to an entity's dissolution and winding up of its business, activity, activities, not for profit activity, or affairs.

(8) CERTIFICATE OF FORMATION.

(A) The document required to be filed publicly under this title to form a filing entity; and

(B) if appropriate, a restated certificate of formation and all amendments of an original or restated certificate of formation; provided that a restated certificate of formation and an amendment of an original or restated certificate of formation shall not be deemed to be a certificate of formation for purposes of Section 10A-1-4.31.

(9) CERTIFICATE OF OWNERSHIP. An instrument evidencing an ownership interest or membership interest in an entity.

(10) CERTIFICATED OWNERSHIP INTEREST. An ownership interest of a domestic entity represented by a certificate.

(11) CERTIFICATION or CERTIFIED. Duly authenticated by
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the proper officer or filing officer of the jurisdiction the
laws of which govern the internal affairs of an entity.

(12) CONTRIBUTION. A tangible or intangible benefit
that a person transfers to an entity in consideration for an
ownership interest in the entity or otherwise in the person's
capacity as an owner or a member. A benefit that may
constitute a contribution transferred in exchange for an
ownership interest or transferred in the transferor's capacity
as an owner or member may include cash, property, services
rendered, a contract for services to be performed, a
promissory note or other obligation of a person to pay cash or
transfer property to the entity, or securities or other
interests in or obligations of an entity. In either case, the
benefit does not include cash or property received by the
entity:

(A) with respect to a promissory note or other
obligation to the extent that the agreed value of the note or
obligation has previously been included as a contribution; or

(B) that the person intends to be a loan to the entity.

(13) CONVERSION. A conversion, whether referred to as a
conversion, domestication, or otherwise, means:

(A) the continuance of a domestic entity as a foreign
entity of any type;

(B) the continuance of a foreign entity as a domestic
entity of any type; or

(C) the continuance of a domestic entity of one type as
a domestic entity of another type.

(14) CONVERTED ENTITY. An entity resulting from a
conversion.

(15) CONVERTING ENTITY. An entity as the entity existed before the entity's conversion.

(16) COOPERATIVE. Includes an employee cooperative as defined in Chapter 11.

(17) CORPORATION. Includes a domestic or foreign business corporation, including a benefit corporation, as defined in Chapter 2A, a domestic or foreign nonprofit corporation as defined in Chapter 3 or Chapter 3A, a domestic or foreign professional corporation as defined in Chapter 4, and those entities specified in Chapter 20 as corporate.

(18) COURT. The designated court, and if none, the circuit court specifically set forth in this title, and if none, any other court having jurisdiction in a case.

(19) DAY. When used in the computation of time, excludes the first day and includes the last day of the period so computed, unless the last day is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, a Sunday, or a legal holiday. When the period of time to be computed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded.

(20) DEBTOR IN BANKRUPTCY. A person who is the subject of:

(A) an order for relief under the United States bankruptcy laws, Title 11, United States Code, or comparable order under a successor statute of general application; or

(B) a comparable order under federal, state, or foreign
law governing insolvency.

(21) DESIGNATED COURT. The court or courts that are
designated in the (i) certificate of incorporation or bylaws
of a corporation as authorized by Chapter 2A, (ii) certificate
of incorporation or bylaws of a nonprofit corporation as
authorized by Chapter 3A, (iii) limited liability company
agreement of a limited liability company formed pursuant to or
governed by Chapter 5A, (iii), (iv) partnership agreement of a
partnership formed pursuant to or governed by Chapter 8A, or
(iv) limited partnership agreement of a limited partnership
formed pursuant to or governed by Chapter 9A.

(22) DIRECTOR. An individual who serves on the board of
directors, by whatever name known, of a foreign or domestic
corporation.

(23) DISTRIBUTION. A transfer of property, including
cash, from an entity to an owner or member of the entity in
the owner's or member's capacity as an owner or member. The
term includes a dividend, a redemption or purchase of an
ownership interest, or a liquidating distribution.

(24) DOMESTIC. With respect to an entity, means
governed as to its internal affairs by this title.

(25) DOMESTIC ENTITY. An entity governed as to its
internal affairs by this title.

(26) EFFECTIVE DATE OF THIS TITLE. January 1, 2011.

(27) ELECTRONIC. Relating to technology having
electrical, digital, magnetic, wireless, optical,
electromagnetic, or similar capabilities.

(28) ELECTRONIC SIGNATURE. An electronic signature as
that term is defined in the Alabama Electronic Transactions Act, Chapter 1A of Title 8, or any successor statute.

(29) ELECTRONIC TRANSMISSION or ELECTRONICALLY TRANSMITTED. Any form or process of communication not directly involving the physical transfer of paper or another tangible medium, which (i) is suitable for the retention, retrieval, and reproduction of information by the recipient, and (ii) is retrievable in paper form by the recipient through an automated process used in conventional commercial practice.

(30) ELECTRONIC WRITING. Information that is stored in an electronic or other nontangible medium and is retrievable in paper form through an automated process used in conventional commercial practice.

(31) ENTITY. A domestic or foreign organization.

(32) FILING ENTITY. A domestic entity that is a corporation, limited partnership, limited liability limited partnership, limited liability company, professional association, employee cooperative corporation, or real estate investment trust.

(33) FILING INSTRUMENT. An instrument, document, or statement that is required or permitted by this title to be delivered for filing by or for an entity to a filing officer.

(34) FILING OFFICER. An officer of this state with whom a filing instrument is required or permitted to be delivered for filing pursuant to this title.

(35) FOREIGN. With respect to an entity, means governed as to its internal affairs by the laws of a jurisdiction other than this state.
(36) FOREIGN ENTITY. An entity governed as to its internal affairs by the laws of a jurisdiction other than this state.

(37) FOREIGN FILING ENTITY. A foreign entity that registers or is required to register as a foreign entity under Article 7.

(38) FOREIGN GOVERNMENTAL AUTHORITY. A governmental official, agency, or instrumentality of a jurisdiction other than this state.

(39) FOREIGN NONFILING ENTITY. A foreign entity that is not a foreign filing entity.

(40) GENERAL PARTNER.

(A) Each partner in a general partnership; or

(B) a person who is admitted to a limited partnership as a general partner in accordance with the governing documents of the limited partnership.

(41) GENERAL PARTNERSHIP. A partnership as defined in Chapter 8A. The term includes a limited liability partnership as defined in Chapter 8A.

(42) GOVERNING AUTHORITY. A person or group of persons who are entitled to manage and direct the affairs of an entity pursuant to this title and the governing documents of the entity, except that if the governing documents of the entity or this title divide the authority to manage and direct the affairs of the entity among different persons or groups of persons according to different matters, governing authority means the person or group of persons entitled to manage and direct the affairs of the entity with respect to a matter...
under the governing documents of the entity or this title. The term includes the board of directors of a corporation, by whatever name known, or other persons authorized to perform the functions of the board of directors of a corporation, the general partners of a general partnership or limited partnership, the persons who have direction and oversight of a limited liability company, and the trust managers of a real estate investment trust. The term does not include an officer who is acting in the capacity of an officer.

(43) GOVERNING DOCUMENTS.

(A) In the case of a domestic entity:

(i) the certificate of formation for a filing entity or the document or agreement under which a nonfiling entity is formed; and

(ii) the other documents or agreements, including bylaws, partnership agreements of partnerships, limited liability company agreements of limited liability companies, or similar documents, adopted by the entity pursuant to this title to govern the formation or the internal affairs of the entity; or

(B) in the case of a foreign entity, the instruments, documents, or agreements adopted under the law of its jurisdiction of formation to govern the formation or the internal affairs of the entity.

(44) GOVERNING PERSON. A person serving as part of the governing authority of an entity.

(45) INDIVIDUAL. A natural person and the estate of an incompetent or deceased natural person.
5910 (46) INSOLVENCY. The inability of a person to pay the
5911 person's debts as they become due in the usual course of
5912 business or affairs.
5913 (47) INSOLVENT. A person who is unable to pay the
5914 person's debts as they become due in the usual course of
5915 business or affairs.
5916 (48) JUDGE OF PROBATE. The judge of probate of the
5917 county in which an entity is required or permitted to deliver
5918 a filing instrument for filing pursuant to this title.
5919 (49) JURISDICTION OF FORMATION.
5920 (A) In the case of a filing entity, this state;
5921 (B) in the case of a foreign entity, the jurisdiction
5922 in which the entity's certificate of formation or similar
5923 organizational instrument is filed, or if no certificate of
5924 formation or similar organizational instrument is filed, then
5925 the laws of the jurisdiction which govern the internal affairs
5926 of the foreign entity;
5927 (C) in the case of a general partnership which has
5928 filed a statement of partnership, a statement of not for
5929 profit partnership, or a statement of limited liability
5930 partnership in accordance with Chapter 8A, in this state;
5931 (D) in the case of a foreign limited liability
5932 partnership, the laws of the jurisdiction which govern the
5933 filing of the foreign limited liability partnership's
5934 statement of limited liability partnership or such filing in
5935 that jurisdiction; and
5936 (E) in the case of a foreign or domestic nonfiling
5937 entity other than those entities described in subsection (C)
(D):

(i) the jurisdiction the laws of which are chosen in the entity's governing documents to govern its internal affairs if that jurisdiction bears a reasonable relation to the owners or members or to the domestic or foreign nonfiling entity's business, activities, and affairs under the principles of this state that otherwise would apply to a contract among the owners or members; or

(ii) if subparagraph (i) does not apply, the jurisdiction in which the entity has its principal office.

(50) LAW. Unless the context requires otherwise, both statutory and common law.

(51) LICENSE. A license, certificate of registration, or other legal authorization.

(52) LICENSING AUTHORITY. The state court, state regulatory licensing board, or other like agency which has the power to issue a license or other legal authorization to render professional services.

(53) LIMITED LIABILITY COMPANY. A limited liability company as defined in Chapter 5A.

(54) LIMITED LIABILITY LIMITED PARTNERSHIP. A limited liability limited partnership as defined in Chapter 9A.

(55) LIMITED LIABILITY PARTNERSHIP. A limited liability partnership as defined in Chapter 8A.

(56) LIMITED PARTNER. A person who has been admitted to a limited partnership as a limited partner as provided by:

(A) in the case of a domestic limited limited partnership, Chapter 9A; or
(B) in the case of a foreign limited partnership, the laws of its jurisdiction of formation.

(57) LIMITED PARTNERSHIP. A limited partnership as defined in Chapter 9A. The term includes a limited liability limited partnership as defined in Chapter 9A.

(58) MANAGERIAL OFFICIAL. An officer or a governing person.

(59) MEMBER.

(A) A person defined as a member under Chapter 5A;

(B) in the case of a nonprofit corporation formed pursuant to or governed by Chapter 3, a person having membership rights in the nonprofit corporation in accordance with its governing documents as provided in Chapter 3, and in the case of a nonprofit corporation formed pursuant to or governed by Chapter 3A, a person defined as a member under Chapter 3A;

(C) in the case of an employee cooperative corporation formed pursuant to or governed by Chapter 11, a natural person who, as provided in Chapter 11, has been accepted for membership in and owns a membership share in an employee cooperative;

(D) in the case of a nonprofit association, a person who, as provided in Chapter 17, may participate in the selection of persons authorized to manage the affairs of the nonprofit association or in the development of its policy.

(60) MERGER. The combination of one or more domestic entities with one or more domestic entities or foreign entities resulting in:
(A) one or more surviving domestic entities or foreign entities;

(B) the creation of one or more new domestic entities or foreign entities, or one or more surviving domestic entities or foreign entities; or

(C) one or more surviving domestic entities or foreign entities and the creation of one or more new domestic entities or foreign entities.

(61) NONFILING ENTITY. A domestic entity that is not a filing entity. The term includes a domestic general partnership, a limited liability partnership, and a nonprofit association.

(62) NONPROFIT ASSOCIATION. An unincorporated nonprofit association as defined in Chapter 17. The term does not include a general partnership which has filed a statement of not for profit partnership in accordance with Chapter 8A, a limited partnership which is carrying on a not for profit purpose, or a limited liability company which is carrying on a not for profit purpose.

(63) NONPROFIT CORPORATION. A domestic or foreign nonprofit corporation as defined in Chapter 3 or Chapter 3A.

(64) NONPROFIT ENTITY. An entity that is a nonprofit corporation, nonprofit association, or other entity that is organized solely for one or more nonprofit purposes.

(65) OFFICER. An individual elected, appointed, or designated as an officer of an entity by the entity's governing authority or under the entity's governing documents.

(66) ORGANIZATION. A corporation, limited partnership,
general partnership, limited liability company, business trust, real estate investment trust, joint venture, joint stock company, cooperative, association, or other organization, including, regardless of its organizational form, a bank, insurance company, credit union, and savings and loan association, whether for profit, not for profit, nonprofit, domestic, or foreign.

