

SB112 ENGROSSED



1 SB112
2 1JVA3ZL-2
3 By Senators Givhan, Smitherman
4 RFD: Fiscal Responsibility and Economic Development
5 First Read: 20-Feb-24



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A BILL
TO BE ENTITLED
AN ACT

Relating to the Alabama Business and Nonprofit Entities Code; to amend Sections 10A-1-1.03, 10A-1-1.08, and 10A-1-3.32, as amended by Act 2023-503; 10A-1-5.31; 10A-2A-1.40, as amended by Act 2023-503; 10A-2A-1.48; 10A-2A-1.51 and 10A-2A-2.02, as amended by Act 2023-503; 10A-2A-6.21, 10A-2A-6.24, and 10A-2A-6.31; 10A-2A-7.04, as amended by Act 2023-503; 10A-2A-7.05 and 10A-2A-10.05; 10A-2A-10.07 and 10A-2A-10.08, as amended by Act 2023-503; 10A-2A-12.01, 10A-2A-13.02, and 10A-2A-14.05; 10A-3A-1.02, 10A-3A-1.23, 10A-3A-1.26, 10A-3A-2.02, 10A-3A-7.04, 10A-3A-7.05, 10A-3A-9.05, 10A-3A-9.07, 10A-3A-10.01, 10A-3A-10.03, 10A-3A-10.04, and 10A-3A-11.07, as added by Act 2023-503; 10A-4-1.03, 10A-4-2.01, 10A-4-2.02, 10A-4-2.03, 10A-4-2.04, 10A-4-3.01, 10A-4-3.02, 10A-4-3.03, 10A-4-3.05, 10A-4-3.06, 10A-4-4.01, 10A-4-4.02, 10A-4-5.01, 10A-4-5.02, 10A-4-5.03, 10A-4-5.04, 10A-4-5.05, 10A-4-5.06, 10A-4-5.08, 10A-5A-1.08, 10A-5A-2.01, 10A-5A-2.02, 10A-5A-3.02, 10A-5A-8.01, 10A-8A-1.08, 10A-8A-10.02, 10A-9A-1.08, and 10A-9A-2.01; and 10A-9A-2.02, as amendeded by Act 2023-503, Code of Alabama 1975; to eliminate references to the old Alabama



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29 Nonprofit Corporation Law; to clarify that the address of
30 registered agents must be in this state, that the certificate
31 of formation must set forth the county of the registered agent
32 in accordance with current practice, and to streamline and
33 clarify the ratification process of certain actions in
34 accordance with Delaware law changes; to provide that business
35 and nonprofit corporations may provide for exculpation of
36 certain officers for certain actions in accordance with
37 changes to Delaware law and the Model Business Corporation
38 Act; to clarify the amendment and restatement process; to
39 clarify the provisions regarding the sale of property by
40 business and nonprofit corporations in accordance with changes
41 to Delaware law; to conform the professional corporation law
42 to recent changes in the business and nonprofit corporation
43 laws; to add Sections 10A-5A-1.11, 10A-8A-1.14, and
44 10A-9A-1.15 to the Code of Alabama 1975; to provide a process
45 for ratification of certain actions and transactions for
46 limited liability companies, limited partnerships, and
47 partnerships; to add Chapter 18 to Title 10A to the Code of
48 Alabama 1975, providing for the Alabama Statewide Trade
49 Association Law; and in connection therewith would have as its
50 purpose or effect the requirement of a new or increased
51 expenditure of local funds within the meaning of Section
52 111.05 of the Constitution of Alabama of 2022.

53 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

54 Section 1. Sections 10A-1-1.03, 10A-1-1.08, and
55 10A-1-3.32, as amended by Act 2023-503; 10A-1-5.31;
56 10A-2A-1.40, as amended by Act 2023-503; 10A-2A-1.48;



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57 10A-2A-1.51 and 10A-2A-2.02, as amended by Act 2023-503;
58 10A-2A-6.21, 10A-2A-6.24, and 10A-2A-6.31; 10A-2A-7.04, as
59 amended by Act 2023-503; 10A-2A-7.05 and 10A-2A-10.05;
60 10A-2A-10.07 and 10A-2A-10.08, as amended by Act 2023-503;
61 10A-2A-12.01, 10A-2A-13.02, and 10A-2A-14.05; 10A-3A-1.02,
62 10A-3A-1.23, 10A-3A-1.26, 10A-3A-2.02, 10A-3A-7.04,
63 10A-3A-7.05, 10A-3A-9.05, 10A-3A-9.07, 10A-3A-10.01,
64 10A-3A-10.03, 10A-3A-10.04, and 10A-3A-11.07, as added by Act
65 2023-503; 10A-4-1.03, 10A-4-2.01, 10A-4-2.02, 10A-4-2.03,
66 10A-4-2.04, 10A-4-3.01, 10A-4-3.02, 10A-4-3.03, 10A-4-3.05,
67 10A-4-3.06, 10A-4-4.01, 10A-4-4.02, 10A-4-5.01, 10A-4-5.02,
68 10A-4-5.03, 10A-4-5.04, 10A-4-5.05, 10A-4-5.06, 10A-4-5.08,
69 10A-5A-1.08, 10A-5A-2.01, 10A-5A-2.02, 10A-5A-3.02,
70 10A-5A-8.01, 10A-8A-1.08, 10A-8A-10.02, 10A-9A-1.08,
71 10A-9A-2.01, and 10A-9A-2.02 of the Code of Alabama 1975, are
72 amended to read as follows:

73 "§10A-1-1.03

74 (a) If a term, including a term that is defined in
75 subsection (b), is defined in a chapter of this title, then,
76 when used in that chapter, the term shall have the meaning set
77 forth in that chapter.

78 (b) As used in this title, except as provided in
79 subsection (a) or where the context otherwise requires, the
80 following terms mean:

81 (1) AFFILIATE. A person who controls, is controlled by,
82 or is under common control with another person. An affiliate
83 of an individual includes the spouse, or a parent or sibling
84 thereof, of the individual, or a child, grandchild, sibling,



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85 parent, or spouse of any thereof, of the individual, or an
86 individual having the same home as the individual, or a trust
87 or estate of which an individual specified in this sentence is
88 a substantial beneficiary; a trust, estate, incompetent,
89 conservatee, protected person, or minor of which the
90 individual is a fiduciary; or an entity of which the
91 individual is director, general partner, agent, employee or
92 the governing authority or member of the governing authority.

93 (2) ASSOCIATE. When used to indicate a relationship
94 with:

95 (A) a domestic or foreign entity for which the person
96 is:

97 (i) an officer or governing person; or

98 (ii) a beneficial owner of 10 percent or more of a
99 class of voting ownership interests or similar securities of
100 the entity;

101 (B) a trust or estate in which the person has a
102 substantial beneficial interest or for which the person serves
103 as trustee or in a similar fiduciary capacity;

104 (C) the person's spouse or a relative of the person
105 related by consanguinity or affinity within the fifth degree
106 who resides with the person; or

107 (D) a governing person or an affiliate or officer of
108 the person.

109 (3) ASSOCIATION. Includes, but is not limited to, an
110 unincorporated nonprofit association as defined in Chapter 17
111 and an unincorporated professional association as defined in
112 Article 1 of Chapter 30.



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113 (4) BENEFIT CORPORATION. A benefit corporation as
114 defined in Chapter 2A.

115 (5) BUSINESS CORPORATION. A corporation or foreign
116 corporation as defined in Chapter 2A. The term includes a
117 benefit corporation as defined in Chapter 2A.

118 (6) BUSINESS TRUST. A business trust as defined in
119 Chapter 16.

120 (7) CERTIFICATE OF DISSOLUTION. Any document such as a
121 certificate of dissolution, statement of dissolution, or
122 articles of dissolution, required or permitted to be filed
123 publicly with respect to an entity's dissolution and winding
124 up of its business, activity, activities, not for profit
125 activity, or affairs.

126 (8) CERTIFICATE OF FORMATION.

127 (A) The document required to be filed publicly under
128 this title to form a filing entity; and

129 (B) if appropriate, a restated certificate of formation
130 and all amendments of an original or restated certificate of
131 formation; provided that a restated certificate of formation
132 and an amendment of an original or restated certificate of
133 formation shall not be deemed to be a certificate of formation
134 for purposes of Section 10A-1-4.31.

135 (9) CERTIFICATE OF OWNERSHIP. An instrument evidencing
136 an ownership interest or membership interest in an entity.

137 (10) CERTIFICATED OWNERSHIP INTEREST. An ownership
138 interest of a domestic entity represented by a certificate.

139 (11) CERTIFICATION or CERTIFIED. Duly authenticated by
140 the proper officer or filing officer of the jurisdiction the



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141 laws of which govern the internal affairs of an entity.

142 (12) CONTRIBUTION. A tangible or intangible benefit
143 that a person transfers to an entity in consideration for an
144 ownership interest in the entity or otherwise in the person's
145 capacity as an owner or a member. A benefit that may
146 constitute a contribution transferred in exchange for an
147 ownership interest or transferred in the transferor's capacity
148 as an owner or member may include cash, property, services
149 rendered, a contract for services to be performed, a
150 promissory note or other obligation of a person to pay cash or
151 transfer property to the entity, or securities or other
152 interests in or obligations of an entity. In either case, the
153 benefit does not include cash or property received by the
154 entity:

155 (A) with respect to a promissory note or other
156 obligation to the extent that the agreed value of the note or
157 obligation has previously been included as a contribution; or

158 (B) that the person intends to be a loan to the entity.

159 (13) CONVERSION. A conversion, whether referred to as a
160 conversion, domestication, or otherwise, means:

161 (A) the continuance of a domestic entity as a foreign
162 entity of any type;

163 (B) the continuance of a foreign entity as a domestic
164 entity of any type; or

165 (C) the continuance of a domestic entity of one type as
166 a domestic entity of another type.

167 (14) CONVERTED ENTITY. An entity resulting from a
168 conversion.



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169 (15) CONVERTING ENTITY. An entity as the entity existed
170 before the entity's conversion.

171 (16) COOPERATIVE. Includes an employee cooperative as
172 defined in Chapter 11.

173 (17) CORPORATION. Includes a domestic or foreign
174 business corporation, including a benefit corporation, as
175 defined in Chapter 2A, a domestic or foreign nonprofit
176 corporation as defined in ~~Chapter 3~~ or Chapter 3A, a domestic
177 or foreign professional corporation as defined in Chapter 4,
178 and those entities specified in Chapter 20 as corporate.

179 (18) COURT. The designated court, and if none, the
180 circuit court specifically set forth in this title, and if
181 none, any other court having jurisdiction in a case.

182 (19) DAY. When used in the computation of time,
183 excludes the first day and includes the last day of the period
184 so computed, unless the last day is a Saturday, Sunday, or
185 legal holiday, in which event the period runs until the end of
186 the next day that is not a Saturday, a Sunday, or a legal
187 holiday. When the period of time to be computed is less than 7
188 days, intermediate Saturdays, Sundays, and legal holidays
189 shall be excluded.

190 (20) DEBTOR IN BANKRUPTCY. A person who is the subject
191 of:

192 (A) an order for relief under the United States
193 bankruptcy laws, Title 11, United States Code, or comparable
194 order under a successor statute of general application; or

195 (B) a comparable order under federal, state, or foreign
196 law governing insolvency.



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197 (21) DESIGNATED COURT. The court or courts that are
198 designated in the (i) certificate of incorporation or bylaws
199 of a corporation as authorized by Chapter 2A, (ii) certificate
200 of incorporation or bylaws of a nonprofit corporation as
201 authorized by Chapter 3A, (iii) limited liability company
202 agreement of a limited liability company formed pursuant to or
203 governed by Chapter 5A, (iv) partnership agreement of a
204 partnership formed pursuant to or governed by Chapter 8A, or
205 (v) limited partnership agreement of a limited partnership
206 formed pursuant to or governed by Chapter 9A.

207 (22) DIRECTOR. An individual who serves on the board of
208 directors, by whatever name known, of a foreign or domestic
209 corporation.

210 (23) DISTRIBUTION. A transfer of property, including
211 cash, from an entity to an owner or member of the entity in
212 the owner's or member's capacity as an owner or member. The
213 term includes a dividend, a redemption or purchase of an
214 ownership interest, or a liquidating distribution.

215 (24) DOMESTIC. With respect to an entity, means
216 governed as to its internal affairs by this title.

217 (25) DOMESTIC ENTITY. An entity governed as to its
218 internal affairs by this title.

219 (26) EFFECTIVE DATE OF THIS TITLE. January 1, 2011.

220 (27) ELECTRONIC. Relating to technology having
221 electrical, digital, magnetic, wireless, optical,
222 electromagnetic, or similar capabilities.

223 (28) ELECTRONIC SIGNATURE. An electronic signature as
224 that term is defined in the Uniform Electronic Transactions



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225 Act, Chapter 1A of Title 8, or any successor statute.

226 (29) ELECTRONIC TRANSMISSION or ELECTRONICALLY
227 TRANSMITTED. Any form or process of communication not directly
228 involving the physical transfer of paper or another tangible
229 medium, which (i) is suitable for the retention, retrieval,
230 and reproduction of information by the recipient, and (ii) is
231 retrievable in paper form by the recipient through an
232 automated process used in conventional commercial practice.

233 (30) ELECTRONIC WRITING. Information that is stored in
234 an electronic or other nontangible medium and is retrievable
235 in paper form through an automated process used in
236 conventional commercial practice.

237 (31) ENTITY. A domestic or foreign organization.

238 (32) FILING ENTITY. A domestic entity that is a
239 corporation, limited partnership, limited liability limited
240 partnership, limited liability company, professional
241 association, employee cooperative corporation, or real estate
242 investment trust.

243 (33) FILING INSTRUMENT. An instrument, document, or
244 statement that is required or permitted by this title to be
245 delivered for filing by or for an entity to a filing officer.

246 (34) FILING OFFICER. An officer of this state with whom
247 a filing instrument is required or permitted to be delivered
248 for filing pursuant to this title.

249 (35) FOREIGN. With respect to an entity, means governed
250 as to its internal affairs by the laws of a jurisdiction other
251 than this state.

252 (36) FOREIGN ENTITY. An entity governed as to its



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253 internal affairs by the laws of a jurisdiction other than this
254 state.

255 (37) FOREIGN FILING ENTITY. A foreign entity that
256 registers or is required to register as a foreign entity under
257 Article 7.

258 (38) FOREIGN GOVERNMENTAL AUTHORITY. A governmental
259 official, agency, or instrumentality of a jurisdiction other
260 than this state.

261 (39) FOREIGN NONFILING ENTITY. A foreign entity that is
262 not a foreign filing entity.

263 (40) GENERAL PARTNER.

264 (A) Each partner in a general partnership; or

265 (B) a person who is admitted to a limited partnership
266 as a general partner in accordance with the governing
267 documents of the limited partnership.

268 (41) GENERAL PARTNERSHIP. A partnership as defined in
269 Chapter 8A. The term includes a limited liability partnership
270 as defined in Chapter 8A.

271 (42) GOVERNING AUTHORITY. A person or group of persons
272 who are entitled to manage and direct the affairs of an entity
273 pursuant to this title and the governing documents of the
274 entity, except that if the governing documents of the entity
275 or this title divide the authority to manage and direct the
276 affairs of the entity among different persons or groups of
277 persons according to different matters, governing authority
278 means the person or group of persons entitled to manage and
279 direct the affairs of the entity with respect to a matter
280 under the governing documents of the entity or this title. The



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281 term includes the board of directors of a corporation, by
282 whatever name known, or other persons authorized to perform
283 the functions of the board of directors of a corporation, the
284 general partners of a general partnership or limited
285 partnership, the persons who have direction and oversight of a
286 limited liability company, and the trust managers of a real
287 estate investment trust. The term does not include an officer
288 who is acting in the capacity of an officer.

289 (43) GOVERNING DOCUMENTS.

290 (A) In the case of a domestic entity:

291 (i) the certificate of formation for a filing entity or
292 the document or agreement under which a nonfiling entity is
293 formed; and

294 (ii) the other documents or agreements, including
295 bylaws, partnership agreements of partnerships, limited
296 liability company agreements of limited liability companies,
297 or similar documents, adopted by the entity pursuant to this
298 title to govern the formation or the internal affairs of the
299 entity; or

300 (B) in the case of a foreign entity, the instruments,
301 documents, or agreements adopted under the law of its
302 jurisdiction of formation to govern the formation or the
303 internal affairs of the entity.

304 (44) GOVERNING PERSON. A person serving as part of the
305 governing authority of an entity.

306 (45) INDIVIDUAL. A natural person and the estate of an
307 incompetent or deceased natural person.