(67) ORGANIZER. A person, who need not be an owner or member of the entity, who, having the capacity to contract, is authorized to execute documents in connection with the formation of the entity. The term includes an incorporator.

(68) OWNER.

(A) With respect to a foreign or domestic business corporation or real estate investment trust, a stockholder or a shareholder;

(B) with respect to a foreign or domestic partnership, a partner;

(C) with respect to a foreign or domestic limited liability company or association, a member; and

(D) with respect to another foreign or domestic entity, an owner of an equity interest in that entity.

(69) OWNERSHIP INTEREST. An owner's interest in an entity. The term includes the owner's share of profits and losses or similar items and the right to receive distributions. The term does not include an owner's right to participate in management or participate in the direction or oversight of the entity. An ownership interest is personal property.
(70) PARENT or PARENT ENTITY. An entity that:

(A) owns at least 50 percent of the ownership or membership interest of a subsidiary; or

(B) possesses at least 50 percent of the voting power of the owners or members of a subsidiary.

(71) PARTNER. A limited partner or general partner.

(72) PARTNERSHIP. Includes a general partnership, a limited liability partnership, a foreign limited liability partnership, a limited partnership, a foreign limited partnership, a limited liability limited partnership, and a foreign limited liability limited partnership.

(73) PARTNERSHIP AGREEMENT. Any agreement (whether referred to as a partnership agreement or otherwise), written, oral or implied, of the partners as to the activities and affairs of a general partnership or a limited partnership. The partnership agreement includes any amendments to the partnership agreement. In the case of limited partnerships formed prior to October 1, 1998, partnership agreement includes the certificate of partnership.

(74) PARTY TO THE MERGER. A domestic entity or foreign entity that under a plan of merger is combined by a merger. The term does not include a domestic entity or foreign entity that is not to be combined into or with one or more domestic entities or foreign entities, regardless of whether ownership interests of the entity are to be issued under the plan of merger.

(75) PERSON. An individual, including the estate of an incompetent or deceased individual, or an entity, whether
created by the laws of this state or another state or foreign
country, including, without limitation, a general partnership,
limited liability partnership, limited partnership, limited
liability limited partnership, limited liability company,
corporation, professional corporation, nonprofit corporation,
professional association, trustee, personal representative,
fiduciary, as defined in Section 19-3-150 or person performing
in any similar capacity, business trust, estate, trust,
association, joint venture, government, governmental
subdivision, agency, or instrumentality, or any other legal or
commercial entity.

(76) PRESIDENT.  
(A) The individual designated as president of an entity
under the entity's governing documents; or

(B) the officer or committee of persons authorized to
perform the functions of the principal executive officer of an
entity without regard to the designated name of the officer or
committee.

(77) PRINCIPAL OFFICE. The office, in or out of this
state, where the principal executive office, whether referred
to as the principal executive office, chief executive office,
or otherwise, of an entity is located.

(78) PROFESSIONAL ASSOCIATION. A professional
association as defined in Chapter 30.

(79) PROFESSIONAL CORPORATION. A domestic or foreign
professional corporation as defined in Chapter 4.

(80) PROFESSIONAL ENTITY. A professional association
and a professional corporation.
(81) PROFESSIONAL SERVICE. Any type of service that may lawfully be performed only pursuant to a license issued by a state court, state regulatory licensing board, or other like agency pursuant to state laws.

(82) PROPERTY. Includes all property, whether real, personal, or mixed, or tangible or intangible, or any right or interest therein.

(83) REAL ESTATE INVESTMENT TRUST. An unincorporated trust, association, or other entity as defined in Chapter 10.

(84) SECRETARY.

(A) The individual designated as secretary of an entity under the entity's governing documents; or

(B) the officer or committee of persons authorized to perform the functions of secretary of an entity without regard to the designated name of the officer or committee.

(85) SECRETARY OF STATE. The Secretary of State of the State of Alabama.

(86) SIGN or SIGNATURE. With the present intent to authenticate or adopt a writing:

(A) to execute or adopt a tangible symbol to a writing, and includes any manual, facsimile, or conformed signature; or

(B) to attach to or logically associate with an electronic transmission an electronic sound, symbol, or process, and includes an electronic signature in an electronic transmission.

(87) STATE. Includes, when referring to a part of the United States, a state or commonwealth, and its agencies and governmental subdivisions, and a territory or possession, and
its agencies and governmental subdivisions, of the United States.

(88) SUBSCRIBER. A person who agrees with or makes an offer to an entity to purchase by subscription an ownership interest in the entity.

(89) SUBSCRIPTION. An agreement between a subscriber and an entity, or a written offer made by a subscriber to an entity before or after the entity's formation, in which the subscriber agrees or offers to purchase a specified ownership interest in the entity.

(90) SUBSIDIARY. An entity at least 50 percent of:

(A) the ownership or membership interest of which is owned by a parent entity; or

(B) the voting power of which is possessed by a parent entity.

(91) TREASURER.

(A) The individual designated as treasurer of an entity under the entity's governing documents; or

(B) the officer or committee of persons authorized to perform the functions of treasurer of an entity without regard to the designated name of the officer or committee.

(92) TRUSTEE. A person who serves as a trustee of a trust, including a real estate investment trust.

(93) UNCERTIFICATED OWNERSHIP INTEREST. An ownership interest in a domestic entity that is not represented by a certificate.

(94) VICE PRESIDENT.

(A) The individual designated as vice president of an
entity under the governing documents of the entity; or
(B) the officer or committee of persons authorized to
perform the functions of the president of the entity on the
death, absence, or resignation of the president or on the
inability of the president to perform the functions of office
without regard to the designated name of the officer or
committee.

(95) WRITING or WRITTEN. Information that is inscribed
on a tangible medium or that is stored in an electronic or
other medium and is retrievable in perceivable form."

"§10A-1-1.08
(a) The provisions of this title as described by this
section may be cited as provided by this section.
(b) Chapter 2A and the provisions of Chapter 1 to the
extent applicable to business corporations may be cited as the
Alabama Business Corporation Law.
(c) Chapter 3 or Chapter 3A and the provisions of
Chapter 1 to the extent applicable to nonprofit corporations
may be cited as the Alabama Nonprofit Corporation Law.
(d) Chapter 4 and the provisions of Chapter 1 to the
extent applicable to professional corporations may be cited as
the Alabama Professional Corporation Law.
(e) Chapter 5A and the provisions of Chapter 1 to the
extent applicable to limited liability companies may be cited
as the Alabama Limited Liability Company Law.
(f) Chapter 8A and the provisions of Chapter 1 to the
extent applicable to general partnerships may be cited as the
Alabama Partnership Law.
(g) Chapter 9A and the provisions of Chapter 1 to the extent applicable to limited partnerships may be cited as the Alabama Limited Partnership Law.

(h) Chapter 10 and the provisions of Chapter 1 to the extent applicable to real estate investment trusts may be cited as the Alabama Real Estate Investment Trust Law.

(i) Chapter 11 and the provisions of Chapter 1 and Chapter 2A to the extent applicable to employee cooperative corporations may be cited as the Alabama Employee Cooperative Corporations Law.

(j) Chapter 17 and the provisions of Chapter 1 to the extent applicable to unincorporated nonprofit associations may be cited as the Alabama Unincorporated Nonprofit Association Law."

§10A-1-3.32

(a) This section applies to domestic entities other than (i) corporations formed pursuant to or governed by Chapter 2A or Chapter 4, and real estate investment trusts formed pursuant to or governed by Chapter 10, each of which is governed by the separate recordkeeping requirements and record inspections provisions of Chapter 2A and (ii) nonprofit corporations formed pursuant to or governed by Chapter 3, or Chapter 3A, limited liability companies formed pursuant to or governed by Chapter 5A, general partnerships formed pursuant to or governed by Chapter 8A, and limited partnerships formed pursuant to or governed by Chapter 9A, each of which are governed by the separate recordkeeping requirements and record inspection provisions set forth in each entity's respective
(b) With respect to a domestic entity covered by this section, the books and records maintained under the chapter of this title applicable to that entity and any other books and records of that entity, wherever situated, are subject to inspection and copying at the reasonable request, and at the expense of, any owner or member or the owner's or member's agent or attorney during regular business hours. The right of access extends to the legal representative of a deceased owner or member or owner or member under legal disability. The entity shall also provide former owners and members with access to its books and records pertaining to the period during which they were owners or members.

(c) The governing documents of a domestic entity may not unreasonably restrict an owner's or member's right to information or access to books and records.

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

"§10A-1-8.01

(a) A conversion of an entity may be accomplished as provided in this section:

(a) The plan of conversion must be in writing, and:
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(1) must include the following:

(A) the name, type of entity, and mailing address of
the principal office of the converting entity, and its unique
identifying number or other designation as assigned by the
Secretary of State, if any, before conversion;

(B) the name, type of entity, and mailing address of
the principal office of the converted entity after conversion;

(C) the terms and conditions of the conversion,
including the manner and basis for converting interests in the
converting entity into any combination of money, interests in
the converted entity, and other consideration allowed in
subsection (b); and

(D) the organizational documents of the converted
entity; and

(2) may include other provisions relating to the
conversion not prohibited by law.

(b) In connection with a conversion, rights or
securities of or interests in a converting entity may be
exchanged for or converted into cash, property, or rights or
securities of or interests in the converted entity, or, in
addition to or in lieu thereof, may be exchanged for or
converted into cash, property, or rights or securities of or
interests in another entity, or may be cancelled.

(c) The plan of conversion of an entity must be
approved as follows:

(1) CORPORATIONS.

(A) a. The terms and conditions of a plan of conversion
of a corporation, other than a nonprofit corporation, If a
corporation is governed by Chapter 2A and that corporation is

a converting entity, the plan of conversion under subsection

(a) must be approved in accordance with the procedures and by

the stockholder vote required by Article 9 of Chapter 2A. If

the governing documents provide for approval of a conversion

by less than all of a corporation's stockholders, approval of

the conversion shall constitute corporate action subject to

appraisal rights pursuant to Article 13 of Chapter 2A. No

conversion of a corporation to a general or limited

partnership may be effected without the consent in writing of

each stockholder who will have personal liability with respect

to the converted entity, notwithstanding any provision in the

governing documents of the converting corporation providing

for less than unanimous stockholder approval for the

corner. If the conversion is a corporate action as

described in Section 10A-2A-13.02, then the rights,

obligations, and procedures under Article 13 of Chapter 2A

shall be applicable to that conversion.

(B)b. The terms and conditions of a plan of conversion

of a nonprofit corporation must be approved by all the

nonprofit corporation's members entitled to vote thereon, if

it is a nonprofit corporation with members with voting rights,
or as otherwise provided in the nonprofit corporation's

governing documents; but in no case may the governing

documents provide for approval by less than a majority of the

members entitled to vote thereon. If the converting nonprofit

corporation has no members, or no members entitled to vote

thereon, the terms and conditions of the plan of conversion
must be approved by a unanimous vote of the board of directors of the converting nonprofit corporation, or as otherwise provided in the governing documents; but in no case may the governing documents provide for approval by less than a majority of the board of directors. If a corporation is governed by Chapter 3A and that corporation is a converting entity, the plan of conversion under subsection (a) must be approved in accordance with Article 13 of Chapter 3A.

(C) If a corporation is not governed by Chapter 2A or Chapter 3A and that corporation is a converting entity, the plan of conversion under subsection (a) must be approved in accordance with the law of the jurisdiction of formation of that corporation.

(2) LIMITED PARTNERSHIPS, INCLUDING LIMITED LIABILITY LIMITED PARTNERSHIPS. The terms and conditions of a plan of conversion of a limited partnership must be approved by all of the partners or as otherwise provided in the partnership agreement. No conversion of a limited partnership to a general partnership may be effected without the consent in writing of each limited partner who will have personal liability with respect to the converted entity, notwithstanding any provision in the limited partnership agreement of the converting limited partnership providing for approval of the conversion by less than all partners. If a limited partnership is a converting entity, the plan of conversion under subsection (a) must be approved in accordance with Article 10 of Chapter 9A.

(3) LIMITED LIABILITY COMPANIES. The terms and conditions of a plan of conversion of a limited liability
company must be approved by all of the limited liability company's members or as otherwise provided in the limited liability company's governing documents. No conversion of a limited liability company to a general or limited partnership may be effected without the consent in writing of each member who will have personal liability with respect to the converted entity, notwithstanding any provision in the governing documents of the converting limited liability company providing for less than unanimous member approval for the conversion. If a limited liability company is a converting entity, the plan of conversion under subsection (a) must be approved in accordance with Article 10 of Chapter 5A.

(4) GENERAL PARTNERSHIPS, INCLUDING LIMITED LIABILITY PARTNERSHIPS. The terms and conditions of a plan of conversion of a general partnership must be approved by all of the partners or as otherwise provided in the partnership agreement. No conversion of a limited liability partnership to a general or limited partnership may be effected without the consent in writing of each partner who will have personal liability with respect to the converted entity, notwithstanding any provision in the partnership agreement of the converting limited liability partnership providing for less than unanimous partner approval for the conversion. If a general partnership is a converting entity, the plan of conversion under subsection (a) must be approved in accordance with Article 9 of Chapter 8A. If a general partnership is the converting entity and that general partnership does not have an effective statement of partnership, statement of not for
profit partnership, or statement of limited liability partnership on file with the Secretary of State, then that general partnership must, before proceeding with a conversion deliver to the Secretary of State for filing, a statement of partnership, statement of not for profit partnership, or statement of limited liability partnership simultaneously with the delivery to the Secretary of State for filing, of a statement of conversion.

(5) REAL ESTATE INVESTMENT TRUST. The terms and conditions of—a the plan of conversion under subsection (a) of a real estate investment trust must be approved by all of the trust's shareholders or as otherwise provided in the trust's declaration of trust; but in no case may the vote required for shareholder approval be set at less than a majority of all the votes entitled to be cast. No conversion of a real estate investment trust to a general or limited partnership may be effected without the consent in writing of each shareholder who will have personal liability with respect to the converted entity, notwithstanding any provision in the declaration of trust of the converting real estate investment trust providing for less than unanimous shareholder approval for the conversion.

(6) OTHER ENTITY. The terms and conditions of a plan of conversion of any entity not specified above must be approved by all owners of the converting entity. No conversion of any entity shall be effected without the consent in writing of any owner of the converting entity who has limited liability and who shall become an owner without limited liability protection
of the converted entity. In the case of an entity not
specified in paragraphs (1) through (5) above, a plan of
conversion under subsection (a) must be approved in writing by
all owners of that entity or, if the entity has no owners,
then by all members of the governing authority of that entity.

(7) ENTITY WITHOUT OWNERS. If the converting entity
does not have owners, the terms and conditions of the plan of
conversion must be unanimously approved by the governing
authority of the converting entity.

(b) The plan of conversion must be in writing, and:
(1) must include the following:
   a. the name, type of entity, and mailing address of the
      principal office of the converting entity, and its unique
      identifying number or other designation as assigned by the
      Secretary of State, if any, before conversion;
   b. the name, type of entity, and mailing address of the
      principal office of the converted entity after conversion;
   c. the terms and conditions of the conversion,
      including the manner and basis for converting interests in the
      converting entity into any combination of money, interests in
      the converted entity, and other consideration allowed in
      subsection (c); and
   d. the organizational documents of the converted
      entity; and
(2) may include other provisions relating to the
conversion not prohibited by law.

(c) In connection with a conversion, rights or
securities of or interests in a converting entity may be
exchanged for or converted into cash, property, or rights or securities of or interests in the converted entity, or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, or rights or securities of or interests in another entity or may be cancelled.

(d) After a plan of conversion is approved and before the conversion takes effect, the plan may be amended or abandoned as provided in the plan, or if the plan does not provide for amendment or abandonment, in the same manner as required for the approval of the plan of conversion originally.

(e) After the plan of conversion is approved pursuant to subsection (a) or (c):

(1) if the converting entity is a domestic filing entity, the converting entity shall deliver to the Secretary of State for filing, a statement of conversion, which must include:

- (A) the name, type of entity, and mailing address of the principal office of the converting entity, and its unique identifying number or other designation as assigned by the Secretary of State, if any, before conversion;

- (B) a statement that the converting entity has been converted into the converted entity;

- (C) the name and type of entity of the converted
the jurisdiction of its governing statute;
(D) the street and mailing address of the principal
office of the converted entity;
(E) the date the conversion is effective under the
governing statute of the converted entity;
(F) a statement that the conversion was approved as
required by this chapter;
(G) a statement that the conversion was approved as
required by the governing statute of the converted entity;
(H) a statement that a copy of the plan of conversion
will be furnished by the converted entity, on request and
without cost, to any owner of the converted or converting
entity; and
(I) if the converted entity is a foreign entity not
authorized to conduct activities and affairs in this state,
the street and mailing address of an office for the purposes
of Section 10A-1-8.04(b); and
(2) if the converted entity is (I) a filing entity, the
converting entity shall deliver to the Secretary of State for
filing a certificate of formation or (II) a general
partnership, the converting entity shall deliver to the
Secretary of State for filing a statement of partnership, a
statement of not for profit partnership, or a statement of
limited liability partnership, as applicable, which
certificate of formation or statement of partnership,
statement of not for profit partnership, or statement of
limited liability partnership, as applicable, must include, in
addition to the information required in the chapter governing
the certificate of formation of the converted entity, the following:

a. (A) The name, mailing address of the principal office of, type of entity, and the jurisdiction of the governing statute of the converting entity and its unique identifying number or other designation as assigned by the Secretary of State, if any, before conversion;

b. (B) A statement that the converting entity has been converted into the converted entity;

c. (C) The filing office where the certificate of formation, if any, of the converting entity is filed and the date of the filing thereof;

d. (D) If the converted entity is one in which one or more owners lack limited liability protection, a statement that each owner of the converting entity who is to become an owner without limited liability protection of the converted entity has consented in writing to the conversion as required by this section; and

e. (E) A statement that the conversion was approved pursuant to this section and, if the converting entity is a foreign entity, that the conversion was approved as required by the governing statute of such foreign entity;

(3) if the converting entity is required pursuant to subsections (e)(2) and (3) to deliver to the Secretary of State for filing both (I) a statement of conversion and (II)(A) a certificate of formation, or (B) a statement of partnership, statement of not for profit partnership, or statement of limited liability partnership, as applicable,
then the converting entity shall deliver the statement of conversion and the certificate of formation or the statement of partnership, statement of not for profit partnership, or statement of limited liability partnership, as applicable, to the Secretary of State simultaneously; and

(4) if the converting entity is a general partnership and that partnership does not have an effective statement of partnership, statement of not for profit partnership, or statement of limited liability partnership on file with the Secretary of State, then the converting entity must deliver to the Secretary of State for filing, a statement of partnership, statement of not for profit partnership, or statement of limited liability partnership simultaneously with the delivery to the Secretary of State for filing, of a statement of conversion.

(e) After a plan of conversion is approved and before the conversion takes effect, the plan may be amended or abandoned as provided in the plan, or if the plan does not provide for amendment or abandonment, in the same manner as required for the approval of the plan of conversion originally.

(f) A conversion becomes effective:

(1) if the converted entity is a domestic filing entity, the effective date determined in accordance with Article 4 of this chapter; and

(2) if the converted entity is not a domestic filing entity, as provided by the governing statute of the converted entity.
(g) When a conversion becomes effective:

(1) all property and contract rights owned by the converting entity remain vested in the converted entity without transfer, reversion, or impairment, and the title to any property vested by deed or otherwise in the converting entity shall not revert or be in any way impaired by reason of the conversion;

(2) all debts, obligations, or other liabilities of the converting entity continue as debts, obligations, or other liabilities of the converted entity and neither the rights of creditors nor the liens upon the property of the converting entity shall be impaired by the conversion;

(3) an action or proceeding pending by or against the converting entity continues as if the conversion had not occurred and the name of the converted entity may, but need not, be substituted for the name of the converting entity in any pending action or proceeding;

(4) except as prohibited by law other than this chapter, all of the rights, privileges, immunities, powers, and purposes of the converting entity remain vested in the converted entity;

(5) except as otherwise provided in the statement of conversion, the terms and conditions of the statement of conversion take effect;

(6) except as otherwise agreed, for all purposes of the laws of this state, the converting entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed
to constitute a dissolution of the converting entity;

(7) for all purposes of the laws of this state, the rights, privileges, powers, interests in property, debts, liabilities, and duties of the converting entity, shall be the rights, privileges, powers, interests in property, debts, liabilities, and duties of the converted entity, and shall not be deemed as a consequence of the conversion, to have been transferred to the converted entity;

(8) if the converted entity is a domestic entity, for all purposes of the laws of this state, the converted entity shall be deemed to be the same entity as the converting entity, and the conversion shall constitute a continuation of the existence of the converting entity in the form of the converted entity;

(9) if the converting entity is a domestic entity, the existence of the converted entity shall be deemed to have commenced on the date the converting entity commenced its existence in the jurisdiction in which the converting entity was first created, formed, organized, incorporated, or otherwise came into being;

(10) the conversion shall not affect the choice of law applicable to matters arising prior to conversion;

(11) if the Secretary of State has assigned a unique identifying number or other designation to the converting entity and (i) the converted entity is formed pursuant to the laws of this state, or (ii) the converted entity is, within 30 days after the effective date of the conversion, registered to transact business in this state, then that unique identifying
number or other designation shall continue to be assigned to
the converted entity; and

(12) An owner with limited liability protection
remains liable, if at all, for an obligation incurred by the
converting entity before the conversion takes effect only to
the extent, if any, the owner would have been liable if the
conversion had not occurred.

An owner with limited liability protection who
becomes an owner without limited liability protection is
liable for an obligation of the converted entity incurred
after conversion to the extent provided for by the laws
applicable to the converted entity.

(13) An owner without limited liability protection who
as a result of a conversion becomes an owner of a converted
entity with limited liability protection remains liable for an
obligation incurred by the converting entity before the
conversion takes effect only to the extent, if any, the owner
would have been liable if the conversion had not occurred.

(h) If:

(1) the converting entity is a filing entity, a general
partnership with an effective statement of partnership,
statement of not for profit partnership, or statement of
limited liability partnership on file with the Secretary of
State, a foreign filing entity registered to transact business
or not for profit activity in this state, or a qualified
foreign limited liability partnership;

(2) the converted entity will be a filing entity, a
general partnership with an effective statement of
partnership, statement of not for profit partnership, or statement of limited liability partnership on file with the Secretary of State, a foreign filing entity registered to transact business or not for profit activity in this state, or a qualified foreign limited liability partnership;

(3) the name of the converting entity and the converted entity are to be the same, other than words, phrases, or abbreviations indicating the type of entity; and

(4) the name of the converted entity complies with Division A of Article 5 or Section 10A-1-7.07, as the case may be;

then, notwithstanding Division B of Article 5, no name reservation shall be required and the converted entity shall for all purposes of this title be entitled to utilize the name of the converting entity without any further action by the converting entity or the converted entity.

(i) A certified copy of the statement of conversion may be delivered to the office of the judge of probate in any county in which the converting entity owned real property, to be recorded without payment and without collection by the judge of probate of any deed or other transfer tax or fee. The judge of probate shall, however, be entitled to collect a filing fee of five dollars ($5). Any filing shall evidence chain of title, but lack of filing shall not affect the converted entity's title to the real property."

"§10A-1-8.02

(a) A merger of two or more entities, whether the other entity or entities are the same or another form of entity, may
be accomplished as provided in this section.

(a) The plan of merger must be in writing, and:

(1) must include the following:

(A) the name, type of entity, and mailing address of the principal office of each entity that is a party to the merger, the jurisdiction of the governing statute of each entity that is a party to the merger, and the respective unique identifying number or other designation as assigned by the Secretary of State, if any, of each entity that is a party to the merger;

(B) the name, type of entity, and mailing address of the principal office of the surviving entity and, if the surviving entity is to be created pursuant to the merger, the surviving entity's organizational documents;

(C) the terms and conditions of the merger, including the manner and basis for converting the interests in each entity that is a party to the merger into any combination of money, interests in the surviving entity, and other consideration as allowed by subsection (b); and

(D) if the surviving entity is not to be created pursuant to the merger, any amendments to be made by the merger to the surviving entity's organizational documents; and

(2) may include other provisions relating to the merger not prohibited by law.

(b) In connection with a merger, rights or securities of or interests in a merged entity may be exchanged for or converted into cash, property, or rights or securities of or interests in the surviving entity, or, in addition to or in
lieu thereof, may be exchanged for or converted into cash, property, or rights or securities of or interests in another entity, or may be cancelled.

(c) The plan of merger of an entity must be approved as follows:

(1) CORPORATIONS.

(A) a. In the case of a corporation, other than a nonprofit corporation, that if a corporation is governed by Chapter 2A and that corporation is a party to a merger, a plan of merger under subsection (a) must be approved in accordance with the procedures and by the stockholder vote required by Article 11 of Chapter 2A. If the governing documents of the corporation provide for approval of a merger by less than all of the corporation's stockholders, approval of the merger shall constitute corporate action subject to appraisal rights pursuant to Article 13 of Chapter 2A, as applicable. No merger of a corporation into a general or limited partnership may be effected without the consent in writing of each stockholder who will have personal liability with respect to the surviving entity, notwithstanding any provision in the governing documents of the corporation that is a party to the merger providing for less than unanimous stockholder approval for the conversion. If the merger is a corporate action as described in Section 10A-2A-13.02, then the rights, obligations, and procedures under Article 13 of Chapter 2A shall be applicable to that merger.