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308 (46) INSOLVENCY. The inability of a person to pay the
309 person's debts as they become due in the usual course of
310 business or affairs.

311 (47) INSOLVENT. A person who is unable to pay the
312 person's debts as they become due in the usual course of
313 business or affairs.

314 (48) JUDGE OF PROBATE. The judge of probate of the
315 county in which an entity is required or permitted to deliver
316 a filing instrument for filing pursuant to this title.

317 (49) JURISDICTION OF FORMATION.

318 (A) In the case of a filing entity, this state;

319 (B) in the case of a foreign entity, the jurisdiction
320 in which the entity's certificate of formation or similar
321 organizational instrument is filed, or if no certificate of
322 formation or similar organizational instrument is filed, then
323 the laws of the jurisdiction which govern the internal affairs
324 of the foreign entity;

325 (C) in the case of a general partnership which has
326 filed a statement of partnership, a statement of not for
327 profit partnership, or a statement of limited liability
328 partnership in accordance with Chapter 8A, in this state;

329 (D) in the case of a foreign limited liability
330 partnership, the laws of the jurisdiction which govern the
331 filing of the foreign limited liability partnership's
332 statement of limited liability partnership or such filing in
333 that jurisdiction; and

334 (E) in the case of a foreign or domestic nonfiling
335 entity other than those entities described in subsection (C)



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336 or (D):

337 (i) the jurisdiction the laws of which are chosen in
338 the entity's governing documents to govern its internal
339 affairs if that jurisdiction bears a reasonable relation to
340 the owners or members or to the domestic or foreign nonfiling
341 entity's business, activities, and affairs under the
342 principles of this state that otherwise would apply to a
343 contract among the owners or members; or

344 (ii) if subparagraph (i) does not apply, the
345 jurisdiction in which the entity has its principal office.

346 (50) LAW. Unless the context requires otherwise, both
347 statutory and common law.

348 (51) LICENSE. A license, certificate of registration,
349 or other legal authorization.

350 (52) LICENSING AUTHORITY. The state court, state
351 regulatory licensing board, or other like agency which has the
352 power to issue a license or other legal authorization to
353 render professional services.

354 (53) LIMITED LIABILITY COMPANY. A limited liability
355 company as defined in Chapter 5A.

356 (54) LIMITED LIABILITY LIMITED PARTNERSHIP. A limited
357 liability limited partnership as defined in Chapter 9A.

358 (55) LIMITED LIABILITY PARTNERSHIP. A limited liability
359 partnership as defined in Chapter 8A.

360 (56) LIMITED PARTNER. A person who has been admitted to
361 a limited partnership as a limited partner as provided by:

362 (A) in the case of a domestic limited partnership,
363 Chapter 9A; or



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364 (B) in the case of a foreign limited partnership, the
365 laws of its jurisdiction of formation.

366 (57) LIMITED PARTNERSHIP. A limited partnership as
367 defined in Chapter 9A. The term includes a limited liability
368 limited partnership as defined in Chapter 9A.

369 (58) MANAGERIAL OFFICIAL. An officer or a governing
370 person.

371 (59) MEMBER.

372 (A) A person defined as a member under Chapter 5A;

373 ~~(B) in the case of a nonprofit corporation formed~~
374 ~~pursuant to or governed by Chapter 3, a person having~~
375 ~~membership rights in the nonprofit corporation in accordance~~
376 ~~with its governing documents as provided in Chapter 3, and in~~
377 the case of a nonprofit corporation formed pursuant to or
378 governed by Chapter 3A, a person defined as a member under
379 Chapter 3A;

380 (C) in the case of an employee cooperative corporation
381 formed pursuant to or governed by Chapter 11, a natural person
382 who, as provided in Chapter 11, has been accepted for
383 membership in and owns a membership share in an employee
384 cooperative;

385 (D) in the case of a nonprofit association, a person
386 who, as provided in Chapter 17, may participate in the
387 selection of persons authorized to manage the affairs of the
388 nonprofit association or in the development of its policy.

389 (60) MERGER. The combination of one or more domestic
390 entities with one or more domestic entities or foreign
391 entities resulting in:



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392 (A) one or more surviving domestic entities or foreign
393 entities;

394 (B) the creation of one or more new domestic entities
395 or foreign entities, or one or more surviving domestic
396 entities or foreign entities; or

397 (C) one or more surviving domestic entities or foreign
398 entities and the creation of one or more new domestic entities
399 or foreign entities.

400 (61) NONFILING ENTITY. A domestic entity that is not a
401 filing entity. The term includes a domestic general
402 partnership, a limited liability partnership, and a nonprofit
403 association.

404 (62) NONPROFIT ASSOCIATION. An unincorporated nonprofit
405 association as defined in Chapter 17. The term does not
406 include a general partnership which has filed a statement of
407 not for profit partnership in accordance with Chapter 8A, a
408 limited partnership which is carrying on a not for profit
409 purpose, or a limited liability company which is carrying on a
410 not for profit purpose.

411 (63) NONPROFIT CORPORATION. A domestic or foreign
412 nonprofit corporation as defined in ~~Chapter 3~~ or Chapter 3A.

413 (64) NONPROFIT ENTITY. An entity that is a nonprofit
414 corporation, nonprofit association, or other entity that is
415 organized solely for one or more nonprofit purposes.

416 (65) OFFICER. An individual elected, appointed, or
417 designated as an officer of an entity by the entity's
418 governing authority or under the entity's governing documents.

419 (66) ORGANIZATION. A corporation, limited partnership,



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420 general partnership, limited liability company, business
421 trust, real estate investment trust, joint venture, joint
422 stock company, cooperative, association, or other
423 organization, including, regardless of its organizational
424 form, a bank, insurance company, credit union, and savings and
425 loan association, whether for profit, not for profit,
426 nonprofit, domestic, or foreign.

427 (67) ORGANIZER. A person, who need not be an owner or
428 member of the entity, who, having the capacity to contract, is
429 authorized to execute documents in connection with the
430 formation of the entity. The term includes an incorporator.

431 (68) OWNER.

432 (A) With respect to a foreign or domestic business
433 corporation or real estate investment trust, a stockholder or
434 a shareholder;

435 (B) with respect to a foreign or domestic partnership,
436 a partner;

437 (C) with respect to a foreign or domestic limited
438 liability company or association, a member; and

439 (D) with respect to another foreign or domestic entity,
440 an owner of an equity interest in that entity.

441 (69) OWNERSHIP INTEREST. An owner's interest in an
442 entity. The term includes the owner's share of profits and
443 losses or similar items and the right to receive
444 distributions. The term does not include an owner's right to
445 participate in management or participate in the direction or
446 oversight of the entity. An ownership interest is personal
447 property.



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448 (70) PARENT or PARENT ENTITY. An entity that:

449 (A) owns at least 50 percent of the ownership or
450 membership interest of a subsidiary; or

451 (B) possesses at least 50 percent of the voting power
452 of the owners or members of a subsidiary.

453 (71) PARTNER. A limited partner or general partner.

454 (72) PARTNERSHIP. Includes a general partnership, a
455 limited liability partnership, a foreign limited liability
456 partnership, a limited partnership, a foreign limited
457 partnership, a limited liability limited partnership, and a
458 foreign limited liability limited partnership.

459 (73) PARTNERSHIP AGREEMENT. Any agreement (whether
460 referred to as a partnership agreement or otherwise), written,
461 oral or implied, of the partners as to the activities and
462 affairs of a general partnership or a limited partnership. The
463 partnership agreement includes any amendments to the
464 partnership agreement. In the case of limited partnerships
465 formed prior to October 1, 1998, partnership agreement
466 includes the certificate of partnership.

467 (74) PARTY TO THE MERGER. A domestic entity or foreign
468 entity that under a plan of merger is combined by a merger.
469 The term does not include a domestic entity or foreign entity
470 that is not to be combined into or with one or more domestic
471 entities or foreign entities, regardless of whether ownership
472 interests of the entity are to be issued under the plan of
473 merger.

474 (75) PERSON. An individual, including the estate of an
475 incompetent or deceased individual, or an entity, whether



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476 created by the laws of this state or another state or foreign
477 country, including, without limitation, a general partnership,
478 limited liability partnership, limited partnership, limited
479 liability limited partnership, limited liability company,
480 corporation, professional corporation, nonprofit corporation,
481 professional association, trustee, personal representative,
482 fiduciary, as defined in Section 19-3-150 or person performing
483 in any similar capacity, business trust, estate, trust,
484 association, joint venture, government, governmental
485 subdivision, agency, or instrumentality, or any other legal or
486 commercial entity.

487 (76) PRESIDENT.

488 (A) The individual designated as president of an entity
489 under the entity's governing documents; or

490 (B) the officer or committee of persons authorized to
491 perform the functions of the principal executive officer of an
492 entity without regard to the designated name of the officer or
493 committee.

494 (77) PRINCIPAL OFFICE. The office, in or out of this
495 state, where the principal executive office, whether referred
496 to as the principal executive office, chief executive office,
497 or otherwise, of an entity is located.

498 (78) PROFESSIONAL ASSOCIATION. A professional
499 association as defined in Chapter 30.

500 (79) PROFESSIONAL CORPORATION. A domestic or foreign
501 professional corporation as defined in Chapter 4.

502 (80) PROFESSIONAL ENTITY. A professional association
503 and a professional corporation.



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504 (81) PROFESSIONAL SERVICE. Any type of service that may
505 lawfully be performed only pursuant to a license issued by a
506 state court, state regulatory licensing board, or other like
507 agency pursuant to state laws.

508 (82) PROPERTY. Includes all property, whether real,
509 personal, or mixed, or tangible or intangible, or any right or
510 interest therein.

511 (83) REAL ESTATE INVESTMENT TRUST. An unincorporated
512 trust, association, or other entity as defined in Chapter 10.

513 (84) SECRETARY.

514 (A) The individual designated as secretary of an entity
515 under the entity's governing documents; or

516 (B) the officer or committee of persons authorized to
517 perform the functions of secretary of an entity without regard
518 to the designated name of the officer or committee.

519 (85) SECRETARY OF STATE. The Secretary of State of the
520 State of Alabama.

521 (86) SIGN or SIGNATURE. With the present intent to
522 authenticate or adopt a writing:

523 (A) to execute or adopt a tangible symbol to a writing,
524 and includes any manual, facsimile, or conformed signature; or

525 (B) to attach to or logically associate with an
526 electronic transmission an electronic sound, symbol, or
527 process, and includes an electronic signature in an electronic
528 transmission.

529 (87) STATE. Includes, when referring to a part of the
530 United States, a state or commonwealth, and its agencies and
531 governmental subdivisions, and a territory or possession, and



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532 its agencies and governmental subdivisions, of the United
533 States.

534 (88) SUBSCRIBER. A person who agrees with or makes an
535 offer to an entity to purchase by subscription an ownership
536 interest in the entity.

537 (89) SUBSCRIPTION. An agreement between a subscriber
538 and an entity, or a written offer made by a subscriber to an
539 entity before or after the entity's formation, in which the
540 subscriber agrees or offers to purchase a specified ownership
541 interest in the entity.

542 (90) SUBSIDIARY. An entity at least 50 percent of:

543 (A) the ownership or membership interest of which is
544 owned by a parent entity; or

545 (B) the voting power of which is possessed by a parent
546 entity.

547 (91) TREASURER.

548 (A) The individual designated as treasurer of an entity
549 under the entity's governing documents; or

550 (B) the officer or committee of persons authorized to
551 perform the functions of treasurer of an entity without regard
552 to the designated name of the officer or committee.

553 (92) TRUSTEE. A person who serves as a trustee of a
554 trust, including a real estate investment trust.

555 (93) UNCERTIFICATED OWNERSHIP INTEREST. An ownership
556 interest in a domestic entity that is not represented by a
557 certificate.

558 (94) VICE PRESIDENT.

559 (A) The individual designated as vice president of an



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560 entity under the governing documents of the entity; or

561 (B) the officer or committee of persons authorized to
562 perform the functions of the president of the entity on the
563 death, absence, or resignation of the president or on the
564 inability of the president to perform the functions of office
565 without regard to the designated name of the officer or
566 committee.

567 (95) WRITING or WRITTEN. Information that is inscribed
568 on a tangible medium or that is stored in an electronic or
569 other medium and is retrievable in perceivable form."

570 "§10A-1-1.08

571 (a) The provisions of this title as described by this
572 section may be cited as provided by this section.

573 (b) Chapter 2A and the provisions of Chapter 1 to the
574 extent applicable to business corporations may be cited as the
575 Alabama Business Corporation Law.

576 (c) ~~Chapter 3~~ or Chapter 3A and the provisions of
577 Chapter 1 to the extent applicable to nonprofit corporations
578 may be cited as the Alabama Nonprofit Corporation Law.

579 (d) Chapter 4 and the provisions of Chapter 1 to the
580 extent applicable to professional corporations may be cited as
581 the Alabama Professional Corporation Law.

582 (e) Chapter 5A and the provisions of Chapter 1 to the
583 extent applicable to limited liability companies may be cited
584 as the Alabama Limited Liability Company Law.

585 (f) Chapter 8A and the provisions of Chapter 1 to the
586 extent applicable to general partnerships may be cited as the
587 Alabama Partnership Law.



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588 (g) Chapter 9A and the provisions of Chapter 1 to the
589 extent applicable to limited partnerships may be cited as the
590 Alabama Limited Partnership Law.

591 (h) Chapter 10 and the provisions of Chapter 1 to the
592 extent applicable to real estate investment trusts may be
593 cited as the Alabama Real Estate Investment Trust Law.

594 (i) Chapter 11 and the provisions of Chapter 1 and
595 Chapter 2A to the extent applicable to employee cooperative
596 corporations may be cited as the Alabama Employee Cooperative
597 Corporations Law.

598 (j) Chapter 17 and the provisions of Chapter 1 to the
599 extent applicable to unincorporated nonprofit associations may
600 be cited as the Alabama Unincorporated Nonprofit Association
601 Law."

602 "§10A-1-3.32

603 (a) This section applies to domestic entities other
604 than (i) corporations formed pursuant to or governed by
605 Chapter 2A or Chapter 4, and real estate investment trusts
606 formed pursuant to or governed by Chapter 10, each of which is
607 governed by the separate recordkeeping requirements and record
608 inspections provisions of Chapter 2A and (ii) nonprofit
609 corporations formed pursuant to or governed by ~~Chapter 3 or~~
610 Chapter 3A, limited liability companies formed pursuant to or
611 governed by Chapter 5A, general partnerships formed pursuant
612 to or governed by Chapter 8A, and limited partnerships formed
613 pursuant to or governed by Chapter 9A, each of which are
614 governed by the separate recordkeeping requirements and record
615 inspection provisions set forth in each entity's respective



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616 chapter governing that entity.

617 (b) With respect to a domestic entity covered by this
618 section, the books and records maintained under the chapter of
619 this title applicable to that entity and any other books and
620 records of that entity, wherever situated, are subject to
621 inspection and copying at the reasonable request, and at the
622 expense of, any owner or member or the owner's or member's
623 agent or attorney during regular business hours. The right of
624 access extends to the legal representative of a deceased owner
625 or member or owner or member under legal disability. The
626 entity shall also provide former owners and members with
627 access to its books and records pertaining to the period
628 during which they were owners or members.

629 (c) The governing documents of a domestic entity may
630 not unreasonably restrict an owner's or member's right to
631 information or access to books and records.

632 (d) Any agent or governing person of a domestic entity
633 who, without reasonable cause, refuses to allow any owner or
634 member or the owner's or member's agent or legal counsel to
635 inspect any books or records of that entity shall be
636 personally liable to the agent or member for a penalty in an
637 amount not to exceed 10 percent of the fair market value of
638 the ownership interest of the owner or member, in addition to
639 any other damages or remedy."

640 "§10A-1-5.31

641 (a) Each filing entity and each foreign filing entity
642 with a registration under Article 7, and each general
643 partnership that has an effective statement of partnership,



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644 statement of not for profit partnership, or statement of
645 limited liability partnership on file with the Secretary of
646 State in accordance with Chapter 8A, shall designate and
647 continuously maintain in this state:

648 (1) a registered agent; and

649 (2) a registered office.

650 (b) A registered agent:

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

654 (2) may be:

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

656 (B) a domestic entity or a foreign entity that is
657 registered to transact business in this state; and

658 (3) must maintain a business office at the same address
659 as the entity's registered office.

660 (c) The registered office:

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

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

666 (3) may not be solely a mailbox service or a telephone
667 answering service."