(B) b. In the case of a nonprofit corporation that is a party to the merger, a plan of merger must be approved by all
the nonprofit corporation's members entitled to vote thereon, if it is a nonprofit corporation with members with voting rights, or as otherwise provided in the nonprofit corporation's governing documents; but in no case may the governing documents provide for approval by less than a majority of the members entitled to vote thereon. If the nonprofit corporation has no members, or no members entitled to vote thereon, the plan of merger must be approved by a unanimous vote of the board of directors of the nonprofit corporation, except as otherwise provided in the governing documents; but in no case may the governing documents provide for approval by less than a majority of the board of directors. If a nonprofit corporation is governed by Chapter 3A and that corporation is a party to a merger, a plan of merger under subsection (a) must be approved in accordance with Article 12 of Chapter 3A.

(C) If a corporation is not governed by Chapter 2A or Chapter 3A and that corporation is a party to a merger, the plan of merger under subsection (a) must be approved in accordance with the law of the jurisdiction of formation of that corporation.

(2) LIMITED PARTNERSHIPS. In the case of a limited partnership that is a party to the merger, a plan of merger under subsection (a) must be approved in writing by all of the partners or as otherwise provided in the partnership agreement. No merger of a limited partnership with a general partnership in which the general partnership is the surviving entity may be effected without the consent in writing of each
limited partner who will have personal liability with respect to the surviving entity, notwithstanding any provision in the limited partnership agreement of the merging limited partnership providing for approval of the merger by less than all partners in accordance with Article 10 of Chapter 9A.

(3) LIMITED LIABILITY COMPANIES. In the case of a limited liability company that is a party to the merger, a plan of merger under subsection (a) must be approved in writing by all of the limited liability company's members or as otherwise provided in the limited liability company's governing documents. No merger of a limited liability company with a general or limited partnership that is the surviving entity may be effected without the consent in writing of each member who will have personal liability with respect to the surviving entity, notwithstanding any provision in the governing documents of the merging limited liability company providing for less than unanimous member approval for a merger in accordance with Article 10 of Chapter 5A.

(4) GENERAL PARTNERSHIPS, INCLUDING LIMITED LIABILITY PARTNERSHIPS. In the case of a general partnership that is a party to the merger, a plan of merger under subsection (a) must be approved in writing by all of the partners or as otherwise provided in the partnership agreement. No merger of a limited liability partnership into a general or limited partnership may be effected without the consent in writing of each partner who will have personal liability with respect to the surviving entity, notwithstanding any provision in the partnership agreement of the limited liability partnership
providing for less than unanimous partner approval for a merger accordance with Article 9 of Chapter 8A. All general partnerships, other than a general partnership that is created pursuant to the merger, that are parties to a merger must have on file with the Secretary of State a statement of partnership, statement of not for profit partnership, or statement of limited liability partnership prior to delivering the statement of merger to the Secretary of State for filing.

(5) REAL ESTATE INVESTMENT TRUST. In the case of a real estate investment trust that is a party to the merger, a plan of merger under subsection (a) must be approved in writing by all of the trust's shareholders or as otherwise provided in the trust's declaration of trust, but in no case may the vote required for shareholder approval be set at less than a majority of all the votes entitled to be cast. No merger of a real estate investment trust with a general or limited partnership that is to be the surviving entity may be effected without the consent in writing of each shareholder who will have personal liability with respect to the surviving entity, notwithstanding any provision in the declaration of trust of the converting real estate investment trust providing for less than unanimous shareholder approval for the merger.

(6) OTHER ENTITY. In the case of an entity other than a corporation, limited partnership, limited liability company, general partnership, or real estate investment trust that is a party to the merger, a plan of merger must be approved in writing by all owners of the entity. No merger of any entity shall be effected without the consent in writing of any owner.
who has limited liability as an owner of an entity party to
the merger, and who will have personal liability with respect
to the surviving entity. In the case of an entity not
specified in paragraphs (1) through (5) above, a plan of
merger under subsection (a) must be approved in writing by all
owners of that entity or, if the entity has no owners, then by
all members of the governing authority of that entity.

(b) The plan of merger must be in writing, and:
(1) must include the following:
   a. the name, type of entity, and mailing address of the
      principal office of each entity that is a party to the merger,
      the jurisdiction of the governing statute of each entity that
      is a party to the merger, and the respective unique
      identifying number or other designation as assigned by the
      Secretary of State, if any, of each entity that is a party to
      the merger;
   b. the name, type of entity, and mailing address of the
      principal office of the surviving entity and, if the surviving
      entity is to be created pursuant to the merger, the surviving
      entity's organizational documents;
   c. the terms and conditions of the merger, including
      the manner and basis for converting the interests in each
      entity that is a party to the merger into any combination of
      money, interests in the surviving entity, and other
      consideration as allowed by subsection (c); and
   d. if the surviving entity is not to be created
      pursuant to the merger, any amendments to be made by the
      merger to the surviving entity's organizational documents; and
(2) may include other provisions relating to the merger not prohibited by law.

(c) In connection with a merger, rights or securities of or interests in a merged entity may be exchanged for or converted into cash, property, or rights or securities of or interests in the surviving entity, or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, or rights or securities of or interests in another entity or may be cancelled.

(d) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan, or if the plan does not provide for amendment or abandonment, in the same manner as required for the approval of the plan of merger originally.

(e)(d) After each entity has approved the plan of merger pursuant to subsection (c), the entities must deliver to the Secretary of State for filing a statement of merger signed on behalf of each entity as provided by its governing statute which must include:

(1) the name, type of entity, and mailing address of the principal office of each entity that is a party to the merger, the jurisdiction of the governing statute of each entity that is a party to the merger, and the respective unique identifying number or other designation as assigned by the Secretary of State, if any, of each entity that is a party to the merger;

(2) the name, type of entity, and mailing address of the principal office of the surviving entity, the unique
identifying number or other designation as assigned by the Secretary of State, if any, of the surviving entity, the jurisdiction of the governing statute of the surviving entity, and, if the surviving entity is created pursuant to the merger, a statement to that effect;

(3) for each entity other than a general partnership, the date of the filing of the certificate of formation, if any, and all prior amendments and the filing office or offices, if any, where such is filed;

(4) for each general partnership, the date of the filing of the statement of partnership, statement of not for profit partnership, or statement of limited liability partnership, if any, and all prior amendments and the filing office or offices, if any, where such is filed;

(5) the date the merger is effective under the governing statute of the surviving entity;

(6) if the surviving entity is to be created pursuant to the merger, (i) if it will be a filing entity, its certificate of formation; or (ii) if it will be a non-filing entity, any document that creates the entity that is required to be in a public writing or in the case of a general partnership, its statement of partnership, statement of not for profit partnership, or statement of limited liability partnership, as applicable;

(7) if the surviving entity is a domestic entity that exists before the merger, any amendments provided for in the plan of merger for the organizational documents that created the domestic entity that are required to be in a
public writing, or in the case of a general partnership, its statement of partnership, statement of not for profit partnership, or statement of limited liability partnership, as applicable;

(a)(7) a statement as to each entity that the merger was approved as required by the entity's governing statute;

(b)(8) a statement that a copy of the plan of merger will be furnished by the surviving entity, on request and without cost, to any owner of any entity which is a party to the merger;

(c)(9) if the surviving entity is a foreign entity not authorized to conduct activities and affairs in this state, the street and mailing address of an office for the purposes of Section 10A-1-8.04; and

(d)(10) any additional information required by the governing statute of any entity that is a party to the merger.

(e) Prior to the statement of merger being delivered for filing to the Secretary of State in accordance with subsection (d), all parties to the merger that are general partnerships, other than a general partnership that is created pursuant to the merger, must have on file with the Secretary of State a statement of partnership, statement of not for profit partnership, or statement of limited liability partnership.

(f) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan, or if the plan does not provide for amendment or abandonment, in the same manner as required for
the approval of the plan of merger originally.

(g) If all of the entities that are parties to the merger are domestic entities, the merger becomes effective on the effective date determined in accordance with Article 4. If one or more parties to the merger is a foreign entity, or a foreign entity created by the merger is the surviving entity, the merger shall become effective at the later of:

(1) when all documents required to be filed in foreign jurisdictions to effect the merger have become effective, or

(2) the effective date determined in accordance with Article 4.

(h) When a merger becomes effective:

(1) the surviving entity continues or, in the case of a surviving entity created pursuant to the merger, comes into existence;

(2) each entity that merges into the surviving entity ceases to exist as a separate entity;

(3) except as provided in the plan of merger, all property owned by, and every contract right possessed by, each merging entity that ceases to exist vests in the surviving entity without transfer, reversion, or impairment and the title to any property and contract rights vested by deed or otherwise in the surviving entity shall not revert, be in any way impaired, or be deemed to be a transfer by reason of the merger;

(4) all debts, obligations, and other liabilities of each merging entity, other than the surviving entity, are debts, obligations, and liabilities of the surviving entity,
and neither the rights of creditors, nor any liens upon the
property of any entity that is a party to the merger, shall be
impaired by the merger;

(5) an action or proceeding, pending by or against any
merging entity that ceases to exist continues as if the merger
had not occurred and the name of the surviving entity may, but
need not be substituted in any pending proceeding for the name
of any merging entity whose separate existence ceased in the
merger;

(6) except as prohibited by law other than this chapter
or as provided in the plan of merger, all the rights,
privileges, franchises, immunities, powers, and purposes of
each merging entity, other than the surviving entity, vest in
the surviving entity;

(7) except as otherwise provided in the plan of merger,
the terms and conditions of the plan of merger take effect;

(8) except as otherwise agreed, if a merged entity
ceases to exist, the merger does not dissolve the merged
entity;

(9) if the surviving entity is created pursuant to the
merger:

(i) if it is a general partnership, the statement of
partnership, statement of not for profit partnership, or
statement of limited liability partnership becomes effective;

or

(ii) if it is an entity other than a partnership,
the organizational documents that create the entity become
effective;
(10) the interests in a merging entity that are to be converted in accordance with the terms of the merger into interests, obligations, rights to acquire interests, cash, other property, or any combination of the foregoing, are converted as provided in the plan of merger, and the former holders of interests are entitled only to the rights provided to them by those terms or to any appraisal or dissenters' rights they may have under the governing statute governing the merging entity;

(11) if the surviving entity exists before the merger:

(A) except as provided in the plan of merger, all the property and contract rights of the surviving entity remain its property and contract rights without transfer, reversion, or impairment;

(B) the surviving entity remains subject to all its debts, obligations, and other liabilities; and

(C) except as provided by law other than this chapter or the plan of merger, the surviving entity continues to hold all of its rights, privileges, franchises, immunities, powers, and purposes.

(12) Service of process in an action or proceeding against a surviving foreign entity to enforce an obligation of a domestic entity that is a party to a merger may be made by registered mail addressed to the surviving entity at the address set forth in the statement of merger or by any method provided by the Alabama Rules of Civil Procedure. Any notice or demand required or permitted by law to be served on a domestic entity may be served on the surviving foreign entity.
by registered mail addressed to the surviving entity at the
address set forth in the statement of merger or in any other
manner similar to the procedure provided by the Alabama Rules
of Civil Procedure for the service of process.

(13) **(A)** An owner of an entity with limited liability
protection remains liable, if at all, for an obligation
incurred prior to the merger by an entity that ceases to exist
as a result of the merger only to the extent, if any, that the
owner would have been liable under the laws applicable to
owners of the form of entity that ceased to exist if the
merger had not occurred.

**(B)** An owner with limited liability protection who,
as a result of the merger, becomes an owner without limited
liability protection of the surviving entity is liable for an
obligation of the surviving entity incurred after merger to
the extent provided for by the laws applicable to the
surviving entity.

(14) An owner without limited liability protection of
an entity that ceases to exist as a result of a merger and who
as a result of the merger becomes an owner of a surviving
entity with limited liability protection remains liable for an
obligation of the entity that ceases to exist incurred before
the merger takes effect only to the extent, if any, that the
owner would have been liable if the merger had not occurred.

**(i)** A certified copy of the statement of merger
required to be filed under this section may be filed in the
real estate records in the office of the judge of probate in
any county in which any merged entity owned real property,
without payment and without collection by the judge of probate of any deed or other transfer tax or fee. The judge of probate, however, shall be entitled to collect a filing fee of five dollars ($5). Any such filing shall evidence chain of title, but lack of filing shall not affect the surviving entity's title to such real property."

"§10A-1-9.01

This article does not apply to business corporations, nonprofit corporations, limited liability companies, general partnerships, and limited partnerships."


"§10A-2A-1.40

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

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

(2) BENEFICIAL STOCKHOLDER means a person who owns the beneficial interest in stock, which is either a record stockholder or a person on whose behalf shares of stock are registered in the name of an intermediary or nominee.
(3) CERTIFICATE OF INCORPORATION means the certificate of incorporation described in Section 10A-2A-2.02, all amendments to the certificate of incorporation, and any other documents permitted or required to be delivered for filing by a corporation with the Secretary of State under this chapter or Chapter 1 that modify, amend, supplement, restate, or replace the certificate of incorporation. After an amendment of the certificate of incorporation or any other document filed under this chapter or Chapter 1 that restates the certificate of incorporation in its entirety, the certificate of incorporation shall not include any prior documents. When used with respect to a corporation incorporated and existing on December 31, 2019, under a predecessor law of this state, the term "certificate of incorporation" means articles of incorporation, charter, or similar incorporating document, and all amendments and restatements to the certificate of incorporation, charter, or similar incorporating document. When used with respect to a foreign corporation, a nonprofit corporation, or a foreign nonprofit corporation, the "certificate of incorporation" of such an entity means the document of such entity that is equivalent to the certificate of incorporation of a corporation. The term "certificate of incorporation" as used in this chapter is synonymous to the term "certificate of formation" used in Chapter 1.

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

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

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

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

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

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

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

(11) ELIGIBLE ENTITY means an unincorporated entity,
foreign unincorporated entity, nonprofit corporation, or
foreign nonprofit corporation.
(12) ELIGIBLE INTERESTS means interests or memberships.

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

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

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

(16) FILING ENTITY means an unincorporated entity, other than a limited liability partnership, that is of a type that is created by filing a public organic record or is required to file a public organic record that evidences its creation.

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

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

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

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

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

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

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

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

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

(24) KNOWLEDGE is determined as follows:

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

(1) has actual knowledge of it; or

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

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

(1) knows of it;

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

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

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

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

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

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

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

(3) conversion, merger, or interest exchange under
Article 9 or Article 11, 90 days after a statement of
conversion, or statement of merger or interest exchange
becomes effective;

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

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

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

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

(25) MEANS denotes an exhaustive definition.
(26) MEMBERSHIP means the rights of a member in a nonprofit corporation or foreign nonprofit corporation.

(27) MERGER means a transaction pursuant to Section 10A-2A-11.02.

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

(29) (28) PRINCIPAL OFFICE means the office (in or out of this state) so designated in the annual report where the principal executive offices of a corporation or foreign corporation are located.

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

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

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

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

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

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

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

STOCKHOLDER means a record stockholder.

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

(39) TYPE OF ENTITY means a generic form of entity:

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

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

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

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

(43) VOTING GROUP means all stock of one or more classes or series that under the certificate of incorporation or this chapter are entitled to vote and be counted together.

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collectively on a matter at a meeting of stockholders. All stock entitled by the certificate of incorporation or this chapter to vote generally on the matter is for that purpose a single voting group.

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

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

"§10A-2A-1.43

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

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

(2) Section 10A-2A-7.44, does not have (i) a material interest in the outcome of the proceeding, or (ii) a material relationship with a person who has such an interest;

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

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

(b) For purposes of this section:

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

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

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

(1) nomination or election of the director to the
current board of directors by any director who is not a
qualified director with respect to the matter (or by any
person that has a material relationship with that director),
acting alone or participating with others; or
(2) service as a director of another corporation of
which a director who is not a qualified director with respect
to the matter (or any individual who has a material
relationship with that director), is or was also a director.
(3) with respect to action to be taken under Section
10A-2A-7.44, status as a named defendant, as a director
against whom action is demanded, or as a director who approved
the conduct being challenged.
§10A-2A-1.51
(a) If the defective corporate action ratified under
this Division D of Article 1 would have required under any
other section of this chapter a filing in accordance with this
chapter, then, regardless of whether a filing was previously
made in respect of such defective corporate action and in lieu
of a filing otherwise required by this chapter, the
corporation shall file a certificate of validation in
accordance with this section, and that certificate of
validation shall serve to amend or substitute for any other
filing with respect to such defective corporate action
required by this chapter.
(b) The certificate of validation must set forth:
(1) the name of the corporation;
(2) the unique identifying number or other designation
as assigned by the Secretary of State;

(1) the defective corporate action that is the subject of the certificate of validation (including, in the case of any defective corporate action involving the issuance of putative stock, the number and type of shares of putative stock issued and the date or dates upon which that putative stock was purported to have been issued);

(2) the date of the defective corporate action;

(3) the nature of the failure of authorization in respect of the defective corporate action;

(4) a statement that the defective corporate action was ratified in accordance with Section 10A-2A-1.47, including the date on which the board of directors ratified that defective corporate action and the date, if any, on which the stockholders approved the ratification of that defective corporate action; and

(5) the information required by subsection (c).

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

(1) if a filing was previously made in respect of the defective corporate action and no changes to that filing are required to give effect to the ratification of that defective corporate action in accordance with Section 10A-2A-1.47, the certificate of validation must set forth (i) the name, title, and filing date of the filing previously made and any certificate of correction to that filing, and (ii) a statement that a copy of the filing previously made, together with any certificate of correction to that filing, is attached as an
(2) if a filing was previously made in respect of the defective corporate action and that filing requires any change to give effect to the ratification of that defective corporate action in accordance with Section 10A-2A-1.47, the certificate of validation must set forth (i) the name, title, and filing date of the filing previously made and any certificate of correction to that filing, and (ii) a statement that a filing containing all of the information required to be included under the applicable section or sections of this chapter to give effect to that defective corporate action is attached as an exhibit to the certificate of validation, and (iii) the date and time that filing is deemed to have become effective; or

(3) if a filing was not previously made in respect of the defective corporate action and the defective corporate action ratified under Section 10A-2A-1.47 would have required a filing under any other section of this chapter, the certificate of validation must set forth (i) a statement that a filing containing all of the information required to be included under the applicable section or sections of this chapter to give effect to that defective corporate action is attached as an exhibit to the certificate of validation, and (ii) the date and time that filing is deemed to have become effective."

"§10A-2A-2.02

Section 10A-1-3.05 shall not apply to this chapter. Instead:
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(a) The certificate of incorporation must set forth:

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

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

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

(4) the name and address of each incorporator.

(b) The certificate of incorporation may set forth:

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

(2) provisions not inconsistent with law regarding:

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

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

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

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

(v) subject to subsection (f), a provision imposing
personal liability for the debts of the corporation on its
stockholders to a specified extent and upon specified
conditions; otherwise, the stockholders of a corporation shall
not be personally liable for the payment of the corporation's
debts, except as they may be liable by reason of their own conduct or acts;

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

(4) a provision eliminating or limiting the liability of a director to the corporation or its stockholders for money damages for any action taken, or any failure to take any action, as a director, except liability for (i) the amount of a financial benefit received by a director to which the director is not entitled; (ii) an intentional infliction of harm on the corporation or the stockholders; (iii) a violation of Section 10A-2A-8.32; or (iv) an intentional violation of criminal law;

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

(6) a provision limiting or eliminating any duty of a director or any other person to offer the corporation the right to have or participate in any, or one or more classes or categories of, business opportunities, before the pursuit or taking of the opportunity by the director or other person;
provided that any application of that provision to an officer or a related person of that officer (i) also requires approval of that application by the board of directors, subsequent to the effective date of the provision, by action of qualified directors taken in compliance with the same procedures as are set forth in Section 10A-2A-8.60, and (ii) may be limited by the authorizing action of the board of directors.

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

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

(e) As used in this section, "related person" has the meaning specified in Section 10A-2A-8.60 means:

(i) the individual's spouse;

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

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

(iv) an entity (other than the corporation or an entity controlled by the corporation) controlled by the individual or any person specified above in this definition;

(v) a domestic or foreign:

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

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

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

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

(f) The certificate of incorporation may not contain
any provision that would impose liability on a stockholder for
the attorney's fees or expenses of the corporation or any
other party in connection with an internal corporate claim, as
defined in Section 10A-2A-2.07(d).

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

§10A-2A-2.06

(a) Unless the certificate of incorporation provides
otherwise, the board of directors may adopt bylaws may be
adopted to be effective only in an emergency defined in
subsection (d). The emergency bylaws, which are subject to
amendment or repeal by the stockholders, may make all
provisions necessary for managing the corporation during the
emergency, including:

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

(2) quorum requirements for the meeting; and
(3) designation of additional or substitute directors.

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

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

(1) binds the corporation; and

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

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

"§10A-2A-7.04

(a) Unless otherwise provided in the certificate of incorporation, any action required or permitted by this chapter to be taken at any meeting of the stockholders may be taken without a meeting, and without prior notice, if one or more consents in writing setting forth the action so taken are signed by the holders of outstanding stock having not less than the minimum number of votes that would be required to authorize or take the action at a meeting at which all shares of stock entitled to vote on the action were present and voted; provided, however, that if a corporation's certificate of incorporation authorizes stockholders to cumulate their votes when electing directors pursuant to Section 10A-2A-7.28, directors may not be elected by less than unanimous written consent. The action must be evidenced by one or more written
consents describing the action taken, signed by the
stockholders approving the action and delivered to the
corporation for filing by the corporation with the minutes or
corporate records.

(b) If not otherwise fixed under Section 10A-2A-7.07
and if prior action by the board of directors is not required
respecting the action to be taken without a meeting, the
record date for determining the stockholders entitled to take
action without a meeting shall be the first date on which a
signed written consent is delivered to the corporation. If not
otherwise fixed under Section 10A-2A-7.07 and if prior action
by the board of directors is required respecting the action to
be taken without a meeting, the record date shall be the close
of business on the day the resolution of the board of
directors taking the prior action is adopted. No written
consent shall be effective to take the corporate action
referred to therein unless, within 60 days of the earliest
date on which a consent is delivered to the corporation as
required by this section, written consents signed by
sufficient stockholders to take the action have been delivered
to the corporation. Any person executing a consent may
provide, whether through instruction to an agent or otherwise,
that such consent will be effective at a future time,
including a time determined upon the happening of an event,
occuring not later than 60 days after such instruction is
given or such provision is made, if evidence of the
instruction or provision is provided to the corporation. A
written consent may be revoked by a writing to that effect
delivered to the corporation before unrevoked written consents sufficient in number to take the corporate action have been delivered to the corporation.

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

(d) If this chapter requires that notice of a proposed action be given to nonvoting stockholders and the action is to be taken by written consent of the voting stockholders, the corporation shall give its nonvoting stockholders written notice of the action not more than 10 days after (i) written consents sufficient to take the action have been delivered to the corporation, or (ii) any later date that tabulation of consents is completed pursuant to an authorization under subsection (c). The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of this chapter, would have been required to be sent to nonvoting stockholders in a notice of a meeting at which the proposed action would have been submitted to the stockholders for action.

(e) If action is taken by less than unanimous written consent of the voting stockholders, the corporation shall give
its nonconsenting voting stockholders written notice of the action not more than 10 days after (i) written consents sufficient to take the action have been delivered to the corporation, or (ii) any later date that tabulation of consents is completed pursuant to an authorization under subsection (c). The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of this chapter, would have been required to be sent to voting stockholders in a notice of a meeting at which the action would have been submitted to the stockholders for action.

(f) The notice requirements in subsections (d) and (e) shall not delay the effectiveness of actions taken by written consent, and a failure to comply with those notice requirements shall not invalidate actions taken by written consent, provided that this subsection shall not be deemed to limit judicial power to fashion any appropriate remedy in favor of a stockholder adversely affected by a failure to give the notice within the required time period."

"§10A-2A-7.20

(a) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its stockholders who are entitled to notice of the stockholders' meeting. If the board of directors fixes a different record date under Section 10A-2A-7.07(e) to determine the stockholders entitled to vote at the meeting, a corporation also shall prepare an alphabetical list of the names of all its stockholders who are entitled to vote at the
meeting. Each list must be arranged by voting group (and
within each voting group by class or series of stock) and
contain the address of, and number and class or series of
shares of stock held by, each stockholder, and if the notice
or other communications regarding the meeting have been or
will be sent by the corporation to a stockholder by electronic
mail or other electronic transmission, the electronic mail or
other electronic transmission address of that stockholder.