668 "§10A-2A-1.40

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



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

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

679 (3) CERTIFICATE OF INCORPORATION means the certificate
680 of incorporation described in Section 10A-2A-2.02, all
681 amendments to the certificate of incorporation, and any other
682 documents permitted or required to be delivered for filing by
683 a corporation with the Secretary of State under this chapter
684 or Chapter 1 that modify, amend, supplement, restate, or
685 replace the certificate of incorporation. ~~After an amendment~~
686 ~~of the certificate of incorporation or any other document~~
687 filed the filing of a filing instrument under this chapter or
688 Chapter 1 that restates or amends and restates the certificate
689 of incorporation in its entirety, the certificate of
690 incorporation shall not include any prior documents, but the
691 original date of incorporation shall remain unchanged. When
692 used with respect to a corporation incorporated and existing
693 on December 31, 2019, under a predecessor law of this state,
694 the term "certificate of incorporation" means articles of
695 incorporation, charter, or similar incorporating document, and
696 all amendments and restatements to the certificate of
697 incorporation, charter, or similar incorporating document.
698 When used with respect to a foreign corporation, a nonprofit
699 corporation, or a foreign nonprofit corporation, the



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700 "certificate of incorporation" of such an entity means the
701 document of such entity that is equivalent to the certificate
702 of incorporation of a corporation. The term "certificate of
703 incorporation" as used in this chapter is synonymous to the
704 term "certificate of formation" used in Chapter 1.

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

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

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

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

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

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

727 (10) ELECTRONIC MAIL ADDRESS means a destination,



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728 commonly expressed as a string of characters, consisting of a
729 unique user name or mailbox (commonly referred to as the
730 "local part" of the address) and a reference to an internet
731 domain (commonly referred to as the "domain part" of the
732 address), whether or not displayed, to which electronic mail
733 can be sent or delivered.

734 (11) ELIGIBLE ENTITY means an unincorporated entity,
735 foreign unincorporated entity, nonprofit corporation, or
736 foreign nonprofit corporation.

737 (12) ELIGIBLE INTERESTS means interests or memberships.

738 (13) EMPLOYEE includes an officer, but not a director.
739 A director may accept duties that make the director also an
740 employee.

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

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

747 (16) FILING ENTITY means an unincorporated entity,
748 other than a limited liability partnership, that is of a type
749 that is created by filing a public organic record or is
750 required to file a public organic record that evidences its
751 creation.

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



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

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

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

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

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

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

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

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

779 (24) KNOWLEDGE is determined as follows:

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

781 (1) has actual knowledge of it; or

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



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

785 (1) knows of it;

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

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

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

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

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

798 (1) matters included in the certificate of
799 incorporation upon filing;

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

802 (3) conversion, merger, or interest exchange under
803 Article 9 or Article 11, 90 days after a statement of
804 conversion, or statement of merger or interest exchange
805 becomes effective;

806 (4) conversion or merger under Article 8 of Chapter 1,
807 90 days after a statement of conversion or statement of merger
808 becomes effective; and

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



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

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

820 (25) MEANS denotes an exhaustive definition.

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

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

826 (28) PRINCIPAL OFFICE means the office (in or out of
827 this state) so designated in the annual report where the
828 principal executive offices of a corporation or foreign
829 corporation are located.

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



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840 (30) PROCEEDING includes any civil suit and criminal,
841 administrative, and investigatory action.

842 (31) PUBLIC ORGANIC RECORD means (i) the certificate of
843 incorporation of a corporation, foreign corporation, nonprofit
844 corporation, or foreign nonprofit corporation, or (ii) the
845 document, if any, the filing of which is required to create an
846 unincorporated entity or foreign unincorporated entity, or
847 which creates the unincorporated entity or foreign
848 unincorporated entity and is required to be filed. Where a
849 public organic record has been amended or restated, the term
850 means the public organic record as last amended or restated.

851 (32) RECORD DATE means the date fixed for determining
852 the identity of the corporation's stockholders and their
853 stockholdings for purposes of this chapter. Unless another
854 time is specified when the record date is fixed, the
855 determination shall be made as of the close of business at the
856 principal office of the corporation on the date so fixed.

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

863 (34) SECRETARY means the corporate officer to whom the
864 board of directors has delegated responsibility under Section
865 10A-2A-8.40(c) to maintain the minutes of the meetings of the
866 board of directors and of the stockholders and for
867 authenticating records of the corporation.



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

870 (36) STOCKHOLDER means a record stockholder.

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

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

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

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

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



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896 agreement.

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

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

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

909 "§10A-2A-1.48

910 (a) The quorum and voting requirements applicable to a
911 ratifying action by the board of directors under Section
912 10A-2A-1.47(a) shall be the quorum and voting requirements
913 applicable to the corporate action proposed to be ratified at
914 the time ~~such~~ the ratifying action is taken.

915 (b) If the ratification of the defective corporate
916 action requires approval by the stockholders under Section
917 10A-2A-1.47(c), and if the approval is to be given at a
918 meeting, the corporation shall notify each holder of valid and
919 putative stock, regardless of whether entitled to vote, ~~as of~~
920 ~~(i) the record date for notice of the meeting and as of (i)~~
921 the date of the action by the board of directors under Section
922 10A-2A-1.47(a), which shall be the record date, and (ii) the
923 date of the occurrence of the defective corporate action,



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924 provided that notice shall not be required to be given to
925 holders of valid or putative stock whose identities or
926 addresses for notice cannot be determined from the records of
927 the corporation. The notice must state that the purpose, or
928 one of the purposes, of the meeting, is to consider
929 ratification of a defective corporate action and must be
930 accompanied by (i) either a copy of the action taken by the
931 board of directors in accordance with Section 10A-2A-1.47(a)
932 or the information required by Section 10A-2A-1.47(a) (1)
933 through (a) (4), and (ii) a statement that any claim that the
934 ratification of ~~such~~ the defective corporate action and any
935 putative stock issued as a result of ~~such~~ the defective
936 corporate action should not be effective, or should be
937 effective only on certain conditions, shall be brought within
938 120 days from the applicable validation effective time.

939 (c) Except as provided in subsection (d) with respect
940 to the voting requirements to ratify the election of a
941 director, the quorum and voting requirements applicable to the
942 approval by the stockholders required by Section
943 10A-2A-1.47(c) shall be the quorum and voting requirements
944 applicable to the corporate action proposed to be ratified at
945 the time of ~~such~~ the stockholder approval.

946 (d) The approval by stockholders to ratify the election
947 of a director requires that the votes cast within the voting
948 group favoring ~~such~~ the ratification exceed the votes cast
949 opposing the ratification of the election at a meeting at
950 which a quorum is present.

951 (e) Putative stock on the ~~record date for determining~~



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952 ~~the stockholders entitled to vote on any matter submitted to~~
953 ~~stockholders under Section 10A-2A-1.47(c) of the action by the~~
954 board of directors under Section 10A-2A-1.47(a) (and without
955 giving effect to any ratification of putative stock that
956 becomes effective as a result of ~~such~~ the vote) shall neither
957 be entitled to vote nor counted for quorum purposes in any
958 vote to approve the ratification of any defective corporate
959 action.

960 (f) If the approval under this section of putative
961 stock would result in an overissue, in addition to the
962 approval required by Section 10A-2A-1.47, approval of an
963 amendment to the certificate of incorporation under Article 10
964 to increase the number of shares of stock of an authorized
965 class or series or to authorize the creation of a class or
966 series of stock so there would be no overissue shall also be
967 required."

968 "§10A-2A-1.51

969 (a) If the defective corporate action ratified under
970 this Division D of Article 1 would have required under any
971 other section of this chapter a filing ~~in accordance with this~~
972 ~~chapter, then, regardless of whether a filing was previously~~
973 ~~made in respect of such defective corporate action and~~
974 instrument to be delivered to a filing officer for filing and
975 either (i) the filing instrument requires any change to give
976 effect to the defective corporate action in accordance with
977 this Division D of Article 1 (including any change to the date
978 and time of the effectiveness of the filing instrument) or
979 (ii) a filing instrument under any other section of this



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980 chapter was not previously delivered to a filing officer for
981 filing in respect of the defective corporate action, then, in
982 lieu of a filing instrument otherwise required by this
983 chapter, the corporation shall file deliver a certificate of
984 validation to the appropriate filing officer for filing in
985 accordance with this section, and that certificate of
986 validation shall serve to amend or substitute for any other
987 filing instrument with respect to such the defective corporate
988 action required by this chapter.

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

990 (1) the name of the corporation;

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

993 ~~(3) the defective corporate action that is the subject~~
994 ~~of the certificate of validation (including, in the case of~~
995 ~~any defective corporate action involving the issuance of~~
996 ~~putative stock, the number and type of shares of putative~~
997 ~~stock issued and the date or dates upon which that putative~~
998 ~~stock was purported to have been issued);~~

999 ~~(4) the date of the defective corporate action;~~

1000 ~~(5) the nature of the failure of authorization in~~
1001 ~~respect of the defective corporate action;~~

1002 ~~(6)~~(3) a statement that the defective corporate action
1003 was ratified in accordance with Section 10A-2A-1.47, including
1004 the date on which the board of directors ratified that
1005 defective corporate action and the date, if any, on which the
1006 stockholders approved the ratification of that defective
1007 corporate action; and



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1008 ~~(7)~~(4) the information required by subsection (c).

1009 (c) The certificate of validation must also contain the
1010 following information:

1011 ~~(1) if a filing was previously made in respect of the~~
1012 ~~defective corporate action and no changes to that filing are~~
1013 ~~required to give effect to the ratification of that defective~~
1014 ~~corporate action in accordance with Section 10A-2A-1.47, the~~
1015 ~~certificate of validation must set forth (i) the name, title,~~
1016 ~~and filing date of the filing previously made and any~~
1017 ~~certificate of correction to that filing, and (ii) a statement~~
1018 ~~that a copy of the filing previously made, together with any~~
1019 ~~certificate of correction to that filing, is attached as an~~
1020 ~~exhibit to the certificate of validation;~~

1021 ~~(2)~~(1) if a filing instrument was previously ~~made~~
1022 delivered to a filing officer for filing in respect of the
1023 defective corporate action and that filing instrument requires
1024 any change to give effect to the ratification of that
1025 defective corporate action in accordance with Section
1026 10A-2A-1.47, the certificate of validation must set forth (i)
1027 the name, title, and filing date of the filing instrument
1028 previously made delivered to a filing officer for filing and
1029 any certificate of correction to that filing instrument, ~~and~~
1030 (ii) a statement that a filing instrument containing all of
1031 the information required to be included under the applicable
1032 section or sections of this chapter to give effect to that
1033 defective corporate action is attached as an exhibit to the
1034 certificate of validation, and (iii) the date and time that
1035 filing instrument is deemed to have become effective; or



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1036 ~~(3)~~(2) if a filing instrument was not previously ~~made~~
1037 delivered to a filing officer for filing in respect of the
1038 defective corporate action and the defective corporate action
1039 ratified under Section 10A-2A-1.47 would have required a
1040 filing instrument under any other section of this chapter, the
1041 certificate of validation must set forth (i) a statement that
1042 a filing instrument containing all of the information required
1043 to be included under the applicable section or sections of
1044 this chapter to give effect to that defective corporate action
1045 is attached as an exhibit to the certificate of validation,
1046 and (ii) the date and time that filing instrument is deemed to
1047 have become effective."

1048 "§10A-2A-2.02

1049 Section 10A-1-3.05 shall not apply to this chapter.

1050 Instead:

1051 (a) The certificate of incorporation must set forth:

1052 (1) a corporate name for the corporation that satisfies
1053 the requirements of Article 5 of Chapter 1;

1054 (2) the number of shares of stock the corporation is
1055 authorized to issue;

1056 (3) the street and mailing addresses of the
1057 corporation's initial registered office, the county within
1058 this state in which the street and mailing address is located,
1059 and the name of the corporation's initial registered agent at
1060 that office as required by Article 5 of Chapter 1; and

1061 (4) the name and address of each incorporator.

1062 (b) The certificate of incorporation may set forth:

1063 (1) the names and addresses of the individuals who are



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1064 to serve as the initial directors;

1065 (2) provisions not inconsistent with law regarding:

1066 (i) the purpose or purposes for which the corporation
1067 is organized;

1068 (ii) managing the business and regulating the affairs
1069 of the corporation;

1070 (iii) defining, limiting, and regulating the powers of
1071 the corporation, its board of directors, and stockholders;

1072 (iv) a par value for authorized stock or classes of
1073 stock; or

1074 (v) subject to subsection (f), a provision imposing
1075 personal liability for the debts of the corporation on its
1076 stockholders to a specified extent and upon specified
1077 conditions; otherwise, the stockholders of a corporation shall
1078 not be personally liable for the payment of the corporation's
1079 debts, except as they may be liable by reason of their own
1080 conduct or acts;

1081 (3) any provision that under this chapter is permitted
1082 to be set forth in the certificate of incorporation or
1083 required or permitted to be set forth in the bylaws;

1084 (4) a provision eliminating or limiting the liability
1085 of a director or officer to the corporation or its
1086 ~~shareholders~~ stockholders for money damages for any action
1087 taken, or any failure to take any action, as a director or
1088 officer, except liability for (i) the amount of a financial
1089 benefit received by a director or officer to which the
1090 director or officer is not entitled; (ii) an intentional
1091 infliction of harm on the corporation or the stockholders;



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1092 (iii) in the case of a director, a violation of Section
1093 10A-2A-8.32;~~or~~ (iv) an intentional violation of criminal law;
1094 or (v) in the case of an officer, any claim by or in the right
1095 of the corporation;

1096 (5) a provision permitting or making obligatory
1097 indemnification of a director for liability as defined in
1098 Section 10A-2A-8.50 to any person for any action taken, or any
1099 failure to take any action, as a director, except liability
1100 for (i) receipt of a financial benefit to which the director
1101 is not entitled, (ii) an intentional infliction of harm on the
1102 corporation or its stockholders, (iii) a violation of Section
1103 10A-2A-8.32, or (iv) an intentional violation of criminal law;
1104 and

1105 (6) a provision limiting or eliminating any duty of a
1106 director or any other person to offer the corporation the
1107 right to have or participate in any, or one or more classes or
1108 categories of, business opportunities, before the pursuit or
1109 taking of the opportunity by the director or other person;
1110 provided that any application of that provision to an officer
1111 or a related person of that officer (i) also requires approval
1112 of that application by the board of directors, subsequent to
1113 the effective date of the provision, by action of qualified
1114 directors taken in compliance with the same procedures as are
1115 set forth in Section 10A-2A-8.60~~7~~7; and (ii) may be limited by
1116 the authorizing action of the board of directors.

1117 (c) The certificate of incorporation need not set forth
1118 any of the corporate powers enumerated in Sections 10A-1-2.11,
1119 10A-1-2.12, and 10A-1-2.13.



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1120 (d) Provisions of the certificate of incorporation may
1121 be made dependent upon facts objectively ascertainable outside
1122 the certificate of incorporation in accordance with Section
1123 10A-2A-1.20(c).

1124 (e) As used in this section, "related person" means:

1125 (i) the individual's spouse;

1126 (ii) a child, stepchild, grandchild, parent,
1127 stepparent, grandparent, sibling, stepsibling, half sibling,
1128 aunt, uncle, niece, or nephew (or spouse of any such person)
1129 of the individual or of the individual's spouse;

1130 (iii) a natural person living in the same home as the
1131 individual;

1132 (iv) an entity (other than the corporation or an entity
1133 controlled by the corporation) controlled by the individual or
1134 any person specified above in this definition;

1135 (v) a domestic or foreign:

1136 (A) business or nonprofit corporation (other than the
1137 corporation or an entity controlled by the corporation) of
1138 which the individual is a director~~+~~L

1139 (B) unincorporated entity of which the individual is a
1140 general partner or a member of the governing authority~~+~~L or

1141 (C) individual, trust or estate for whom or of which
1142 the individual is a trustee, guardian, personal
1143 representative, or like fiduciary~~+~~L or

1144 (vi) a person that is, or an entity that is, controlled
1145 by an employer of the individual.

1146 (f) The certificate of incorporation may not contain
1147 any provision that would impose liability on a stockholder for



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1148 the attorney's fees or expenses of the corporation or any
1149 other party in connection with an internal corporate claim, as
1150 defined in Section 10A-2A-2.07(d).

1151 (g) The certificate of incorporation is part of a
1152 binding contract between the corporation and the stockholders,
1153 subject to the provisions of this chapter.

1154 (h) For purposes of subsection (b)(4) only, unless the
1155 certificate of incorporation otherwise provides, "officer"
1156 means an individual appointed or elected in accordance with
1157 Section 10A-2A-8.40 as (i) president, chief executive officer,
1158 chief operating officer, chief financial officer, chief legal
1159 officer, secretary, controller, treasurer, or chief accounting
1160 officer of the corporation; and (ii) any officer of the
1161 corporation designated by resolution of the board of directors
1162 as an "officer" for purposes of subsection (b)(4). The board
1163 of directors may, from time to time, by resolution determine
1164 that one or more of the officers designated in accordance with
1165 subsection (h)(ii) shall no longer be an officer for purposes
1166 of subsection (b)(4), but no such resolution shall be
1167 effective as to any such officer, or any act or omission of
1168 any such officer, prior to the adoption of the resolution.