(b) The list of stockholders entitled to notice and to vote shall be available for inspection by any stockholder,
beginning two business days after notice of no later than the
tenth day before each meeting of stockholders; provided,
however, if the record date for determining the stockholders
entitled to vote is less than 10 days before the meeting is
given for which the list was prepared and continuing through
the meeting date, the list shall reflect the stockholders
classified as of the tenth day before the meeting date.
The list shall be made available (i) at the corporation's principal
office or at a place identified in the meeting notice in the
city where the meeting will be held or (ii) on a reasonably
accessible electronic network, provided that the information
required to gain access to such list is provided with the
notice of the meeting. The list of stockholders entitled to vote shall be similarly available for inspection promptly
after the record date for voting. In the event that the
corporation determines to make a list of stockholders
available on an electronic network, the corporation may take
reasonable steps to ensure that such information is available
only to stockholders of the corporation. A stockholder, or the stockholder's agent or attorney, is entitled on written demand to inspect and, subject to the requirements of Section 10A-2A-16.02(c), to copy a list of stockholders, during regular business hours and at the stockholder's expense, during the period it is available for inspection. A corporation may satisfy the stockholder's right to copy a list of stockholders by furnishing a copy in the manner described in Section 10A-2A-16.03(b). A stockholder and the stockholder's agent or attorney who inspects or is furnished a copy of a list of stockholders under this subsection (b) or under subsection (c) or who copies the list under this subsection (b) may use the information on that list only for purposes related to the meeting and its subject matter and must keep the information on that list confidential.

(c) If the meeting is to be held at a place, the corporation shall make the list of stockholders entitled to vote available at the meeting and any adjournment, and any stockholder, or the stockholder's agent or attorney, is entitled to inspect the list at any time during the meeting and any adjournment. If the meeting is to be held solely by means of remote communication, then such list shall also be available for such inspection during the meeting and any adjournment on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. The corporation may satisfy its obligation to make such list available for inspection during a meeting by furnishing a copy of the list in the
manner described in Section 10A-2A-16.03(b) to the
stockholders prior to the meeting.

(d) (c) If the corporation refuses to allow a
stockholder, or the stockholder's agent or attorney, to
inspect a list of stockholders before or at the meeting or any
adjournment (or copy a list as permitted by subsection (b)),
the designated court, and if none, the circuit court for the
county in which the corporation's principal office is located
in this state, and if none in this state, the circuit court
for the county in which the corporation's most recent
registered office is located, on application of the
stockholder, may summarily order the inspection or copying at
the corporation's expense and may postpone the meeting for
which the list was prepared until the inspection or copying is
complete.

(e) (d) Refusal or failure to prepare or make available
a list of stockholders does not affect the validity of action
taken at the meeting.

(f) (e) The stock transfer records of the corporation
shall be prima facie evidence as to who are the stockholders
entitled to examine the stockholders' list or transfer records
or to vote at any meeting of stockholders."

"§10A-2A-7.32

(a) An agreement among the stockholders of a
corporation that complies with this section is effective among
the stockholders and the corporation even though it is
inconsistent with one or more other provisions of this chapter
in that it:
(1) eliminates the board of directors or restricts the
discretion or powers of the board of directors;
(2) governs the authorization or making of
distributions, regardless of whether they are in proportion to
ownership of stock, subject to the limitations in Section
10A-2A-6.40;
(3) establishes who shall be directors or officers of
the corporation, or their terms of office or manner of
selection or removal;
(4) governs, in general or in regard to specific
matters, the exercise or division of voting power by or
between the stockholders and directors or by or among any of
them, including use of weighted voting rights or director
proxies;
(5) establishes the terms and conditions of any
agreement for the transfer or use of property or the provision
of services between the corporation and any stockholder,
director, officer, or employee of the corporation or among any
of them;
(6) transfers to one or more stockholders or other
persons all or part of the authority to exercise the corporate
powers or to manage the business and affairs of the
corporation, including the resolution of any issue about which
there exists a deadlock among directors or stockholders;
(7) requires dissolution of the corporation at the
request of one or more of the stockholders or upon the
occurrence of a specified event or contingency; or
(8) otherwise governs the exercise of the corporate
powers or the management of the business and affairs of the corporation or the relationship among the stockholders, the directors and the corporation, or among any of them, and is not contrary to public policy.

(b) An agreement authorized by this section shall be:

(1) as set forth (i) in the certificate of incorporation or bylaws and approved by all persons who are stockholders at the time of the agreement, or (ii) in a written agreement that is signed by all persons who are stockholders at the time of the agreement and is made known to the corporation; and

(2) subject to amendment only by all persons who are stockholders at the time of the amendment, unless the agreement provides otherwise.

(c) The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding stock or in the information required by Section 10A-1-3.45. If at the time of the agreement the corporation has stock outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement as required by this subsection shall not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of stock who, at the time of purchase, did not have knowledge of the existence of the agreement shall be entitled to rescission of the purchase. A purchaser shall be deemed to have knowledge of the existence of the agreement if
its existence is noted on the certificate or if the stock is not represented by a certificate, the information required by Section 10A-1-3.45 is delivered to the purchaser at or before the time of purchase of the stock. An action to enforce the right of rescission authorized by this subsection shall be commenced within the earlier of 90 days after discovery of the existence of the agreement or two years after the time of purchase of the stock.

(d) If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's certificate of incorporation or bylaws, adopt an amendment to the certificate of incorporation or bylaws, without stockholder action, to delete the agreement and any references to it.

(e) An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom the discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement. An agreement authorized by this section that eliminates the board of directors shall impose on the person or persons in whom the discretion or powers of the directors are vested the liability for acts or omissions as are imposed by law on directors.

(f) The existence or performance of an agreement authorized by this section shall not be a ground for imposing personal liability on any stockholder for the acts or debts of
the corporation even if the agreement or its performance
treats the corporation as if it were a partnership or results
in failure to observe the corporate formalities otherwise
applicable to the matters governed by the agreement.

(g) Incorporators or subscribers for stock may act as
stockholders with respect to an agreement authorized by this
section if no stock has been issued when the agreement is
made.

(h) Limits, if any, on the duration of an agreement
authorized by this section must be set forth in the
agreement."

"§10A-2A-8.10

(a) Unless the certificate of incorporation provides

otherwisE Except as otherwise provided in Section
10A-2A-8.10(b) or the certificate of incorporation, if a
vacancy occurs on the board of directors, including a
vacancy resulting from an increase in the number of directors:

(1) the stockholders may fill the vacancy;
(2) the board of directors may fill the vacancy; or
(3) if the directors remaining in office are less than
a quorum, they may fill the vacancy by the affirmative vote of
a majority of all the directors remaining in office.

(b) If the vacant office was held by a director elected
by a voting group of stockholders, only the holders of stock
of that voting group are entitled to vote to fill the vacancy
if it is filled by the stockholders, and only the remaining
directors elected by that voting group, even if less than a
quorum, are entitled to fill the vacancy if it is filled by
the directors.

(c) A vacancy that will occur at a specific later date
(by reason of a resignation effective at a later date under
Section 10A-2A-8.07(b) or otherwise) may be filled before the
vacancy occurs but the new director may not take office until
the vacancy occurs."

§10A-2A-8.21

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

(b) Action taken under this section is the act of the
board of directors when one or more consents signed by all the
directors are delivered to the corporation. The consent may
specify a later time as the time at which the action taken is
to be effective. Any director executing a consent may provide,
whether through instruction to an agent or otherwise, that
such consent will be effective at a future time, including a
time determined upon the happening of an event, occurring not
later than 60 days after such instruction is given or such
provision is made, if evidence of the instruction or provision
is provided to the corporation. A director's consent may be
withdrawn by a revocation signed by the director and delivered
to the corporation before delivery to the corporation of
unrevoked written consents signed by all the directors.

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

"§10A-2A-8.22

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

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

"§10A-2A-8.24

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

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

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

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

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

"§10A-2A-8.59
Division A of Article 6 of Chapter 1 shall not apply to this chapter. Instead, a corporation may provide indemnification or advance expenses to a director or an officer only as permitted by this Division E of this Article 8."
"§10A-2A-10.06
Division B of Article 3 of Chapter 1 shall not apply to
this chapter. Instead:

(a) After an amendment to the certificate of
incorporation has been adopted and approved in the manner
required by this chapter and by the certificate of
incorporation, the corporation shall deliver to the Secretary
of State for filing a certificate of amendment, which must set
forth:

(1) the name of the corporation;

(2) the text of each amendment adopted, or the
information required by Section 10A-2A-1.20(c)(5);

(3) if an amendment provides for an exchange,
reclassification, or cancellation of issued stock, provisions
for implementing the amendment if not contained in the
amendment itself, (which may be made dependent upon facts
objectively ascertainable outside the certificate of amendment
in accordance with Section 10A-2A-1.20(c)(5));

(4) the date of each amendment's adoption;

(5) if an amendment:

(i) was adopted by the incorporators or board of
directors without stockholder approval, a statement that the
amendment was duly adopted by the incorporators or by the
board of directors, as the case may be, and that stockholder
approval was not required;

(ii) required approval by the stockholders, a statement
that the amendment was duly approved by the stockholders in
the manner required by this chapter and by the certificate of
incorporation; or

(iii) is being filed pursuant to Section 10A-2A-1.20(c)(5), a statement to that effect; and

(6) the unique identifying number or other designation as assigned by the Secretary of State.

(b) A certificate of amendment shall take effect at the effective date determined in accordance with Article 4 of Chapter 1."

"§10A-2A-10.07
Division B of Article 3 of Chapter 1 shall not apply to this chapter. Instead:

(a) A corporation's board of directors may restate its certificate of incorporation at any time, without stockholder approval, to consolidate all amendments into a single document.

(b) If the restated certificate of incorporation includes one or more new amendments that require stockholder approval, the amendments shall be adopted and approved as provided in Section 10A-2A-10.03.

(c) A corporation that restates its certificate of incorporation shall deliver to the Secretary of State for filing a certificate of restatement setting forth:

(1) the name of the corporation;

(2) the text of the restated certificate of incorporation;

(3) a statement that the restated certificate of incorporation consolidates all amendments into a single document;
(4) if a new amendment is included in the restated certificate of incorporation, the statements required under Section 10A-2A-10.06 with respect to the new amendment; and

(5) the unique identifying number or other designation as assigned by the Secretary of State.

(d) The duly adopted restated certificate of incorporation supersedes the original certificate of incorporation and all amendments to the certificate of incorporation.

(e) The Secretary of State may certify the restated certificate of incorporation as the certificate of incorporation currently in effect, without including the statements required by subsection (c)(4)."

"§10A-2A-10.08
Division B of Article 3 of Chapter 1 shall not apply to this chapter. Instead:

(a) A corporation's certificate of incorporation may be amended without action by the board of directors or stockholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under the authority of a law of the United States if the certificate of incorporation after the amendment only contains provisions required or permitted by Section 10A-2A-2.02.

(b) The individual or individuals designated by the court shall deliver to the Secretary of State for filing a certificate of amendment setting forth:

(1) the name of the corporation;

(2) the text of each amendment approved by the court;
(3) the date of the court's order or decree approving the certificate of amendment;

(4) the title of the reorganization proceeding in which the order or decree was entered;

(5) a statement that the court had jurisdiction of the proceeding under federal statute; and

(6) the unique identifying number or other designation as assigned by the Secretary of State.

(c) Stockholders of a corporation undergoing reorganization do not have dissenters' rights except as and to the extent provided in the reorganization plan.

(d) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan."

"§10A-2A-11.02

(a) A corporation may merge with one or more other constituent organizations pursuant to this article, and a plan of merger, if:

(1) the governing statute of each of the other organizations authorizes the merger;

(2) the merger is not prohibited by the law of a jurisdiction that enacted any of those governing statutes; and

(3) each of the other organizations complies with its governing statute in effecting the merger.

(b) A plan of merger must be in writing and must include:

(1) the name, type of organization, and mailing address
of the principal office of each constituent organization, the
jurisdiction of the governing statute of each constituent
organization, and the respective unique identifying number or
other designation as assigned by the Secretary of State, if
any, of each constituent organization;

(2) the name, type of organization, and mailing address
of the principal office of the surviving organization, the
unique identifying number or other designation as assigned by
the Secretary of State, if any, of the surviving organization,
the jurisdiction of the governing statute of the surviving
organization, and, if the surviving organization is created
pursuant to the merger, a statement to that effect;

(3) the terms and conditions of the merger, including
the manner and basis for converting the stock or eligible
interests in each constituent organization into any
combination of money, stock, eligible interests in the
surviving organization, and other consideration as allowed by
subsection (c);

(4) if the surviving organization is to be created
pursuant to the merger, the surviving organization's
organizational documents; and

(5) if the surviving organization is not to be created
pursuant to the merger, any amendments to be made by the
merger to the surviving organization's organizational
documents.

(c) In connection with a merger, rights, securities,
stock, or eligible interests, *if any*, in a constituent
organization may be exchanged for or converted into cash,
property, rights, securities, stock, or eligible interests, if any, in the surviving organization, or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights, securities, stock, or eligible interests, if any, in another organization, or may be cancelled.

(d) In addition to the requirements of subsection (b), a plan of merger may contain any other provision not prohibited by law.

(e) Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with Section 10A-2A-1.20(c).

(f) A plan of merger may be amended only with the consent of each constituent organization, except as provided in the plan. A domestic constituent organization may approve an amendment to a plan:

(1) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) in the manner provided in the plan, except that if the plan has been approved by the stockholders, members, or interest holders that were entitled to vote on, consent to, or approve of, the plan, then those stockholders, members, or interest holders are entitled to vote on, consent to, or approve of any amendment of the plan that will change:

(i) the amount or kind of stock or other securities, eligible interests, obligations, rights to acquire stock, other securities or eligible interests, cash, or other property to be received under the plan by the stockholders,
members, or interest holders of a constituent organization;

(ii) the certificate of incorporation of any corporation, foreign corporation, nonprofit corporation, foreign nonprofit corporation or the organizational documents of any unincorporated entity or foreign unincorporated entity, that will be the surviving organization, except for changes permitted by Section 10A-2A-10.05 or by comparable provisions of the governing statute of the foreign corporation, nonprofit corporation, foreign nonprofit corporation, unincorporated entity, or foreign unincorporated entity; or

(iii) any of the other terms or conditions of the plan if the change would adversely affect the stockholders, members, or interest holders in any material respect."

§10A-2A-11.06

(a) After a plan of merger has been adopted and approved as required by this article, then a statement of merger shall be signed by each party to the merger except as provided in Section 10A-2A-11.05(a). The statement of merger must set forth:

(1) the name, type of organization, and mailing address of the principal office of each constituent organization, the jurisdiction of the governing statute of each constituent organization, and the respective unique identifying number or other designation as assigned by the Secretary of State, if any, of each constituent organization;

(2) the name, type of organization, and mailing address of the principal office of the surviving organization, the unique identifying number or other designation as assigned by
the Secretary of State, if any, of the surviving organization, the jurisdiction of the governing statute of the surviving organization, and, if the surviving organization is created pursuant to the merger, a statement to that effect;

(3) the date of the filing of the certificate of formation, if any, and all prior amendments and the filing office or offices, if any, and where the certificate of formation is filed of each constituent organization which was formed under the laws of this state;

(4)(3) the date the merger is effective under the governing statute of the surviving organization;

(5)(4) if the surviving organization is to be created pursuant to the merger:

(A) if it will be a corporation, the corporation's certificate of incorporation; or

(B) if it will be an organization other than a corporation, any organizational document that creates the organization that is required to be in a public writing or in the case of a limited liability partnership, its statement of limited liability partnership;

(6)(5) if the surviving organization exists before the merger, any amendments provided for in the plan of merger for the organizational document that created the organization that are in a public writing;

(7)(6) a statement as to each constituent organization that the merger was approved as required by the organization's governing statute;

(8)(7) if the surviving organization is a foreign
organization not authorized to conduct activities and affairs in this state, the street and mailing address of an office for the purposes of Section 10A-2A-11.07(c);

(9)-(8) any additional information required by the governing statute of any constituent organization;

10(9) if the plan of merger required approval by the stockholders of a corporation that is a constituent organization, a statement that the plan was duly approved by the stockholders and, if voting by any separate voting group was required, by each separate voting group, in the manner required by this chapter and the certificate of incorporation;

10(10) if the plan of merger did not require approval by the stockholders of a corporation that is a constituent organization, a statement to that effect; and

10(11) a statement that the plan of merger will be furnished by the surviving organization, on request and without cost, to any owner of any constituent organization which is a party to the merger.

(b) After a plan of stock exchange in which the acquired entity is a corporation has been adopted and approved as required by this chapter, a statement of stock exchange shall be signed by the acquired entity and the acquiring entity. The statement of stock exchange shall set forth:

10(1) the name and mailing address of the principal office of the acquired entity, and the jurisdiction of its governing statute, and its unique identifying number or other designation as assigned by the Secretary of State, if any;

10(2) the name, jurisdiction of formation, and type of
entity of the corporation or foreign corporation that is the acquiring entity;

(3) a statement that the plan of stock exchange was duly approved by the acquired entity by:

(i) the required vote or consent of each class or series of stock included in the exchange; and

(ii) the required vote or consent of each other class or series of stock entitled to vote on approval of the exchange by the certificate of incorporation of the acquired entity; and

(4) if the stock exchange did not require the approval by the stockholders of a corporation that is a party to the stock exchange, a statement to that effect.

(c) In addition to the requirements of subsection (a) or subsection (b), a statement of merger or stock exchange may contain any other provision not prohibited by law.

(d) The statement of merger or stock exchange shall be delivered to the Secretary of State for filing and, subject to subsection (e), the merger or stock exchange shall take effect at the effective date determined in accordance with Article 4 of Chapter 1.

(e) With respect to a merger in which one or more foreign organizations is a constituent organization or a foreign organization created by the merger is the surviving organization, the merger itself shall become effective at the later of:

(1) when all documents required to be filed in foreign jurisdictions to effect the merger have become effective, or
(2) when the statement of merger takes effect.

(f) A statement of merger filed under this section may be combined with any filing required under the governing statute governing any domestic organization involved in the transaction if the combined filing satisfies the requirements of this section, the other governing statute, and Article 4 of Chapter 1.

(g) After a merger becomes effective, if the surviving organization is a corporation, then, except for certified copies of the statement of merger permitted to be delivered to the judge of probate for filing pursuant to subsection (h), all filing instruments required to be filed under this title regarding that surviving organization shall be delivered for filing to the Secretary of State.

(h) (g) A certified copy of the statement of merger required to be filed under this section may be filed in the real estate records in the office of the judge of probate in any county in which any constituent organization owned real property, without payment and without collection by the judge of probate of any deed or other transfer tax or fee. The judge of probate, however, shall be entitled to collect the filing fee of five dollars ($5). Any filing shall evidence chain of title, but lack of filing shall not affect the surviving organization's title to real property."

"§10A-2A-12.02

(a) A sale, lease, exchange, or other disposition of assets, other than a disposition described in Section 10A-2A-12.01, requires approval of the corporation's
stockholders if the disposition would leave the corporation
without a significant continuing business activity. A
corporation will conclusively be deemed to have retained a
significant continuing business activity if it retains a
business activity that represented, for the corporation and
its subsidiaries on a consolidated basis, at least (i) 25
percent of total assets at the end of the most recently
completed fiscal year, and (ii) either 25 percent of either
income from continuing operations before taxes or 25 percent
of revenues from continuing operations, in each case for the
most recently completed fiscal year.

(b) To obtain the approval of the stockholders under
subsection (a) the board of directors shall first adopt a
resolution authorizing the disposition. The disposition shall
then be approved by the stockholders. In submitting the
disposition to the stockholders for approval, the board of
directors shall recommend that the stockholders approve the
disposition, unless (i) the board of directors makes a
determination that because of conflicts of interest or other
special circumstances it should not make a recommendation, or
(ii) Section 10A-2A-8.26 applies. If either (i) or (ii)
applies, the board of directors shall inform the stockholders
of the basis for its so proceeding.

(c) The board of directors may set conditions for the
approval by the stockholders of a disposition or the
effectiveness of the disposition.

(d) If a disposition is required to be approved by the
stockholders under subsection (a), and if the approval is to
be given at a meeting, the corporation shall notify each
stockholder, regardless of whether entitled to vote, of the
meeting of stockholders at which the disposition is to be
submitted for approval. The notice must state that the
purpose, or one of the purposes, of the meeting is to consider
the disposition and must contain a description of the
disposition, including the terms and conditions of the
disposition and the consideration to be received by the
corporation.

(e) Unless the certificate of incorporation or the
board of directors acting pursuant to subsection (c) requires
a greater vote or a greater quorum, the approval of a
disposition by the stockholders shall require the approval of
the stockholders at a meeting at which a quorum exists
consisting of a majority of the votes entitled to be cast on
the disposition.

(f) After a disposition has been approved by the
stockholders under this Article 12, and at any time before the
disposition has been consummated, it may be abandoned by the
corporation without action by the stockholders, subject to any
contractual rights of other parties to the disposition.

(g) A disposition of assets in the course of
dissolution under Article 14 is not governed by this section.

(h) For purposes of this section only, the property and
assets of the corporation include the property and assets of
any subsidiary of the corporation. As used in this subsection,
"subsidiary" means any entity wholly owned and controlled,
directly or indirectly, by the corporation and includes,
without limitation, corporations, partnerships, limited partnerships, limited liability partnerships, limited liability companies, and/or statutory trusts. Notwithstanding subsection (a) of this section, except to the extent the certificate of incorporation otherwise provides, no vote by stockholders shall be required for a sale, lease, or exchange of property and assets of the corporation to a subsidiary."

§10A-2A-14.13
(a) If after a hearing the court determines that one or more grounds for judicial dissolution described in Section 10A-2A-14.10 exist, the court may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and If the court enters a decree dissolving the corporation, then the clerk of the court shall deliver a certified copy of the decree to the Secretary of State for filing.

(b) After entering the decree of dissolution, the court shall direct the winding-up and liquidation of the corporation's business and affairs in accordance with Section 10A-2A-14.05 and the notification of claimants in accordance with Sections 10A-2A-14.06 and 10A-2A-14.07."

Section 4. Sections 10A-2A-10.00 and 10A-2A-10.10 are added to the Code of Alabama 1975, to read as follows:

§10A-2A-10.00. Applicability of Chapter 1.

Division B of Article 3 of Chapter 1 shall not apply to this chapter.

§10A-2A-10.10. Effect of filing of restated certificate of incorporation.
(a) A restated certificate of incorporation takes effect when the filing of the restated certificate of incorporation takes effect as provided by Article 4 of Chapter 1.

(b) On the date and time the restated certificate of incorporation takes effect, the original certificate of incorporation and each prior amendment or restatement of the certificate of incorporation is superseded and the restated certificate of incorporation is the effective certificate of incorporation.

(c) Section 10A-2A-10.09 applies to an amendment effected by a restated certificate of incorporation.

Section 5. Sections 10A-5A-2.03 and 10A-5A-10.07 of the Code of Alabama 1975, are amended to read as follows:

"§10A-5A-2.03

(a) The filing of a certificate of amendment to the certificate of formation shall have the effect, and shall take effect, as provided in Section 10A-1-3.14.

(b) The filing of a restated certificate of formation shall have the effect, and shall take effect, as provided in Section 10A-1-3.18.

(a)(1) An amendment to a certificate of formation takes effect when the filing of the certificate of amendment takes effect as provided by Article 4 of Chapter 1.

(2) An amendment to a certificate of formation does not affect:

(i) an existing cause of action in favor of or against the limited liability company for which the certificate of
amendment is sought;

(ii) a pending suit to which the limited liability company is a party; or

(iii) an existing right of a person other than an existing member.

(3) If the name of a limited liability company is changed by amendment, an action brought by or against the limited liability company in the former name of that limited liability company does not abate because of the name change.

(b)(1) A restated certificate of formation takes effect when the filing of the restated certificate of formation takes effect as provided by Article 4 of Chapter 1.

(2) On the date and time the restated certificate of formation takes effect, the original certificate of formation and each prior amendment or restatement of the certificate of formation is superseded and the restated certificate of formation is the effective certificate of formation.

(3) Subsections (b)(1) and (2) apply to an amendment effected by a restated certificate of formation."

"§10A-5A-10.07

(a) After each constituent organization has approved the plan of merger, a statement of merger must be signed on behalf of:

(1) each constituent limited liability company, as provided in Section 10A-5A-2.04(a); and

(2) each other constituent organization, as provided by its governing statute.

(b) A statement of merger under this section must
include:

(1) the name, type of organization, and mailing address of the principal office of each constituent organization, the jurisdiction of the governing statute of each constituent organization, and the respective unique identifying number or other designation as assigned by the Secretary of State, if any, of each constituent organization;

(2) the name, type of organization, and mailing address of the principal office of the surviving organization, the unique identifying number or other designation as assigned by the Secretary of State, if any, of the surviving organization, the jurisdiction of the governing statute of the surviving organization, and, if the surviving organization is created pursuant to the merger, a statement to that effect;

(3) the date of the filing of the certificate of formation, if any, and all prior amendments and the filing office or offices, if any, and where such is filed of each constituent organization which was formed under the laws of this state;

(4) the date the merger is effective under the governing statute of the surviving organization;

(5) if the surviving organization is to be created pursuant to the merger:

(A) if it will be a limited liability company, the limited liability company's certificate of formation; or

(B) if it will be an organization other than a limited liability company, any organizational document that creates the organization that is required to be in a public writing;
if the surviving organization exists before the merger, any amendments provided for in the plan of merger for the organizational document that created the organization that are required to be in a public writing;

a statement as to each constituent organization that the merger was approved as required by the organization's governing statute;

a statement that a copy of the plan of merger will be furnished by the surviving organization, on request and without cost, to any owner of any constituent organization which is a party to the merger;

if the surviving organization is a foreign organization not authorized to conduct activities and affairs in this state, the street and mailing address of an office for the purposes of Section 10A-5A-10.08(b); and

any additional information required by the governing statute of any constituent organization.