1169 (i) No provision in the certificate of incorporation
1170 pursuant to subsection (b)(4) shall eliminate or limit the
1171 liability of a director or officer for any act or omission
1172 occurring prior to the date when the provision in the
1173 certificate of incorporation becomes effective. Any amendment,
1174 repeal, or elimination of a provision in the certificate of
1175 incorporation pursuant to subsection (b)(4) shall not affect



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1176 its application with respect to an act or omission by a
1177 director or officer occurring before the amendment, repeal, or
1178 elimination unless the provision in the certificate of
1179 incorporation provides otherwise at the time of the act or
1180 omission."

1181 "§10A-2A-6.21

1182 (a) The powers granted in this section to the board of
1183 directors may be reserved to the stockholders by the
1184 certificate of incorporation.

1185 (b) The board of directors may authorize stock to be
1186 issued for consideration consisting of a contribution. Stock
1187 may be issued in one or more transactions, in the numbers, at
1188 the time and for the consideration as set forth in a
1189 resolution of the board of directors.

1190 (c) A resolution of the board of directors may delegate
1191 to a person or body, in addition to the board of directors,
1192 the authority to enter into one or more transactions to issue
1193 stock, and with respect to that transaction, shares of stock
1194 may be issued in the numbers, at the time and for the
1195 consideration as the person or body may determine; provided
1196 the resolution fixes (i) a maximum number of shares of stock
1197 that may be issued pursuant to the resolution, (ii) a time
1198 period during which the stock may be issued, and (iii) a
1199 minimum amount of consideration for which the stock may be
1200 issued. No resolution shall permit a person or body to issue
1201 stock to that person or body.

1202 ~~(e)~~ (d) Before the corporation issues stock pursuant to
1203 subsection (b) or subsection (c), the board of directors or



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1204 the person or body authorized pursuant to subsection (c) shall
1205 determine that the consideration received or to be received
1206 for stock to be issued is adequate. That determination by the
1207 board of directors or the person or body authorized pursuant
1208 to subsection (c) is conclusive insofar as the adequacy of
1209 consideration for the issuance of stock relates to whether the
1210 stock is validly issued, fully paid, and nonassessable.

1211 (e) Any provision of a resolution contemplated by
1212 subsection (b) or subsection (c) may be made dependent on
1213 facts ascertainable outside the resolution, which facts shall
1214 be determined in accordance with Section 10A-2A-1.20(c).

1215 ~~(d)~~ (f) When the corporation receives the consideration
1216 for which the board of directors authorized the issuance of
1217 stock, the stock issued therefor is fully paid and
1218 nonassessable.

1219 ~~(e)~~ (g) The corporation may place in escrow stock issued
1220 for a contract for future services or benefits or a promissory
1221 note, or make other arrangements to restrict the transfer of
1222 the stock, and may credit distributions in respect of the
1223 stock against its purchase price, until the services are
1224 performed, the benefits are received, or the note is paid. If
1225 the services are not performed, the benefits are not received,
1226 or the note is not paid, the stock escrowed or restricted and
1227 the distributions credited may be cancelled in whole or part."

1228 "§10A-2A-6.24

1229 (a) A corporation may issue rights, options, or
1230 warrants for the purchase of stock or other securities of the
1231 corporation. The board of directors shall determine (i) the



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1232 terms and conditions upon which the rights, options, or
1233 warrants are issued; and (ii) the terms, including the
1234 consideration for which the stock or other securities acquired
1235 from the corporation upon the exercise of any rights, options,
1236 or warrants are to be issued. The authorization by the board
1237 of directors for the corporation to issue rights, options, or
1238 warrants constitutes authorization of the issuance of the
1239 stock or other securities for which the rights, options, or
1240 warrants are exercisable.

1241 (b) The board of directors may adopt a resolution to
1242 delegate to a person or body, in addition to the board of
1243 directors, the authority to enter into one or more
1244 transactions to issue rights, options, or warrants, and with
1245 respect to those transactions, the rights, options, or
1246 warrants may be issued in the numbers, at the time and for the
1247 consideration as the person or body may determine; provided
1248 that the resolution fixes (i) the maximum number of rights,
1249 options, or warrants, and the maximum number of shares of
1250 stock issuable upon exercise thereof, that may be issued
1251 pursuant to the resolution, (ii) a time period during which
1252 the rights, options, or warrants, and during which the stock
1253 issuable upon exercise thereof, may be issued, and (iii) a
1254 minimum amount of consideration (if any) for which the rights,
1255 options, or warrants may be issued and a minimum amount of
1256 consideration for the stock issuable upon exercise thereof. No
1257 resolution shall permit a person or body to issue rights,
1258 options, or warrants to that person or body.

1259 (c) Any provision in a resolution contemplated by



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1260 subsection (a) or subsection (b) may be made dependent on
1261 facts ascertainable outside the resolution, which facts shall
1262 be determined in accordance with Section 10A-2A-1.20(c).

1263 ~~(b)~~ (d) The terms and conditions of rights, options, or
1264 warrants may include restrictions or conditions that:

1265 (1) preclude or limit the exercise, transfer, or
1266 receipt of rights, options, or warrants by any person or
1267 persons owning or offering to acquire a specified number or
1268 percentage of the outstanding stock or other securities of the
1269 corporation or by any transferee or transferees of that person
1270 or persons, or

1271 (2) invalidate or void rights, options, or warrants
1272 held by that person or persons or any of that person's
1273 transferee or transferees.

1274 ~~(c)~~ (e) The board of directors or the person or body
1275 authorized pursuant to subsection (b) may authorize one or
1276 more officers to (i) designate the recipients of rights,
1277 options, warrants, or other equity compensation awards that
1278 involve the issuance of stock and (ii) determine, within an
1279 amount and subject to any other limitations established by the
1280 board of directors, the person or body authorized pursuant to
1281 subsection (b) and, if applicable, the stockholders, the
1282 number of the rights, options, warrants, or other equity
1283 compensation awards and the terms of the rights, options,
1284 warrants, or awards to be received by the recipients, provided
1285 that an officer may not use that authority to designate
1286 himself or herself or any other persons as the board of
1287 directors may specify as a recipient of rights, options,



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1288 warrants, or other equity compensation awards."

1289 "§10A-2A-6.31

1290 (a) A corporation may acquire its own stock, and,
1291 ~~unless otherwise provided in the certificate of incorporation,~~
1292 the stock so acquired constitutes shall constitute authorized
1293 but unissued stock~~-,~~ provided, however, that:

1294 (1) the certificate of incorporation may provide that
1295 the acquired stock shall constitute authorized, issued, but
1296 not outstanding stock;

1297 ~~(b) If the~~ (2) the certificate of incorporation
1298 ~~prohibits~~ may prohibit the reissue of the acquired stock, in
1299 which case, the number of authorized shares of stock is
1300 reduced by the number of shares of stock acquired~~-,~~ or

1301 (3) if the certificate of incorporation does not (i)
1302 provide that the acquired stock shall constitute authorized
1303 but unissued stock, (ii) prohibit the reissuance of the
1304 acquired stock, or (iii) provide that the acquired stock shall
1305 constitute authorized, issued, but not outstanding stock, then
1306 the board of directors may determine, at or prior to the time
1307 of the acquisition, that the acquired stock will constitute
1308 authorized, issued, but not outstanding stock.

1309 (b) If the board of directors has determined that any
1310 acquired stock was to be authorized, issued, but not
1311 outstanding in accordance with subsection (a) (3), then the
1312 board of directors may thereafter determine that the acquired
1313 stock shall be converted to stock that is authorized but not
1314 issued."

1315 "§10A-2A-7.04



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1316 (a) Unless otherwise provided in the certificate of
1317 incorporation, any action required or permitted by this
1318 chapter to be taken at any meeting of the stockholders may be
1319 taken without a meeting, and without prior notice, if one or
1320 more consents in writing setting forth the action so taken are
1321 signed by the holders of outstanding stock having not less
1322 than the minimum number of votes that would be required to
1323 authorize or take the action at a meeting at which all shares
1324 of stock entitled to vote on the action were present and
1325 voted; provided, however, that if a corporation's certificate
1326 of incorporation authorizes stockholders to cumulate their
1327 votes when electing directors pursuant to Section 10A-2A-7.28,
1328 directors may not be elected by less than unanimous written
1329 consent. The action must be evidenced by one or more written
1330 consents describing the action taken, signed by the
1331 stockholders approving the action and delivered to the
1332 corporation for filing by the corporation with the minutes or
1333 corporate records.

1334 (b) If not otherwise fixed under Section 10A-2A-7.07
1335 and if prior action by the board of directors is not required
1336 respecting the action to be taken without a meeting, the
1337 record date for determining the stockholders entitled to take
1338 action without a meeting shall be the first date on which a
1339 ~~signed~~ written consent signed by a stockholder is delivered to
1340 the corporation. If not otherwise fixed under Section
1341 10A-2A-7.07 and if prior action by the board of directors is
1342 required respecting the action to be taken without a meeting,
1343 the record date shall be the close of business on the day the



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1344 resolution of the board of directors taking the prior action
1345 is adopted. No written consent of the stockholders shall be
1346 effective to take the corporate action referred to therein
1347 unless, within 60 days of the earliest date on which a consent
1348 is delivered to the corporation as required by this section,
1349 written consents signed by sufficient stockholders to take the
1350 action have been delivered to the corporation. Any person
1351 ~~executing~~ signing a consent may provide, whether through
1352 instruction to an agent or otherwise, that ~~such~~ the consent
1353 will be effective at a future time, including a time
1354 determined upon the happening of an event, occurring not later
1355 than 60 days after ~~such~~ the instruction is given or such
1356 provision is made, if evidence of the instruction or provision
1357 is provided to the corporation. ~~A~~ If a person signs a consent
1358 when that person is not a stockholder, then that person's
1359 consent shall not be valid unless that person is a stockholder
1360 as of the record date for determining stockholders entitled to
1361 consent to the action. Unless a person's written consent
1362 states that it is irrevocable, that written consent may be
1363 revoked by that person by a writing to that effect delivered
1364 to the corporation before unrevoked written consents
1365 sufficient in number to take the corporate action have been
1366 delivered to the corporation.

1367 (c) A consent signed pursuant to this section has the
1368 effect of a vote taken at a meeting and may be described as
1369 such in any document. Unless the certificate of incorporation,
1370 bylaws or a resolution of the board of directors provides for
1371 a reasonable delay to permit tabulation of written consents,



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1372 the action taken by written consent shall be effective when
1373 written consents signed by sufficient stockholders to take the
1374 action have been delivered to the corporation.

1375 (d) If this chapter requires that notice of a proposed
1376 action be given to nonvoting stockholders and the action is to
1377 be taken by written consent of the voting stockholders, the
1378 corporation shall give its nonvoting stockholders written
1379 notice of the action not more than 10 days after (i) written
1380 consents sufficient to take the action have been delivered to
1381 the corporation, or (ii) any later date that tabulation of
1382 consents is completed pursuant to an authorization under
1383 subsection (c). The notice must reasonably describe the action
1384 taken and contain or be accompanied by the same material that,
1385 under any provision of this chapter, would have been required
1386 to be sent to nonvoting stockholders in a notice of a meeting
1387 at which the proposed action would have been submitted to the
1388 stockholders for action.

1389 (e) If action is taken by less than unanimous written
1390 consent of the voting stockholders, the corporation shall give
1391 its nonconsenting voting stockholders written notice of the
1392 action not more than 10 days after (i) written consents
1393 sufficient to take the action have been delivered to the
1394 corporation, or (ii) any later date that tabulation of
1395 consents is completed pursuant to an authorization under
1396 subsection (c). The notice must reasonably describe the action
1397 taken and contain or be accompanied by the same material that,
1398 under any provision of this chapter, would have been required
1399 to be sent to voting stockholders in a notice of a meeting at



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1400 which the action would have been submitted to the stockholders
1401 for action.

1402 (f) The notice requirements in subsections (d) and (e)
1403 shall not delay the effectiveness of actions taken by written
1404 consent, and a failure to comply with those notice
1405 requirements shall not invalidate actions taken by written
1406 consent, provided that this subsection shall not be deemed to
1407 limit judicial power to fashion any appropriate remedy in
1408 favor of a stockholder adversely affected by a failure to give
1409 the notice within the required time period."

1410 "§10A-2A-7.05

1411 (a) A corporation shall notify stockholders of the
1412 place, if any, date, and time of each annual and special
1413 stockholders' meeting no fewer than 10 nor more than 60 days
1414 before the meeting date. If the board of directors has
1415 authorized participation by means of remote communication
1416 pursuant to Section 10A-2A-7.09 for holders of any class or
1417 series of stock, the notice to the holders of that class or
1418 series of stock must describe the means of remote
1419 communication to be used. The notice must include the record
1420 date for determining the stockholders entitled to vote at the
1421 meeting, if that date is different from the record date for
1422 determining stockholders entitled to notice of the meeting.
1423 Unless this chapter or the certificate of incorporation
1424 requires otherwise, the corporation is required to give notice
1425 only to stockholders entitled to vote at the meeting as of the
1426 record date for determining the stockholders entitled to
1427 notice of the meeting.



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1428 (b) Unless this chapter or the certificate of
1429 incorporation requires otherwise, the notice of an annual
1430 meeting of stockholders need not include a description of the
1431 purpose or purposes for which the meeting is called.

1432 (c) Notice of a special meeting of stockholders must
1433 include a description of the purpose or purposes for which the
1434 meeting is called.

1435 (d) If not otherwise fixed under Section 10A-2A-7.03 or
1436 Section 10A-2A-7.07, the record date for determining
1437 stockholders entitled to notice of and to vote at an annual or
1438 special stockholders' meeting is the earlier of (i) the date
1439 of the action by the board of directors calling the meeting of
1440 the stockholders or (ii) the day before the first notice is
1441 delivered to stockholders.

1442 (e) Unless the certificate of incorporation or bylaws
1443 require otherwise, if an annual or special stockholders'
1444 meeting is adjourned to a different place, if any, date, or
1445 time (including an adjournment taken to address a technical
1446 failure to convene or continue a meeting using remote
1447 communication pursuant to Section 10A-2A-7.09), notice need
1448 not be given of the new place, if any, date, or time if the
1449 new place, if any, date, or time is (i) announced at the
1450 meeting before adjournment or (ii) displayed, during the time
1451 scheduled for the meeting, on the same electronic network used
1452 to enable stockholders and proxy holders to participate in the
1453 meeting by means of remote communication. If a new record date
1454 for the adjourned meeting is or must be fixed under Section
1455 10A-2A-7.07, however, notice of the adjourned meeting shall be



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1456 given under this section to stockholders entitled to vote at
1457 the adjourned meeting as of the record date fixed for notice
1458 of the adjourned meeting."

1459 "§10A-2A-10.05

1460 Unless the certificate of incorporation provides
1461 otherwise, a corporation's board of directors may adopt
1462 amendments to the corporation's certificate of incorporation
1463 without stockholder approval:

1464 (a) to extend the duration of the corporation if it was
1465 incorporated at a time when limited duration was required by
1466 law;

1467 (b) to delete the names and addresses of the
1468 incorporators or initial directors;

1469 (c) to delete the name and address of the initial
1470 registered agent or registered office, if a statement of
1471 change is on file with the Secretary of State;

1472 (d) if the corporation has only one class of stock
1473 outstanding:

1474 (1) to change each issued and unissued authorized share
1475 of stock of the class into a greater number of whole shares of
1476 stock of that class; or

1477 (2) to increase the number of authorized shares of
1478 stock of the class to the extent necessary to permit the
1479 issuance of stock as a stock dividend;

1480 (e) to change the corporate name, provided that the
1481 name complies with Article 5 of Chapter 1;

1482 (f) to reflect a reduction in authorized stock, as a
1483 result of the operation of Section ~~10A-2A-6.31(b)~~



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1484 10A-2A-6.31(a)(2), when the corporation has acquired its own
1485 stock and the certificate of incorporation prohibits the
1486 reissue of the acquired stock;

1487 (g) to delete a class of stock from the certificate of
1488 incorporation, as a result of the operation of Section
1489 ~~10A-2A-6.31(b)~~ 10A-2A-6.31(a)(2), when there is no remaining
1490 stock of the class because the corporation has acquired all
1491 stock of the class and the certificate of incorporation
1492 prohibits the reissue of the acquired stock; or

1493 (h) to take actions expressly permitted by Section
1494 10A-2A-6.02 to be made without stockholder approval."