(c) The statement of merger shall be delivered for filing to the Secretary of State.

(d) A merger becomes effective under this article:

(1) if the surviving organization is a limited liability company, upon the later of:

(A) the filing of the statement of merger with the Secretary of State; or

(B) as specified in the statement of merger; or

(2) if the surviving organization is not a limited liability company, as provided by the governing statute of the surviving organization.
(e) After a merger becomes effective, if the surviving organization is a limited liability company, then, except for certified copies of the statement of merger permitted to be delivered to the judge of probate for filing pursuant to subsection (f), all filing instruments required to be filed under this title regarding that surviving organization shall be delivered for filing to the Secretary of State.

(f) A certified copy of the statement of merger required to be filed under this section may be filed in the real estate records in the office of the judge of probate in any county in which any constituent organization owned real property, without payment and without collection by the judge of probate of any deed or other transfer tax or fee. The judge of probate, however, shall be entitled to collect the filing fee of five dollars ($5). Any such filing shall evidence chain of title, but lack of filing shall not affect the surviving organization's title to such real property.

(g) A statement of merger is a filing instrument under Chapter 1.

(h) The filing fees for a statement of merger shall be as set forth in Chapter 1."

Section 6. Section 10A-8A-9.08 of the Code of Alabama 1975, is amended to read as follows:

"§10A-8A-9.08

(a) After each constituent organization has approved the plan of merger, a statement of merger must be signed on behalf of:

(1) each constituent partnership, as provided in
Section 10A-8A-2.03(a); and
(2) each other constituent organization, as provided by its governing statute.

(b) A statement of merger under this section must include:

(1) the name, type of organization, and mailing address of the principal office of each constituent organization, the jurisdiction of the governing statute of each constituent organization, and the respective unique identifying numbers or other designations as assigned by the Secretary of State, if any, of each constituent organization;

(2) the name, type of organization, and mailing address of the principal office of the surviving organization, the unique identifying number or other designation as assigned by the Secretary of State, if any, of the surviving organization, the jurisdiction of the governing statute of the surviving organization, and, if the surviving organization is created pursuant to the merger, a statement to that effect;

(3) the date of the filing of the certificate of formation, if any, and all prior amendments and the filing of the certificate of formation, if any, and where such is filed of each constituent organization which was formed under the laws of this state;

(4) the date of the filing of the statement of partnership, statement of not for profit partnership, or statement of limited liability partnership, if any, and all prior amendments and the filing office or offices, if any, and where such is filed of each constituent organization which is
a partnership;

(5)-(4) the date the merger is effective under the governing statute of the surviving organization;

(6)-(5) if the surviving organization is to be created pursuant to the merger:

(A) if it will be a partnership, the partnership's statement of partnership, statement of not for profit partnership, or statement of limited liability partnership; or

(B) if it will be an organization other than a partnership, any organizational document that creates the organization that is required to be in a public writing;

(7)-(6) if the surviving organization exists before the merger, any amendments provided for in the plan of merger for the organizational document that are required to be in a public writing;

(8)-(7) a statement as to each constituent organization that the merger was approved as required by the organization's governing statute;

(9)-(8) a statement that a copy of the plan of merger will be furnished by the surviving organization, on request and without cost, to any owner of any constituent organization which is a party to the merger;

(10)-(9) if the surviving organization is a foreign organization not authorized to conduct business or not for profit activity in this state, the street and mailing address of an office for the purposes of Section 10A-8A-9.09(b); and

(11)-(10) any additional information required by the governing statute of any constituent organization.
(c) Prior to the statement of merger being delivered for filing to the Secretary of State in accordance with subsection (d), all constituent organizations that are partnerships, other than a partnership that is created pursuant to the merger, must have on file with the Secretary of State a statement of partnership, statement of not for profit partnership, or statement of limited liability partnership.

(d) The statement of merger shall be delivered for filing to the Secretary of State.

(e) A merger becomes effective under this article:

(1) if the surviving organization is a partnership, upon the later of:

(A) the filing of the statement of merger with the Secretary of State; or

(B) as specified in the statement of merger; or

(2) if the surviving organization is not a partnership, as provided by the governing statute of the surviving organization.

(f) After a merger becomes effective, if the surviving organization is a partnership, then, except (I) the statement of merger permitted to be delivered to the judge of probate for filing pursuant to subsection (g) and (II) certified copies of statements of authority, denial, and cancellations thereof permitted to be delivered to the judge of probate for filing pursuant to Sections 10A-8A-3.03 and 10A-8A-3.04 for certified copies of, all filing instruments required to be filed under this title regarding that surviving organization.
shall be delivered for filing to the Secretary of State.

(g)(f) A certified copy of the statement of merger required to be filed under this section may be filed in the real estate records in the office of the judge of probate in any county in which any constituent organization owned real property, without payment and without collection by the judge of probate of any deed or other transfer tax or fee. The judge of probate, however, shall be entitled to collect the filing fee of five dollars ($5). Any such filing shall evidence chain of title, but lack of filing shall not affect the surviving organization's title to such real property.

(h)(g) A statement of merger is a filing instrument under Chapter 1.

(h) The filing fees for a statement of merger shall be as set forth in Chapter 1."

Section 7. Sections 10A-9A-2.02 and 10A-9A-10.08 of the Code of Alabama 1975, are amended to read as follows:

"§10A-9A-2.02 Division B of Article 3 of Chapter 1 shall not apply to this chapter. Instead:

(a) A certificate of formation may be amended at any time.

(b) A certificate of formation may be restated with or without amendment at any time.

(c) To amend its certificate of formation, a limited partnership must deliver a certificate of amendment for filing to the Secretary of State which certificate of amendment shall state:
(1) the name of the limited partnership;
(2) the unique identifying number or other designation as assigned by the Secretary of State; and
(3) the changes the amendment makes to the certificate of formation as most recently amended or restated.

(d) Prior to a statement of dissolution being delivered to the Secretary of State for filing, a limited partnership shall promptly deliver a certificate of amendment for filing with the Secretary of State to reflect:
(1) the admission of a new general partner; or
(2) the dissociation of a person as a general partner.
(e) Prior to a statement of dissolution being delivered to the Secretary of State for filing, if a general partner knows that any information in a filed certificate of formation was inaccurate when the certificate of formation was filed or has become inaccurate due to changed circumstances and if such information is required to be set forth in a newly filed certificate of formation under this chapter, the general partner shall promptly:
(1) cause the certificate of formation to be amended;
or
(2) if appropriate, deliver for filing with the Secretary of State a certificate of correction in accordance with Chapter 1.
(f) A certificate of formation may be amended at any time pursuant to this section for any other proper purpose as determined by the limited partnership. A certificate of formation may also be amended in a statement of merger.
pursuant to Article 8 of Chapter 1 or Article 10 of this chapter.

(g) In order to restate its certificate of formation, a limited partnership must deliver a restated certificate of formation for filing with the Secretary of State. A restated certificate of formation must:

(1) be designated as such in the heading;

(2) state the name of the limited partnership;

(3) state the unique identifying number or other designation as assigned by the Secretary of State;

(4) set forth any amendment or change effected in connection with the restatement of the certificate of formation. Any such restatement that effects an amendment shall be subject to any other provision of this chapter not inconsistent with this section, which would apply if a separate certificate of amendment were filed to effect the amendment or change;

(5) set forth the text of the restated certificate of formation; and

(6) state that the restated certificate of formation consolidates all amendments into a single document.

(h) The original certificate of formation, as theretofore amended, shall be superseded by the restated certificate of formation and thenceforth, the restated certificate of formation, including any further amendment or changes made thereby, shall be the certificate of formation of the limited partnership, but the original effective date of formation shall remain unchanged.
(i) An amended or restated certificate of formation may contain only the provisions that would be permitted at the time of the amendment if the amended or restated certificate of formation were a newly filed original certificate of formation.

(j) The filing of a certificate of amendment to the certificate of formation shall have the effect, and shall take effect, as provided in Section 10A-1-3.14.

(k) The filing of a restated certificate of formation shall have the effect, and shall take effect, as provided in Section 10A-1-3.18.

(j)(1) An amendment to a certificate of formation takes effect when the filing of the certificate of amendment takes effect as provided by Article 4 of Chapter 1.

(2) An amendment to a certificate of formation does not affect:

(i) an existing cause of action in favor of or against the limited partnership for which the certificate of amendment is sought;

(ii) a pending suit to which the limited partnership is a party; or

(iii) an existing right of a person other than an existing partner.

(3) If the name of a limited partnership is changed by amendment, an action brought by or against the limited partnership in the former name of that limited partnership does not abate because of the name change.

(k)(1) A restated certificate of formation takes effect
(2) On the date and time the restated certificate of formation takes effect, the original certificate of formation and each prior amendment or restatement of the certificate of formation is superseded and the restated certificate of formation is the effective certificate of formation.

(3) Subsections (j)(2) and (3) apply to an amendment effected by a restated certificate of formation."

"§10A-9A-10.08

(a) After each constituent organization has approved the plan of merger, a statement of merger must be signed on behalf of:

(1) each constituent limited partnership, as provided in Section 10A-9A-2.03(a); and

(2) each other constituent organization, as provided by its governing statute.

(b) A statement of merger under this section must include:

(1) the name, type of organization, and mailing address of the principal office of each constituent organization, the jurisdiction of the governing statute of each constituent organization, and the respective unique identifying numbers or other designations as assigned by the Secretary of State, if any, of each constituent organization;

(2) the name, type of organization, and mailing address of the principal office of the surviving organization, the unique identifying number or other designation as assigned by
the Secretary of State, if any, of the surviving organization, the jurisdiction of the governing statute of the surviving organization, and, if the surviving organization is created pursuant to the merger, a statement to that effect;

(3) the date of the filing of the certificate of formation, if any, and all prior amendments and the filing office or offices, if any, and where such is filed of each constituent organization which was formed under the laws of this state;

(4) the date the merger is effective under the governing statute of the surviving organization;

(5) if the surviving organization is to be created pursuant to the merger:

(A) if it will be a limited partnership, the limited partnership's certificate of formation; or

(B) if it will be an organization other than a limited partnership, any organizational document that creates the organization that is required to be in a public writing;

(6) if the surviving organization exists before the merger, any amendments provided for in the plan of merger for the organizational document that created the organization that are required to be in a public writing;

(7) a statement as to each constituent organization that the merger was approved as required by the organization's governing statute;

(8) a statement that a copy of the plan of merger will be furnished by the surviving organization, on request and without cost, to any owner of any constituent organization.
which is a party to the merger;

(9) if the surviving organization is a foreign organization not authorized to conduct activities and affairs in this state, the street and mailing address of an office for the purposes of Section 10A-9A-10.09(b); and

(10) any additional information required by the governing statute of any constituent organization.

(c) The statement of merger shall be delivered for filing to the Secretary of State.

(d) A merger becomes effective under this article:

(1) if the surviving organization is a limited partnership, upon the later of:

(A) the filing of the statement of merger with the Secretary of State; or

(B) as specified in the statement of merger; or

(2) if the surviving organization is not a limited partnership, as provided by the governing statute of the surviving organization.

(e) After a merger becomes effective, if the surviving organization is a limited partnership, then, except for certified copies of the statement of merger permitted to be delivered to the judge of probate for filing pursuant to subsection (f), all filing instruments required to be filed under this title regarding that surviving organization shall be delivered for filing to the Secretary of State.

(f) A certified copy of the statement of merger required to be filed under this section may be filed in the real estate records in the office of the judge of probate in
any county in which any constituent organization owned real
property, without payment and without collection by the judge
of probate of any deed or other transfer tax or fee. The judge
of probate, however, shall be entitled to collect the filing
fee of five dollars ($5). Any such filing shall evidence chain
of title, but lack of filing shall not affect the surviving
organization's title to such real property.

A statement of merger is a filing instrument
under Chapter 1.
The filing fees for a statement of merger shall
be as set forth in Chapter 1."

Section 8. This act shall become effective January 1,
2024, following its passage and approval by the Governor, or
its otherwise becoming law.
HB267 Enrolled

Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in and was passed by the House 24-MAY-23.

John Treadwell
Clerk

01-Jun-23
Passed