1495 "§10A-2A-10.07

1496 (a) A corporation's board of directors may restate its
1497 certificate of incorporation at any time, without stockholder
1498 approval, to consolidate all amendments into a single
1499 document. The restated certificate of incorporation may amend
1500 the certificate of incorporation with those amendments that
1501 the board of directors is permitted to adopt without
1502 stockholder approval in accordance with Sections 10A-2A-10.02
1503 and 10A-2A-10.05. The restated certificate of incorporation
1504 may also amend the certificate of incorporation with those
1505 amendments that the stockholders must approve in accordance
1506 with Section 10A-2A-10.03.

1507 (b) If the restated certificate of incorporation
1508 includes one or more new amendments that require stockholder
1509 approval, the amendments shall be adopted and approved as
1510 provided in Section 10A-2A-10.03.

1511 (c) A corporation that restates its certificate of



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1512 incorporation shall deliver to the Secretary of State for
1513 filing a certificate of restatement setting forth:

1514 (1) the name of the corporation;

1515 (2) the text of the restated certificate of
1516 incorporation;

1517 (3) a statement that the restated certificate of
1518 incorporation consolidates all amendments into a single
1519 document;

1520 (4) if a new amendment is included in the restated
1521 certificate of incorporation, the statements required under
1522 Section 10A-2A-10.06 with respect to the new amendment; and

1523 (5) the unique identifying number or other designation
1524 as assigned by the Secretary of State.

1525 (d) The duly adopted restated certificate of
1526 incorporation supersedes the original certificate of
1527 incorporation and all amendments to the certificate of
1528 incorporation.

1529 (e) A restated certificate of incorporation may omit
1530 the information that may be deleted pursuant to Section
1531 10A-2A-10.05."

1532 "§10A-2A-10.08

1533 (a) A corporation's certificate of incorporation may be
1534 amended without action by the board of directors or
1535 stockholders to carry out a plan of reorganization ordered or
1536 decreed by a court of competent jurisdiction under the
1537 authority of a law of the United States if the certificate of
1538 incorporation after the amendment only contains provisions
1539 required or permitted by Section 10A-2A-2.02.



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1540 (b) The individual or individuals designated by the
1541 court shall deliver to the Secretary of State for filing a
1542 certificate of amendment setting forth:

1543 (1) the name of the corporation;

1544 (2) the text of each amendment approved by the court;

1545 (3) the date of the court's order or decree approving
1546 the certificate of amendment;

1547 (4) the title of the reorganization proceeding in which
1548 the order or decree was entered;

1549 (5) a statement that the court had jurisdiction of the
1550 proceeding under federal statute; and

1551 (6) the unique identifying number or other designation
1552 as assigned by the Secretary of State.

1553 (c) Stockholders of a corporation undergoing
1554 reorganization do not have ~~dissenters'~~ appraisal rights except
1555 as and to the extent provided in the reorganization plan.

1556 (d) This section does not apply after entry of a final
1557 decree in the reorganization proceeding even though the court
1558 retains jurisdiction of the proceeding for limited purposes
1559 unrelated to consummation of the reorganization plan."

1560 "§10A-2A-12.01

1561 (a) No approval of the stockholders is required, unless
1562 the certificate of incorporation otherwise provides:

1563 ~~(a)~~ (1) to sell, lease, exchange, or otherwise dispose
1564 of any or all of the corporation's assets in the usual and
1565 regular course of business;

1566 ~~(b)~~ (2) to mortgage, pledge, dedicate to the repayment
1567 of indebtedness (whether with or without recourse), or



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1568 otherwise encumber any or all of the corporation's assets,
1569 regardless of whether in the usual and regular course of
1570 business;

1571 ~~(e)~~ (3) to transfer any or all of the corporation's
1572 assets to one or more corporations, foreign corporations, or
1573 other entities all of the stock or interests of which are
1574 owned by the corporation; or

1575 ~~(d)~~ (4) to distribute assets pro rata to the holders of
1576 one or more classes or series of the corporation's stock.

1577 (b) Without limiting the rights of a secured party
1578 under applicable law, no approval by stockholders shall be
1579 required by Section 10A-2A-12.02 for a sale, lease, exchange,
1580 or other disposition of any of the corporation's assets if
1581 those assets are mortgaged, pledged, dedicated to the
1582 repayment of indebtedness, or otherwise encumbered for the
1583 benefit of a secured party or other creditor and either:

1584 (1) The secured party or other creditor exercises its
1585 rights under the law governing the mortgage, pledge,
1586 dedication, or encumbrance, or other applicable law, whether
1587 under the Uniform Commercial Code, a real property law, or
1588 other law, to effect the sale, lease, exchange, or other
1589 disposition of those assets without the consent of the
1590 corporation; or

1591 (2) In lieu of the secured party or other creditor
1592 exercising such rights, the board of directors of the
1593 corporation authorizes an alternative sale, lease, exchange,
1594 or other disposition of those assets, whether with the secured
1595 party or other creditor, that results in the reduction or



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1596 elimination of the total liabilities or obligations secured by
1597 those assets, provided that (i) the value of those assets is
1598 less than or equal to the total amount of the liabilities or
1599 obligations being eliminated or reduced and (ii) the sale,
1600 lease, exchange, or other disposition of those assets is not
1601 prohibited by the law governing the mortgage, pledge,
1602 dedication, or encumbrance. The provision of consideration to
1603 the corporation or to its stockholders shall not create a
1604 presumption that the value of the assets is greater than the
1605 total amount of the liabilities or obligations being
1606 eliminated or reduced.

1607 (c) A failure to satisfy the condition in subsection
1608 (b) (2) (i) shall not result in the invalidation of a sale,
1609 lease, exchange, or other disposition of the corporation's
1610 assets if the transferee of those assets (i) provided value
1611 therefor (which may include the reduction or elimination of
1612 the total liabilities or obligations secured by those assets)
1613 and (ii) acted in good faith (as defined in Section
1614 7-1-201(b)). The preceding sentence shall not apply to a
1615 proceeding against the corporation and any other necessary
1616 parties to enjoin the sale, lease, exchange, or other
1617 disposition of the corporation's assets before the
1618 consummation thereof and shall not eliminate any liability for
1619 monetary damages for any claim, including a claim in the right
1620 of the corporation, based upon a violation of a duty by a
1621 current or former director or officer, or other person.

1622 (d) A provision of the certificate of incorporation
1623 that requires the authorization or consent of stockholders for



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1624 a sale, lease, exchange, or other disposition of the
1625 corporation's assets shall not apply to a transaction
1626 permitted by subsection (b) unless that provision expressly so
1627 requires."

1628 "§10A-2A-13.02

1629 (a) A stockholder is entitled to appraisal rights, and
1630 to obtain payment of the fair value of that stockholder's
1631 stock, in the event of any of the following corporate actions:

1632 (1) consummation of a merger to which the corporation
1633 is a party (i) if the corporation is a subsidiary and the
1634 merger is governed by Section 10A-2A-11.05 or (ii) if
1635 stockholder approval is required for the merger by Section
1636 10A-2A-11.04, or would be required but for the provisions of
1637 Section 10A-2A-11.04(j), except that appraisal rights shall
1638 not be available to any stockholder of the corporation with
1639 respect to stock of any class or series that remain
1640 outstanding after consummation of the merger;

1641 (2) consummation of a stock exchange to which the
1642 corporation is a party the stock of which will be acquired,
1643 except that appraisal rights shall not be available to any
1644 stockholder of the corporation with respect to any class or
1645 series of stock of the corporation that is not acquired in the
1646 stock exchange;

1647 (3) consummation of a disposition of assets pursuant to
1648 Section 10A-2A-12.02 if the stockholder is entitled to vote on
1649 the disposition, except that appraisal rights shall not be
1650 available to any stockholder of the corporation with respect
1651 to stock of any class or series if (i) (A) under the terms of



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1652 the corporate action approved by the stockholders there is to
1653 be distributed to stockholders in cash the corporation's net
1654 assets, in excess of a reasonable amount reserved to meet
1655 claims of the type described in Section 10A-2A-14.06 and
1656 Section 10A-2A-14.07, ~~(A)~~(I) within one year after the
1657 stockholders' approval of the action and ~~(B)~~(II) in accordance
1658 with their respective interests determined at the time of
1659 distribution, and ~~(ii)~~(B) the disposition of assets is not an
1660 interested transaction, or (ii) the certificate of
1661 incorporation states that no stockholder shall be entitled to
1662 appraisal rights with respect to the consummation of a
1663 disposition of assets pursuant to Section 10A-2A-12.02;

1664 (4) an amendment of the certificate of incorporation
1665 with respect to a class or series of stock that reduces the
1666 number of stock of a class or series owned by the stockholder
1667 to a fraction of a stock if the corporation has the obligation
1668 or right to repurchase the fractional stock so created;

1669 (5) any other merger, stock exchange, disposition of
1670 assets or amendment to the certificate of incorporation, in
1671 each case to the extent provided by the certificate of
1672 incorporation, bylaws or a resolution of the board of
1673 directors;

1674 (6) consummation of a conversion of a corporation to a
1675 foreign corporation pursuant to Article 9 of this chapter or
1676 Article 8 of Chapter 1 if the stockholder does not receive
1677 stock in the foreign corporation resulting from the conversion
1678 that has terms as favorable to the stockholder in all material
1679 respects, and represents at least the same percentage interest



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1680 of the total voting rights of the outstanding stock of the
1681 foreign corporation, as the stock held by the stockholder
1682 before the conversion;

1683 (7) consummation of a conversion of a corporation to a
1684 nonprofit corporation pursuant to Article 9 of this chapter ~~or~~
1685 or Article 8 of Chapter 1; or

1686 (8) consummation of a conversion of the corporation to
1687 an unincorporated entity pursuant to Article 9 of this chapter
1688 or Article 8 of Chapter 1.

1689 (b) Notwithstanding subsection (a), the availability of
1690 appraisal rights under subsections (a) (1), (2), (3), (4), (6),
1691 and (8) shall be limited in accordance with the following
1692 provisions:

1693 (1) Appraisal rights shall not be available for the
1694 holders of stock of any class or series of stock which is:

1695 (i) a covered security under Section 18(b) (1) (A) or (B)
1696 of the Securities Act of 1933;

1697 (ii) has at least 2,000 record stockholders; or

1698 (iii) issued by an open end management investment
1699 company registered with the Securities and Exchange Commission
1700 under the Investment Company Act of 1940 and which may be
1701 redeemed at the option of the holder at net asset value.

1702 (2) The applicability of subsection (b) (1) shall be
1703 determined as of:

1704 (i) the record date fixed to determine the stockholders
1705 entitled to receive notice of the meeting of stockholders to
1706 act upon the corporate action requiring appraisal rights or,
1707 in the case of an offer made pursuant to Section



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1708 10A-2A-11.04(j), the date of the offer; or

1709 (ii) if there is no meeting of stockholders and no
1710 offer made pursuant to Section 10A-2A-11.04(j), the day before
1711 the consummation of the corporate action or effective date of
1712 the amendment of the certificate of incorporation, as
1713 applicable.

1714 (3) Subsection (b)(1) shall not be applicable and
1715 appraisal rights shall be available pursuant to subsection (a)
1716 for the holders of any class or series of stock (i) who are
1717 required by the terms of the corporate action requiring
1718 appraisal rights to accept for their stock anything other than
1719 cash or stock of any class or any series of stock of any
1720 corporation, or any other proprietary interest of any other
1721 entity, that satisfies the standards set forth in subsection
1722 (b)(1) at the time the corporate action becomes effective, ~~or~~
1723 (ii) in the case of the consummation of a disposition of
1724 assets pursuant to Section 10A-2A-12.02, unless the cash,
1725 stock, or proprietary interests received in the disposition
1726 are, under the terms of the corporate action approved by the
1727 stockholders, to be distributed to the stockholders, as part
1728 of a distribution to stockholders of the net assets of the
1729 corporation in excess of a reasonable amount to meet claims of
1730 the type described in Sections 10A-2A-14.06 and 10A-2A-14.07,
1731 (A) within one year after the stockholders' approval of the
1732 action, and (B) in accordance with their respective interests
1733 determined at the time of the distribution, or (iii) in the
1734 case of the consummation of a disposition of assets pursuant
1735 to Section 10A-2A-12.02, unless the certificate of



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1736 incorporation states that no stockholder shall be entitled to
1737 appraisal rights with respect to the consummation of a
1738 disposition of assets pursuant to Section 10A-2A-12.02.

1739 (4) Subsection (b)(1) shall not be applicable and
1740 appraisal rights shall be available pursuant to subsection (a)
1741 for the holders of any class or series of stock where the
1742 corporate action is an interested transaction.

1743 (c) Notwithstanding any other provision of this Section
1744 10A-2A-13.02, the certificate of incorporation as originally
1745 filed or any amendment to the certificate of incorporation may
1746 limit or eliminate appraisal rights for any class or series of
1747 preferred stock, except that (i) no limitation or elimination
1748 shall be effective if the class or series does not have the
1749 right to vote separately as a voting group (alone or as part
1750 of a group) on the action or if the action is a conversion or
1751 merger in which the converted organization or the surviving
1752 organization is not a corporation or foreign corporation, and
1753 (ii) any limitation or elimination contained in an amendment
1754 to the certificate of incorporation that limits or eliminates
1755 appraisal rights for any stock that is outstanding immediately
1756 before the effective date of the amendment or that the
1757 corporation is or may be required to issue or sell thereafter
1758 pursuant to any conversion, exchange, or other right existing
1759 immediately before the effective date of the amendment shall
1760 not apply to any corporate action that becomes effective
1761 within one year after the effective date of the amendment if
1762 that action would otherwise afford appraisal rights."

1763 "§10A-2A-14.05



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1764 (a) A dissolved corporation continues its existence as
1765 a corporation but may not carry on any business except as is
1766 appropriate to wind up and liquidate its business and affairs,
1767 including:

1768 (1) collecting its assets;

1769 (2) disposing of its properties that will not be
1770 distributed in kind to stockholders;

1771 (3) discharging or making provisions for discharging
1772 its liabilities;

1773 (4) distributing its remaining property among its
1774 stockholders according to their interests; and

1775 (5) doing every other act necessary to wind up and
1776 liquidate its business and affairs.

1777 (b) In winding up its business and affairs, a
1778 corporation may:

1779 (1) preserve the corporation's business and affairs and
1780 property as a going concern for a reasonable time;

1781 (2) prosecute, defend, or settle actions or proceedings
1782 whether civil, criminal, or administrative;

1783 (3) transfer the corporation's assets;

1784 (4) resolve disputes by mediation or arbitration;

1785 (5) merge or convert in accordance with Article 9 or 11
1786 of this chapter or Article 8 of Chapter 1; and

1787 (6) enter into a stock exchange in accordance with
1788 Article 11 of this chapter.

1789 (c) Dissolution of a corporation does not:

1790 (1) transfer title to the corporation's property;

1791 (2) prevent transfer of its stock or securities;



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1792 (3) subject its directors or officers to standards of
1793 conduct different from those prescribed in Article 8 of this
1794 chapter;

1795 (4) change (i) quorum or voting requirements for its
1796 board of directors or stockholders;

1797 (ii) provisions for selection, resignation, or removal
1798 of its directors or officers or both; or

1799 (iii) provisions for amending its bylaws;

1800 (5) prevent commencement of a proceeding by or against
1801 the corporation in its corporate name;

1802 (6) abate or suspend a proceeding pending by or against
1803 the corporation on the effective date of dissolution; or

1804 (7) terminate the authority of the registered agent of
1805 the corporation.

1806 (d) A distribution in liquidation under this section
1807 may only be made by a dissolved corporation. For purposes of
1808 determining the stockholders entitled to receive a
1809 distribution in liquidation, the board of directors may fix a
1810 record date for determining stockholders entitled to a
1811 distribution in liquidation, which date may not be
1812 retroactive. If the board of directors does not fix a record
1813 date for determining stockholders entitled to a distribution
1814 in liquidation, the record date is the date the board of
1815 directors authorizes the distribution in liquidation."

1816 "§10A-3A-1.02

1817 As used in this chapter, unless otherwise specified or
1818 unless the context otherwise requires, the following terms
1819 have the following meanings:



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1820 (1) CERTIFICATE OF INCORPORATION means the certificate
1821 of incorporation described in Section 10A-3A-2.02, all
1822 amendments to the certificate of incorporation, and any other
1823 documents permitted or required to be delivered for filing by
1824 a nonprofit corporation with the Secretary of State under this
1825 chapter or Chapter 1 that modify, amend, supplement, restate,
1826 or replace the certificate of incorporation. After ~~an~~
1827 ~~amendment of the certificate of incorporation or any other~~
1828 ~~document filed~~ the filing of a filing instrument under this
1829 chapter or Chapter 1 that restates or amends and restates the
1830 certificate of incorporation in its entirety, the certificate
1831 of incorporation shall not include any prior documents, but
1832 the original date of incorporation shall remain unchanged.

1833 When used with respect to a nonprofit corporation incorporated
1834 and existing on December 31, 2023, under a predecessor law of
1835 this state, the term "certificate of incorporation" means
1836 articles of incorporation, charter, or similar incorporating
1837 document, and all amendments and restatements to the articles
1838 of incorporation, charter, or similar incorporating document.
1839 When used with respect to a foreign nonprofit corporation, a
1840 business corporation, or a foreign business corporation, the
1841 "certificate of incorporation" of that entity means the
1842 document of that entity that is equivalent to the certificate
1843 of incorporation of a corporation. The term "certificate of
1844 incorporation" as used in this chapter is synonymous to the
1845 term certificate of formation used in Chapter 1.

1846 (2) BOARD or BOARD OF DIRECTORS means the group of
1847 individuals responsible for the management or direction, and



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1848 oversight, of the activities and affairs of the nonprofit
1849 corporation, regardless of the name used to refer to the group
1850 or other persons authorized to perform the functions of the
1851 board of directors.

1852 (3) BUSINESS CORPORATION, except in the phrase foreign
1853 business corporation, means an entity incorporated or existing
1854 under the Alabama Business Corporation Law.

1855 (4) BYLAWS means the code or codes of rules (other than
1856 the certificate of incorporation) adopted for the regulation
1857 or management of the affairs of the nonprofit corporation,
1858 regardless of the name or names by which the rules are
1859 designated.

1860 (5) DELIVER or DELIVERY means any method of delivery
1861 used in conventional commercial practice, including delivery
1862 by hand, mail, commercial delivery, and, if authorized in
1863 accordance with Section 10A-3A-1.03, by electronic
1864 transmission.

1865 (6) DIRECTOR means an individual designated, elected,
1866 or appointed, by that or any other name or title, to act as a
1867 member of the board of directors, while the individual is
1868 holding that position.

1869 (7) DISTRIBUTION means a direct or indirect transfer of
1870 cash or other property from a nonprofit corporation to a
1871 member, director, or officer of that nonprofit corporation in
1872 that person's capacity as a member, director, or officer, but
1873 does not mean payments or benefits made in accordance with
1874 Section 10A-3A-6.41.

1875 (8) DOCUMENT means a writing as defined in Chapter 1.



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1876 (9) EFFECTIVE DATE when referring to a document
1877 accepted for filing by the Secretary of State, means the time
1878 and date determined in accordance with Article 4 of Chapter 1.

1879 (10) ELECTRONIC MAIL means an electronic transmission
1880 directed to a unique electronic mail address.

1881 (11) ELECTRONIC MAIL ADDRESS means a destination,
1882 commonly expressed as a string of characters, consisting of a
1883 unique user name or mailbox (commonly referred to as the
1884 "local part" of the address) and a reference to an internet
1885 domain (commonly referred to as the "domain part" of the
1886 address), whether or not displayed, to which electronic mail
1887 can be sent or delivered.

1888 (12) EMPLOYEE does not include an individual serving as
1889 an officer or director who is not otherwise employed by the
1890 nonprofit corporation.

1891 (13) ENTITLED TO VOTE means entitled to vote on the
1892 matter under consideration pursuant to the certificate of
1893 incorporation or bylaws of the nonprofit corporation, or
1894 applicable provisions of this chapter or Chapter 1.

1895 (14) ENTITY includes nonprofit corporation; foreign
1896 nonprofit corporation; business corporation; foreign business
1897 corporation; estate; trust; unincorporated entity; foreign
1898 unincorporated entity; and state, United States, and foreign
1899 government.

1900 (15) EXPENSES means reasonable expenses of any kind
1901 that are incurred in connection with a matter.

1902 (16) FOREIGN BUSINESS CORPORATION means a business
1903 corporation incorporated under a law other than the law of



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1904 this state which would be a business corporation if
1905 incorporated under the law of this state.

1906 (17) FOREIGN NONPROFIT CORPORATION means a nonprofit
1907 corporation incorporated under a law other than the law of
1908 this state which would be a nonprofit corporation if
1909 incorporated under the law of this state.

1910 (18) FOREIGN UNINCORPORATED ENTITY means an
1911 unincorporated entity whose internal affairs are governed by
1912 the law of a jurisdiction other than this state.

1913 (19) FUNDAMENTAL TRANSACTION means an amendment of the
1914 certificate of incorporation, an amendment to the bylaws, a
1915 merger, a conversion, a sale of all or substantially all of
1916 the assets, or the dissolution of a nonprofit corporation.

1917 (20) GOVERNING STATUTE means the statute governing the
1918 internal affairs of a nonprofit corporation, foreign nonprofit
1919 corporation, business corporation, foreign business
1920 corporation, unincorporated entity, or foreign unincorporated
1921 entity.

1922 (21) INCLUDES and INCLUDING denote a partial definition
1923 or a nonexclusive list.

1924 (22) INTEREST means:

1925 (a) a share;

1926 (b) a membership or membership interests; or

1927 (c) either or both of the following rights under the
1928 governing statute governing an organization other than a

1929 nonprofit corporation, foreign nonprofit corporation, business
1930 corporation, or foreign business corporation:

1931 (i) the right to receive distributions from that



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1932 organization either in the ordinary course or upon
1933 liquidation; or

1934 (ii) the right to receive notice or vote on issues
1935 involving that organization's internal affairs, other than as
1936 an agent, assignee, proxy, or person responsible for managing
1937 that organization's business and affairs.

1938 (23) INTEREST HOLDER means a person who holds of record
1939 an interest.

1940 (24) KNOWLEDGE is determined as follows:

1941 (a) A person knows a fact when the person:

1942 (1) has actual knowledge of it; or

1943 (2) is deemed to know it under law other than this
1944 chapter.

1945 (b) A person has notice of a fact when the person:

1946 (1) knows of it;

1947 (2) receives notification of it in accordance with
1948 Section 10A-3A-1.03;

1949 (3) has reason to know the fact from all of the facts
1950 known to the person at the time in question; or

1951 (4) is deemed to have notice of the fact under
1952 subsection (d).

1953 (c) A person notifies another of a fact by taking steps
1954 reasonably required to inform the other person in ordinary
1955 course in accordance with Section 10A-3A-1.03, whether or not
1956 the other person knows the fact.

1957 (d) A person is deemed to have notice of a nonprofit
1958 corporation's:

1959 (1) matters included in the certificate of



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1960 incorporation upon filing;

1961 (2) dissolution, 90 days after a certificate of
1962 dissolution under Section 10A-3A-11.05 becomes effective;

1963 (3) conversion or merger under Article 13 or Article
1964 12, 90 days after a statement of conversion or statement of
1965 merger becomes effective;

1966 (4) conversion or merger under Article 8 of Chapter 1,
1967 90 days after a statement of conversion or statement of merger
1968 becomes effective; and

1969 (5) revocation of dissolution and reinstatement, 90
1970 days after certificate of revocation of dissolution and
1971 reinstatement under Section 10A-3A-11.06 becomes effective.

1972 (e) A member's knowledge, notice, or receipt of a
1973 notification of a fact relating to the nonprofit corporation
1974 is not knowledge, notice, or receipt of a notification of a
1975 fact by that nonprofit corporation solely by reason of the
1976 member's capacity as a member.

1977 (f) The date and time of the effectiveness of a notice
1978 delivered in accordance with Section 10A-3A-1.03, is
1979 determined by Section 10A-3A-1.03.

1980 (25) MEANS denotes an exhaustive definition.

1981 (26) MEMBER means a person in whose name a membership
1982 is registered on the records of the membership nonprofit
1983 corporation and who has the right to (i) select or vote for
1984 the election of directors or (ii) vote on any type of
1985 fundamental transaction.

1986 (27) MEMBERSHIP or MEMBERSHIP INTERESTS means the
1987 rights and any obligations of a member in a membership



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1988 nonprofit corporation or a foreign membership nonprofit
1989 corporation.

1990 (28) MEMBERSHIP NONPROFIT CORPORATION means, except as
1991 provided in Section 10A-3A-14.01(c)(1), a nonprofit
1992 corporation whose certificate of incorporation provides that
1993 it will have members.

1994 (29) NONMEMBERSHIP NONPROFIT CORPORATION means a
1995 nonprofit corporation whose certificate of incorporation
1996 provides that it will not have members.

1997 (30) NONPROFIT CORPORATION, except in the phrase
1998 foreign nonprofit corporation, means a nonprofit corporation
1999 incorporated under or existing under this chapter.

2000 (31) ORGANIZATIONAL DOCUMENTS means the public organic
2001 record and private organizational documents of a nonprofit
2002 corporation, foreign nonprofit corporation, business
2003 corporation, foreign business corporation, or other
2004 organization.

2005 (32) PRINCIPAL OFFICE means the office (in or out of
2006 this state) where the principal executive offices of a
2007 nonprofit corporation or foreign nonprofit corporation are
2008 located.

2009 (33) PRIVATE ORGANIZATIONAL DOCUMENTS means (i) the
2010 bylaws of a nonprofit corporation, foreign nonprofit
2011 corporation, business corporation, or foreign business
2012 corporation or (ii) the rules, regardless of whether in
2013 writing, that govern the internal affairs of an unincorporated
2014 entity or foreign unincorporated entity, are binding on all
2015 its interest holders, and are not part of its public organic



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2016 record, if any. Where private organizational documents have
2017 been amended or restated, the term means the private
2018 organizational documents as last amended or restated.

2019 (34) PROCEEDING includes any civil suit and criminal,
2020 administrative, and investigatory action.

2021 (35) PUBLIC ORGANIC RECORD means (i) the certificate of
2022 incorporation of a nonprofit corporation, foreign nonprofit
2023 corporation, business corporation, or foreign business
2024 corporation, or (ii) the document, if any, the filing of which
2025 is required to create an unincorporated entity or foreign
2026 unincorporated entity, or which creates the unincorporated
2027 entity or foreign unincorporated entity and is required to be
2028 filed. Where a public organic record has been amended or
2029 restated, the term means the public organic record as last
2030 amended or restated.

2031 (36) RECORD DATE means the date fixed for determining
2032 the identity of the nonprofit corporation's members and their
2033 interests for purposes of this chapter. Unless another time is
2034 specified when the record date is fixed, the determination
2035 shall be made as of the close of business at the principal
2036 office of the nonprofit corporation on the date so fixed.

2037 (37) SECRETARY means the corporate officer to whom the
2038 certificate of incorporation, bylaws, or board of directors
2039 has delegated responsibility under Section 10A-3A-8.40(c) to
2040 maintain the minutes of the meetings of the board of
2041 directors, committees, and the members, and for authenticating
2042 records of the nonprofit corporation.

2043 (38) SHARES means the units into which the proprietary



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2044 interests in a domestic or foreign business corporation are
2045 divided.

2046 (39) TYPE OF ENTITY means a generic form of entity: (i)
2047 recognized at common law; or (ii) formed under a governing
2048 statute, regardless of whether some entities formed under that
2049 law are subject to provisions of that law that create
2050 different categories of the form of entity.

2051 (40) UNINCORPORATED ENTITY means an organization or
2052 artificial legal person that either has a separate legal
2053 existence or has the power to acquire an estate in real
2054 property in its own name and that is not any of the following:
2055 a corporation, foreign corporation, nonprofit corporation,
2056 foreign nonprofit corporation, a series of a limited liability
2057 company or of another type of entity, an estate, a trust, a
2058 state, United States, or foreign government. The term includes
2059 a general partnership, limited liability company, limited
2060 partnership, business trust, joint stock association, and
2061 unincorporated nonprofit association.

2062 (41) UNITED STATES includes a district, authority,
2063 bureau, commission, department, and any other agency of the
2064 United States.

2065 (42) VOTE, VOTING, or CASTING A VOTE includes the
2066 giving of consent in writing without a meeting. The term does
2067 not include either recording the fact of abstention or failing
2068 to vote for a candidate or for approval or disapproval of a
2069 matter, whether or not the person entitled to vote
2070 characterizes that conduct as voting or casting a vote.

2071 (43) VOTING GROUP means one or more classes of members



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2072 that under the certificate of incorporation, bylaws, or this
2073 chapter are entitled to vote and be counted together
2074 collectively on a matter at a meeting of members. All members
2075 entitled by the certificate of incorporation, bylaws, or this
2076 chapter to vote generally on the matter are for that purpose a
2077 single voting group.

2078 (44) VOTING POWER means the current power to vote in
2079 the election of directors, or to vote on approval of any type
2080 of fundamental transaction.

2081 "§10A-3A-1.23

2082 (a) The quorum and voting requirements applicable to a
2083 ratifying action by the board of directors under Section
2084 10A-3A-1.22(a) shall be the quorum and voting requirements
2085 applicable to the corporate action proposed to be ratified at
2086 the time the ratifying action is taken.

2087 (b) If the ratification of the defective corporate
2088 action requires approval by the members under Section
2089 10A-3A-1.22(c), and if the approval is to be given at a
2090 meeting, the membership nonprofit corporation shall notify
2091 each holder of valid and putative membership interests,
2092 regardless of whether entitled to vote, ~~as of the record date~~
2093 ~~for notice of the meeting and as of~~ (i) the date of the action
2094 by the board of directors under Section 10A-3A-1.22(a) which
2095 shall be the record date and (ii) the date of the occurrence
2096 of the defective corporate action, provided that notice shall
2097 not be required to be given to holders of valid or putative
2098 membership interests whose identities or addresses for notice
2099 cannot be determined from the records of the membership



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2100 nonprofit corporation. The notice must state that the purpose,
2101 or one of the purposes, of the meeting, is to consider
2102 ratification of a defective corporate action and must be
2103 accompanied by (i) either a copy of the action taken by the
2104 board of directors in accordance with Section 10A-3A-1.22(a)
2105 or the information required by Section 10A-3A-1.22(a)(1)
2106 through (a)(4), and (ii) a statement that any claim that the
2107 ratification of the defective corporate action and any
2108 putative membership interest issued as a result of the
2109 defective corporate action should not be effective, or should
2110 be effective only on certain conditions, shall be brought
2111 within 120 days from the applicable validation effective time.

2112 (c) Except as provided in subsection (d) with respect
2113 to the voting requirements to ratify the election of a
2114 director, the quorum and voting requirements applicable to the
2115 approval by the members, if any, and if none, by the directors
2116 shall be the quorum and voting requirements applicable to the
2117 corporate action proposed to be ratified at the time of the
2118 member or director approval.

2119 (d) The approval by members to ratify the election of a
2120 director requires that the votes cast within the voting group
2121 favoring the ratification exceed the votes cast opposing the
2122 ratification of the election at a meeting at which a quorum is
2123 present.

2124 (e) Putative membership ~~interest~~ interests on the
2125 ~~record date for determining the members entitled to vote on~~
2126 ~~any matter submitted to members under Section 10A-3A-1.22(c)~~
2127 of the action by the board of directors under Section



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2128 10A-3A-1.22(a) (and without giving effect to any ratification
2129 of putative membership interests that becomes effective as a
2130 result of the vote) shall neither be entitled to vote nor
2131 counted for quorum purposes in any vote to approve the
2132 ratification of any defective corporate action.

2133 (f) If the approval under this section of putative
2134 membership interests would result in an overissue, in addition
2135 to the approval required by Section 10A-3A-1.22, approval of
2136 an amendment to the certificate of incorporation under Article
2137 9 to increase the number of membership interests of an
2138 authorized class or to authorize the creation of a class of
2139 membership interests so there would be no overissue shall also
2140 be required.

2141 (g) If the ratification of the defective corporate
2142 action requires approval by a person or group of persons
2143 specified in the certificate of incorporation, the directors
2144 shall provide that person or group of persons with (i) either
2145 a copy of the action taken by the board of directors in
2146 accordance with Section 10A-3A-1.22(a) or the information
2147 required by Section 10A-3A-1.22(a)(1) through (a)(4), and (ii)
2148 a statement that any claim that the ratification of the
2149 defective corporate action and any putative membership
2150 interest issued as a result of the defective corporate action
2151 should not be effective, or should be effective only on
2152 certain conditions, shall be brought within 120 days from the
2153 applicable validation effective time.

2154 "§10A-3A-1.26

2155 (a) If the defective corporate action ratified under



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2156 this Division B of Article 1 would have required under any
2157 other section of this chapter a filing ~~in accordance with this~~
2158 ~~chapter, then, regardless of whether a filing was previously~~
2159 ~~made in respect of the defective corporate action and~~
2160 instrument to be delivered to a filing officer for filing and
2161 either (i) the filing instrument requires any change to give
2162 effect to the defective corporate action in accordance with
2163 Division B of Article 1 (including any change to the date and
2164 time of the effectiveness of the filing instrument) or (ii) a
2165 filing instrument under any other section of this chapter was
2166 not previously delivered to a filing officer for filing in
2167 respect of the defective corporate action, then, in lieu of a
2168 filing instrument otherwise required by this chapter, the
2169 nonprofit corporation shall ~~file~~ deliver a certificate of
2170 validation to the appropriate filing officer for filing in
2171 accordance with this section, and that certificate of
2172 validation shall serve to amend or substitute for any other
2173 filing instrument with respect to the defective corporate
2174 action required by this chapter.

2175 (b) The certificate of validation must set forth:

2176 (1) the name of the nonprofit corporation;

2177 (2) the unique identifying number or other designation
2178 as assigned by the Secretary of State;

2179 ~~(3) the defective corporate action that is the subject~~
2180 ~~of the certificate of validation (including, in the case of~~
2181 ~~any defective corporate action involving the issuance of~~
2182 ~~putative membership interests, the number and type of shares~~
2183 ~~of putative membership interests issued and the date or dates~~



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2184 ~~upon which that putative membership interest was purported to~~
2185 ~~have been issued);~~

2186 ~~(4) the date of the defective corporate action;~~

2187 ~~(5) the nature of the failure of authorization in~~
2188 ~~respect of the defective corporate action;~~

2189 ~~(6)~~ (3) a statement that the defective corporate action
2190 was ratified in accordance with Section 10A-3A-1.22, including
2191 the date on which the board of directors ratified that
2192 defective corporate action, and if applicable, the date on
2193 which the members approved the ratification of that defective
2194 corporate action, and the date on which the person or group of
2195 persons specified in the certificate of incorporation approved
2196 the ratification of that defective corporate action; and

2197 ~~(7)~~ (4) the information required by subsection (c).

2198 (c) The certificate of validation must also contain the
2199 following information:

2200 ~~(1) if a filing was previously made in respect of the~~
2201 ~~defective corporate action and no changes to that filing are~~
2202 ~~required to give effect to the ratification of that defective~~
2203 ~~corporate action in accordance with Section 10A-3A-1.22, the~~
2204 ~~certificate of validation must set forth (i) the name, title,~~
2205 ~~and filing date of the filing previously made and any~~
2206 ~~certificate of correction to that filing, and (ii) a statement~~
2207 ~~that a copy of the filing previously made, together with any~~
2208 ~~certificate of correction to that filing, is attached as an~~
2209 ~~exhibit to the certificate of validation;~~

2210 ~~(2)~~ (1) if a filing instrument was previously ~~made~~
2211 delivered to a filing officer for filing in respect of the



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2212 defective corporate action and that filing instrument requires
2213 any change to give effect to the ratification of that
2214 defective corporate action in accordance with Section
2215 10A-3A-1.22, the certificate of validation must set forth (i)
2216 the name, title, and filing date of the filing instrument
2217 previously ~~made~~ delivered to a filing officer for filing and
2218 any certificate of correction to that filing instrument, ~~and~~
2219 (ii) a statement that a filing instrument containing all of
2220 the information required to be included under the applicable
2221 section or sections of this chapter to give effect to that
2222 defective corporate action is attached as an exhibit to the
2223 certificate of validation, and (iii) the date and time that
2224 filing instrument is deemed to have become effective; or
2225 ~~(3)~~ (2) if a filing instrument was not previously ~~made~~
2226 delivered to a filing officer for filing in respect of the
2227 defective corporate action and the defective corporate action
2228 ratified under Section 10A-3A-1.22 would have required a
2229 filing instrument under any other section of this chapter, the
2230 certificate of validation must set forth (i) a statement that
2231 a filing instrument containing all of the information required
2232 to be included under the applicable section or sections of
2233 this chapter to give effect to that defective corporate action
2234 is attached as an exhibit to the certificate of validation,
2235 and (ii) the date and time that filing instrument is deemed to
2236 have become effective."

2237 "§10A-3A-2.02

2238 Section 10A-1-3.05 shall not apply to this chapter.

2239 Instead:



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2240 (a) The certificate of incorporation must set forth:

2241 (1) a name for the nonprofit corporation that satisfies
2242 the requirements of Article 5 of Chapter 1;

2243 (2) the street and mailing address of the nonprofit
2244 corporation's initial registered office, the county within
2245 this state in which the street and mailing address is located,
2246 and the name of the nonprofit corporation's initial registered
2247 agent at that office as required by Article 5 of Chapter 1;

2248 (3) that the nonprofit corporation is incorporated
2249 under this chapter;

2250 (4) the name and address of each incorporator; and

2251 (5) (i) if the nonprofit corporation will have members,
2252 a statement to that effect; or

2253 (ii) if the nonprofit corporation will not have
2254 members, a statement to that effect.

2255 (b) The certificate of incorporation may set forth:

2256 (1) the names and addresses of the individuals who are
2257 to serve as the initial directors;

2258 (2) provisions not inconsistent with law regarding:

2259 (i) the purpose or purposes for which the nonprofit
2260 corporation is organized;

2261 (ii) managing the activities and regulating the affairs
2262 of the nonprofit corporation;

2263 (iii) defining, limiting, and regulating the powers of
2264 the nonprofit corporation, its board of directors, and the
2265 members;

2266 (iv) the characteristics, qualifications, rights,
2267 limitations, and obligations attaching to each or any class of



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2268 members;

2269 (v) subject to Section 10A-3A-4.20, limiting a member's
2270 right to inspect and copy the records of the nonprofit
2271 corporation under Section 10A-3A-4.02 (b);

2272 (vi) the distribution of assets on dissolution;

2273 (vii) provisions for the election, appointment, or
2274 designation of directors;

2275 (viii) provisions granting inspection rights to a
2276 person or group of persons under Section 10A-3A-4.07; and

2277 (ix) provisions specifying a person or group of persons
2278 whose approval is required under Sections 10A-3A-9.30,
2279 10A-3A-10.04, 10A-3A-11.04, 10A-3A-12.08, or 10A-3A-13.08;

2280 (3) any provision that under this chapter is permitted
2281 to be set forth in the certificate of incorporation or
2282 required or permitted to be set forth in the bylaws;

2283 (4) a provision eliminating or limiting the liability
2284 of a director or officer to a nonprofit corporation or its
2285 members for money damages for any action taken, or any failure
2286 to take any action, as a director or officer, except liability
2287 for (i) the amount of a financial benefit received by a
2288 director or officer to which the director or officer is not
2289 entitled, (ii) an intentional infliction of harm on the
2290 nonprofit corporation or its members, (iii) in the case of a
2291 director, a violation of Section 10A-3A-8.32, ~~or~~ (iv) an
2292 intentional violation of criminal law, or (v) in the case of
2293 an officer, any claim by or in the right of the nonprofit
2294 corporation;

2295 (5) a provision permitting or making obligatory



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2296 indemnification of a director for liability as defined in
2297 Section 10A-3A-8.50 to any person for any action taken, or any
2298 failure to take any action, as a director, except liability
2299 for (i) receipt of a financial benefit to which the director
2300 is not entitled, (ii) an intentional infliction of harm on the
2301 nonprofit corporation or its members, (iii) a violation of
2302 Section 10A-3A-8.32, or (iv) an intentional violation of
2303 criminal law;

2304 (6) a provision limiting or eliminating any duty of a
2305 director or any other person to offer the nonprofit
2306 corporation the right to have or participate in any, or one or
2307 more classes or categories of, corporate opportunities, before
2308 the pursuit or taking of the opportunity by the director or
2309 other person; provided that the application of that provision
2310 to an officer or a related person of that officer (i) also
2311 requires approval of that application by the board of
2312 directors, subsequent to the effective date of the provision,
2313 by action of the disinterested or qualified directors taken in
2314 compliance with the same procedures as are set forth in
2315 Section 10A-3A-8.60, and (ii) may be limited by the
2316 authorizing action of the board of directors; and

2317 (7) provisions required if the nonprofit corporation is
2318 to be exempt from taxation under federal, state, or local law.

2319 (c) The certificate of incorporation need not set forth
2320 any of the corporate powers enumerated in Sections 10A-1-2.11,
2321 10A-1-2.12, and 10A-1-2.13.

2322 (d) Provisions of the certificate of incorporation may
2323 be made dependent upon facts objectively ascertainable outside



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2324 the certificate of incorporation in accordance with Section
2325 10A-3A-1.04.

2326 (e) As used in this section, "related person" means:
2327 (i) the individual's spouse; (ii) a child, stepchild,
2328 grandchild, parent, stepparent, grandparent, sibling,
2329 stepsibling, half sibling, aunt, uncle, niece, or nephew (or
2330 spouse of any such person) of the individual or of the
2331 individual's spouse; (iii) a natural person living in the same
2332 home as the individual; (iv) an entity (other than the
2333 nonprofit corporation or an entity controlled by the nonprofit
2334 corporation) controlled by the individual or any person
2335 specified above in this definition; (v) a domestic or foreign
2336 (A) business or nonprofit corporation (other than the
2337 nonprofit corporation or an entity controlled by the nonprofit
2338 corporation) of which the individual is a director, (B)
2339 unincorporated entity of which the individual is a general
2340 partner or a member of the governing authority, or (C)
2341 individual, trust or estate for whom or of which the
2342 individual is a trustee, guardian, personal representative, or
2343 like fiduciary; or (vi) a person that is, or an entity that
2344 is, controlled by, an employer of the individual.

2345 (f) The certificate of incorporation may not contain
2346 any provision that would impose liability on a member or a
2347 director for the attorney's fees or expenses of the nonprofit
2348 corporation or any other party in connection with an internal
2349 corporate claim, as defined in Section 10A-3A-2.07(d).

2350 (g) The certificate of incorporation is a part of a
2351 binding contract between the nonprofit corporation and (i) the



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2352 members in a membership nonprofit corporation and (ii) the
2353 directors in a nonmembership nonprofit corporation, subject to
2354 the provisions of this chapter.

2355 (h) For purposes of subsection (b) (4) only, unless the
2356 certificate of incorporation otherwise provides, "officer"
2357 means an individual appointed or elected in accordance with
2358 Section 10A-3A-8.40 as (i) president, chief executive officer,
2359 chief operating officer, chief financial officer, chief legal
2360 officer, secretary, controller, treasurer, or chief accounting
2361 officer of the nonprofit corporation and (ii) any officer of
2362 the nonprofit corporation designated by resolution of the
2363 board of directors as an "officer" for purposes of subsection
2364 (b) (4). The board of directors may from time to time by
2365 resolution determine that one or more of the officers
2366 designated in accordance with subsection (h) (ii) shall no
2367 longer be an "officer" for purposes of subsection (b) (4), but
2368 no such resolution shall be effective as to any such officer,
2369 or any act or omission of any such officer, prior to the
2370 adoption of such resolution.

2371 (i) No provision in the certificate of incorporation
2372 pursuant to subsection (b) (4) shall eliminate or limit the
2373 liability of a director or officer for any act or omission
2374 occurring prior to the date when the provision in the
2375 certificate of incorporation becomes effective. Any amendment,
2376 repeal, or elimination of a provision in the certificate of
2377 incorporation pursuant to subsection (b) (4) shall not affect
2378 its application with respect to an act or omission by a
2379 director or officer occurring before the amendment, repeal, or



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2380 elimination unless the provision in the certificate of
2381 incorporation provides otherwise at the time of the act or
2382 omission."

2383 "§10A-3A-7.04

2384 (a) Unless otherwise provided in the certificate of
2385 incorporation, ~~any~~ any action required or permitted by this
2386 chapter to be taken at any meeting of the members may be taken
2387 without a meeting, and without prior notice, if one or more
2388 consents in writing setting forth the action so taken are
2389 signed by the members having not less than the minimum number
2390 of votes that would be required to authorize or take the
2391 action at a meeting at which all members entitled to vote on
2392 the action were present and voted. The action must be
2393 evidenced by one or more written consents describing the
2394 action taken, signed by the members approving the action and
2395 delivered to the membership nonprofit corporation for filing
2396 by the membership nonprofit corporation with the minutes or
2397 corporate records.

2398 (b) If not otherwise fixed under Section 10A-3A-7.07
2399 and if prior action by the board of directors is not required
2400 respecting the action to be taken without a meeting, the
2401 record date for determining the members entitled to take
2402 action without a meeting shall be the first date on which a
2403 ~~signed~~ written consent signed by a member is delivered to the
2404 membership nonprofit corporation. If not otherwise fixed under
2405 Section 10A-3A-7.07 and if prior action by the board of
2406 directors is required respecting the action to be taken
2407 without a meeting, the record date shall be the close of



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2408 business on the day the resolution of the board of directors
2409 taking the prior action is adopted. No written consent of a
2410 member shall be effective to take the corporate action
2411 referred to therein unless, within 60 days of the earliest
2412 date on which a consent is delivered to the membership
2413 nonprofit corporation as required by this section, written
2414 consents signed by sufficient members to take the action have
2415 been delivered to the membership nonprofit corporation. Any
2416 person ~~executing~~ signing a consent may provide, whether
2417 through instruction to an agent or otherwise, that the consent
2418 will be effective at a future time, including a time
2419 determined upon the happening of an event, occurring not later
2420 than 60 days after the instruction is given or the provision
2421 is made, if evidence of the instruction or provision is
2422 provided to the membership nonprofit corporation. ~~A~~ If a
2423 person signs a consent when that person is not a member, then
2424 that person's consent shall not be valid unless that person is
2425 a member as of the record date for determining members
2426 entitled to consent to the action. Unless a person's written
2427 consent states that it is irrevocable, that written consent
2428 may be revoked by that person by a writing to that effect
2429 delivered to the membership nonprofit corporation before
2430 unrevoked written consents sufficient in number to take the
2431 corporate action have been delivered to the membership
2432 nonprofit corporation.

2433 (c) A consent signed pursuant to the provisions of this
2434 section has the effect of a vote taken at a meeting and may be
2435 described as such in any document. Unless the certificate of



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2436 incorporation, bylaws, or a resolution of the board of
2437 directors provides for a reasonable delay to permit tabulation
2438 of written consents, the action taken by written consent shall
2439 be effective when written consents signed by sufficient
2440 members to take the action have been delivered to the
2441 membership nonprofit corporation.

2442 (d) If action is taken by less than unanimous written
2443 consent of the voting members, the membership nonprofit
2444 corporation shall give its nonconsenting voting members
2445 written notice of the action not more than 10 days after (i)
2446 written consents sufficient to take the action have been
2447 delivered to the membership nonprofit corporation or (ii) any
2448 later date that tabulation of consents is completed pursuant
2449 to an authorization under subsection (c). The notice must
2450 reasonably describe the action taken.

2451 (e) The notice requirements in subsection (d) shall not
2452 delay the effectiveness of actions taken by written consent,
2453 and a failure to comply with those notice requirements shall
2454 not invalidate actions taken by written consent, provided that
2455 this subsection shall not be deemed to limit judicial power to
2456 fashion any appropriate remedy in favor of a member adversely
2457 affected by a failure to give the notice within the required
2458 time period.

2459 "§10A-3A-7.05

2460 (a) A membership nonprofit corporation shall notify
2461 members of the place, if any, date, and time of each annual,
2462 regular, or special meeting of the members no fewer than 10
2463 nor more than 60 days before the meeting date. If the board of



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2464 directors has authorized participation by means of remote
2465 communication pursuant to Section 10A-3A-7.09 for any class of
2466 members or voting group, the notice to that class of members
2467 or voting group must describe the means of remote
2468 communication to be used. The notice must include the record
2469 date for determining the members entitled to vote at the
2470 meeting, if that date is different from the record date for
2471 determining members entitled to notice of the meeting. Unless
2472 the certificate of incorporation requires otherwise, the
2473 membership nonprofit corporation is required to give notice
2474 only to members entitled to vote at the meeting as of the
2475 record date for determining the members entitled to notice of
2476 the meeting.

2477 (b) Unless this chapter, the certificate of
2478 incorporation, or the bylaws require otherwise, notice of an
2479 annual or regular meeting of the members need not include a
2480 description of the purpose or purposes for which the meeting
2481 is called.

2482 (c) Notice of a special meeting of members must include
2483 a description of the purpose or purposes for which the meeting
2484 is called.

2485 (d) If not otherwise fixed under Section 10A-3A-7.03 or
2486 Section 10A-3A-7.07, the record date for determining members
2487 entitled to notice of and to vote at an annual, regular, or
2488 special meeting of the members is the earlier of (i) the date
2489 of the action by the board of directors calling the meeting of
2490 the members or (ii) the day before the first notice is
2491 delivered to members.



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2492 (e) Unless the certificate of incorporation or bylaws
2493 require otherwise, if an annual, regular, or special meeting
2494 of the members is adjourned to a different place, if any,
2495 date, or time (including an adjournment taken to address a
2496 technical failure to convene or continue a meeting using
2497 remote communication pursuant to Section 10A-3A-7.09), notice
2498 need not be given of the new place, if any, date, or time if
2499 the new place, if any, date, or time is (i) announced at the
2500 meeting before adjournment or (ii) displayed, during the time
2501 scheduled for the meeting, on the same electronic network used
2502 to enable members and proxy holders to participate in the
2503 meeting by means of remote communication. If a new record date
2504 for the adjourned meeting is or must be fixed under Section
2505 10A-3A-7.07, however, notice of the adjourned meeting shall be
2506 given under this section to members entitled to vote at the
2507 adjourned meeting as of the record date fixed for notice of
2508 the adjourned meeting.

2509 "§10A-3A-9.05

2510 Except as otherwise provided in the certificate of
2511 incorporation:

2512 (1) the board of directors of a nonmembership nonprofit
2513 corporation, or if the initial board of directors of a
2514 nonmembership nonprofit corporation is not named in the
2515 certificate of incorporation and has not yet been elected,
2516 appointed, or designated, its incorporators, may adopt
2517 amendments to the nonmembership nonprofit corporation's
2518 certificate of incorporation; and

2519 (2) an amendment adopted ~~by the board of directors~~



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2520 under this section must also be approved by that person or
2521 group of persons, if any, whose approval is required by the
2522 certificate of incorporation in accordance with Section
2523 10A-3A-9.30.

2524 "§10A-3A-9.07

2525 (a) (1) A membership nonprofit corporation's board of
2526 directors may restate its certificate of incorporation at any
2527 time, without member the approval of the members or any person
2528 or group of persons specified in the certificate of
2529 incorporation, to consolidate all amendments into a single
2530 document. Unless the certificate of incorporation of a
2531 membership nonprofit corporation provides otherwise, the
2532 restated certificate of incorporation may amend the
2533 certificate of incorporation with those amendments that the
2534 board of directors is permitted to adopt in accordance with
2535 Sections 10A-3A-9.02 and 10A-3A-9.03(g) without the approval
2536 of the members or any person or group of persons specified in
2537 the certificate of incorporation. Unless the certificate of
2538 incorporation of a membership nonprofit corporation provides
2539 otherwise, the restated certificate of incorporation of a
2540 membership nonprofit corporation may also amend the
2541 certificate of incorporation with those amendments that the
2542 member or any person or group of persons specified in the
2543 certificate of incorporation must approve in accordance with
2544 Sections 10A-3A-9.02, 10A-3A-9.03, 10A-3A-9.04, and
2545 10A-3A-9.30.

2546 (2) A nonmembership nonprofit corporation's board of
2547 directors may restate its certificate of incorporation at any



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2548 time without the approval of any person or group of persons
2549 specified in the certificate of incorporation to consolidate
2550 all amendments into a single document. Unless the certificate
2551 of incorporation of a nonmembership nonprofit corporation
2552 provides otherwise, the restated certificate of incorporation
2553 may amend the certificate of incorporation with those
2554 amendments that the board of directors is permitted to adopt
2555 in accordance with Section 10A-3A-9.05 without the approval of
2556 any person or group of persons specified in the certificate of
2557 incorporation. Unless the certificate of incorporation of a
2558 nonmembership nonprofit corporation provides otherwise, the
2559 restated certificate of incorporation of a nonmembership
2560 nonprofit corporation may also amend the certificate of
2561 incorporation with those amendments that any person or group
2562 of persons specified in the certificate of incorporation must
2563 approve in accordance with Sections 10A-3A-9.02, 10A-3A-9.05,
2564 and 10A-3A-9.30.

2565 (b) If the restated certificate of incorporation
2566 includes one or more new amendments, the amendments must be
2567 adopted and approved as provided in (i) Section 10A-3A-9.02,
2568 (ii) Sections 10A-3A-9.03 and 10A-3A-9.04, or ~~(ii)~~ (iii)
2569 Section 10A-3A-9.05.

2570 (c) A nonprofit corporation that restates its
2571 certificate of incorporation shall deliver to the Secretary of
2572 State for filing a certificate of restatement setting forth:

2573 (1) the name of the nonprofit corporation;

2574 (2) the text of the restated certificate of
2575 incorporation;



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2576 (3) a statement that the restated certificate of
2577 incorporation consolidates all amendments into a single
2578 document;

2579 (4) if a new amendment is included in the restated
2580 certificate of incorporation, the statements required under
2581 Section 10A-3A-9.06 with respect to the new amendment; and

2582 (5) the unique identifying number or other designation
2583 as assigned by the Secretary of State.

2584 (d) The duly adopted restated certificate of
2585 incorporation supersedes the original certificate of
2586 incorporation and all amendments to the certificate of
2587 incorporation.

2588 (e) Unless the certificate of incorporation provides
2589 otherwise, a restated certificate of incorporation may omit
2590 the information that may be deleted pursuant to Section
2591 10A-3A-9.03(g)."

2592 "§10A-3A-10.01

2593 In a membership nonprofit corporation, ~~no~~:

2594 (a) No approval of the members or any person or group
2595 of persons specified in the certificate of incorporation is
2596 required, unless the certificate of incorporation otherwise
2597 provides:

2598 ~~(a)~~ (1) to sell, lease, exchange, or otherwise dispose
2599 of any or all of the membership nonprofit corporation's assets
2600 in the usual and regular course of the membership nonprofit
2601 corporation's activities;

2602 ~~(b)~~ (2) to mortgage, pledge, dedicate to the repayment
2603 of indebtedness (whether with or without recourse), or



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2604 otherwise encumber any or all of the membership nonprofit
2605 corporation's assets, regardless of whether in the usual and
2606 regular course of its activities; or

2607 ~~(e)~~ (3) to transfer any or all of the membership
2608 nonprofit corporation's assets to one or more corporations or
2609 other entities all of the memberships or interests of which
2610 are owned by the membership nonprofit corporation.

2611 (b) Unless the certificate of incorporation otherwise
2612 provides, without limiting the rights of a secured party under
2613 applicable law, no approval by members or any person or group
2614 of persons specified in the certificate of incorporation shall
2615 be required by Section 10A-3A-10.02 for a sale, lease,
2616 exchange, or other disposition of any of the membership
2617 nonprofit corporation's assets if those assets are mortgaged,
2618 pledged, dedicated to the repayment of indebtedness, or
2619 otherwise encumbered for the benefit of a secured party or
2620 other creditor and either:

2621 (1) The secured party or other creditor exercises its
2622 rights under the law governing the mortgage, pledge,
2623 dedication, or encumbrance, or other applicable law, whether
2624 under the Uniform Commercial Code, a real property law, or
2625 other law, to effect the sale, lease, exchange, or other
2626 disposition of those assets without the consent of the
2627 corporation; or

2628 (2) In lieu of the secured party or other creditor
2629 exercising such rights, the board of directors of the
2630 membership nonprofit corporation authorizes an alternative
2631 sale, lease, exchange, or other disposition of those assets,



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2632 whether with the secured party or other creditor, that results
2633 in the reduction or elimination of the total liabilities or
2634 obligations secured by those assets, provided that (i) the
2635 value of those assets is less than or equal to the total
2636 amount of the liabilities or obligations being eliminated or
2637 reduced and (ii) the sale, lease, exchange, or other
2638 disposition of those assets is not prohibited by the law
2639 governing the mortgage, pledge, dedication, or encumbrance.
2640 The provision of consideration to the membership nonprofit
2641 corporation shall not create a presumption that the value of
2642 the assets is greater than the total amount of the liabilities
2643 or obligations being eliminated or reduced.

2644 (c) A failure to satisfy the condition in subsection
2645 (b) (2) (i) shall not result in the invalidation of a sale,
2646 lease, exchange, or other disposition of the membership
2647 nonprofit corporation's assets if the transferee of those
2648 assets (i) provided value therefor (which may include the
2649 reduction or elimination of the total liabilities or
2650 obligations secured by those assets) and (ii) acted in good
2651 faith (as defined in Section 7-1-201(b)). The preceding
2652 sentence shall not apply to a proceeding against the
2653 membership nonprofit corporation and any other necessary
2654 parties to enjoin the sale, lease, exchange, or other
2655 disposition of the membership nonprofit corporation's assets
2656 before the consummation thereof and shall not eliminate any
2657 liability for monetary damages for any claim, including a
2658 claim in the right of the membership nonprofit corporation,
2659 based upon a violation of a duty by a current or former



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2660 director or officer, or other person.

2661 (d) A provision of the certificate of incorporation
2662 that requires the authorization or consent of members or any
2663 person or group of persons specified in the certificate of
2664 incorporation for a sale, lease, exchange, or other
2665 disposition of the membership nonprofit corporation's assets
2666 shall not apply to a transaction permitted by subsection (b)
2667 unless that provision expressly so requires.

2668 "§10A-3A-10.03

2669 ~~Except as otherwise provided in~~In a nonmembership
2670 nonprofit corporation:

2671 (a) Unless the certificate of incorporation otherwise
2672 provides:

2673 (1) a sale, lease, exchange, mortgage, pledge, or other
2674 disposition of all, or substantially all, the property and
2675 assets of the nonmembership nonprofit corporation may be
2676 approved by the board of directors; and

2677 (2) a sale, lease, exchange, mortgage, pledge, or other
2678 disposition of all, or substantially all, of the property and
2679 assets of the nonmembership nonprofit corporation approved by
2680 the board of directors under this section must also be
2681 approved by that person or group of persons whose approval is
2682 required by the certificate of incorporation in accordance
2683 with Section 10A-3A-10.04.

2684 (b) Unless the certificate of incorporation otherwise
2685 provides, without limiting the rights of a secured party under
2686 applicable law, no approval by any person or group of persons
2687 specified in the certificate of incorporation shall be



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2688 required by this section for a sale, lease, exchange, or other
2689 disposition of any of the nonmembership nonprofit
2690 corporation's assets if those assets are mortgaged, pledged,
2691 dedicated to the repayment of indebtedness, or otherwise
2692 encumbered for the benefit of a secured party or other
2693 creditor and either:

2694 (1) The secured party or other creditor exercises its
2695 rights under the law governing the mortgage, pledge,
2696 dedication, or encumbrance, or other applicable law, whether
2697 under the Uniform Commercial Code, a real property law, or
2698 other law, to effect the sale, lease, exchange, or other
2699 disposition of those assets without the consent of the
2700 nonmembership nonprofit corporation; or

2701 (2) In lieu of the secured party or other creditor
2702 exercising such rights, the board of directors of the
2703 nonmembership nonprofit corporation authorizes an alternative
2704 sale, lease, exchange, or other disposition of those assets,
2705 whether with the secured party or other creditor, that results
2706 in the reduction or elimination of the total liabilities or
2707 obligations secured by those assets, provided that (i) the
2708 value of those assets is less than or equal to the total
2709 amount of the liabilities or obligations being eliminated or
2710 reduced and (ii) the sale, lease, exchange, or other
2711 disposition of those assets is not prohibited by the law
2712 governing the mortgage, pledge, dedication, or encumbrance.
2713 The provision of consideration to the nonmembership nonprofit
2714 corporation shall not create a presumption that the value of
2715 the assets is greater than the total amount of the liabilities



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2716 or obligations being eliminated or reduced.

2717 (c) A failure to satisfy the condition in subsection
2718 (b) (2) (i) shall not result in the invalidation of a sale,
2719 lease, exchange, or other disposition of the nonmembership
2720 nonprofit corporation's assets if the transferee of those
2721 assets (i) provided value therefor (which may include the
2722 reduction or elimination of the total liabilities or
2723 obligations secured by those assets) and (ii) acted in good
2724 faith (as defined in Section 7-1-201(b)). The preceding
2725 sentence shall not apply to a proceeding against the
2726 nonmembership nonprofit corporation and any other necessary
2727 parties to enjoin the sale, lease, exchange, or other
2728 disposition of the nonmembership nonprofit corporation's
2729 assets before the consummation thereof and shall not eliminate
2730 any liability for monetary damages for any claim, including a
2731 claim in the right of the nonmembership nonprofit corporation,
2732 based upon a violation of a duty by a current or former
2733 director or officer, or other person.

2734 (d) A provision of the certificate of incorporation
2735 that requires the authorization or consent of any person or
2736 group of persons specified in the certificate of incorporation
2737 for a sale, lease, exchange, or other disposition of the
2738 nonmembership nonprofit corporation's assets shall not apply
2739 to a transaction permitted by subsection (b) unless that
2740 provision expressly so requires.

2741 "§10A-3A-10.04

2742 (a) The certificate of incorporation of a membership
2743 nonprofit corporation may require that a disposition of assets



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2744 under either or both Section 10A-3A-10.01 and Section
2745 10A-3A-10.02 be approved in writing by a specified person or
2746 group of persons in addition to the board of directors and
2747 members.

2748 (b) The certificate of incorporation of a nonmembership
2749 nonprofit corporation may require that a disposition of assets
2750 under Section 10A-3A-10.03 be approved in writing by a
2751 specified person or group of persons in addition to the board
2752 of directors.

2753 (c) A requirement in the certificate of incorporation
2754 described in subsection (a) or (b) may only be approved by the
2755 written approval of the specified person or group of persons."

2756 "§10A-3A-11.07

2757 (a) A dissolved nonprofit corporation continues its
2758 existence as a nonprofit corporation but may not carry on any
2759 activity except as is appropriate to wind up and liquidate its
2760 activities and affairs, including:

2761 (1) collecting its assets;

2762 (2) disposing of its properties that will not be
2763 distributed in kind;

2764 (3) discharging or making provisions for discharging
2765 its liabilities;

2766 (4) distributing its remaining property as required by
2767 law, its certificate of incorporation, bylaws, and as approved
2768 when the dissolution was authorized; and

2769 (5) doing every other act necessary to wind up and
2770 liquidate its activities and affairs.

2771 (b) In winding up its activities and affairs, a



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2772 dissolved nonprofit corporation may:

2773 (1) preserve the nonprofit corporation's activities and
2774 affairs and property as a going concern for a reasonable time;

2775 (2) prosecute, defend, or settle actions or proceedings
2776 whether civil, criminal, or administrative;

2777 (3) transfer the nonprofit corporation's assets;

2778 (4) resolve disputes by mediation or arbitration; and

2779 (5) merge or convert in accordance with Article 12 or
2780 13 of this chapter or Article 8 of Chapter 1.

2781 (c) Dissolution of a nonprofit corporation does not:

2782 (1) transfer title to the nonprofit corporation's
2783 property;

2784 (2) subject its directors or officers to standards of
2785 conduct different from those prescribed in Article 8 of this
2786 chapter;

2787 (3) change:

2788 (i) quorum or voting requirements for its board of
2789 directors or members;

2790 (ii) provisions for selection, resignation, or removal
2791 of its directors or officers or both; or

2792 (iii) provisions for amending its bylaws;

2793 (4) prevent commencement of a proceeding by or against
2794 the nonprofit corporation in its corporate name;

2795 (5) abate or suspend a proceeding pending by or against
2796 the nonprofit corporation on the effective date of
2797 dissolution; or

2798 (6) terminate the authority of the registered agent of
2799 the nonprofit corporation.



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2800 (d) A distribution in liquidation under this section
2801 may only be made by a dissolved nonprofit corporation.

2802 "§10A-4-1.03

2803 As used in this chapter, unless the context otherwise
2804 requires, the term:

2805 (1) DISQUALIFIED PERSON. Any person who is not a
2806 qualified person.

2807 (2) DOMESTIC PROFESSIONAL CORPORATION. A business
2808 professional corporation ~~for profit~~ or nonprofit professional
2809 corporation organized pursuant to ~~the provisions of this~~
2810 chapter.

2811 (3) FOREIGN PROFESSIONAL CORPORATION. A corporation or
2812 unincorporated association, for profit or nonprofit, organized
2813 for the purpose of rendering professional services under a law
2814 other than the law of ~~Alabama~~ this state.

2815 (4) LICENSING AUTHORITY. As defined in Section
2816 ~~10A-1-1.03(49)~~ 10A-1-1.03.

2817 (5) PROFESSIONAL SERVICE. As defined in Section
2818 ~~10A-1-1.03(80)~~ 10A-1-1.03.

2819 (6) QUALIFIED PERSON. With respect to any domestic
2820 professional corporation:

2821 a. An individual who is authorized by law of ~~Alabama~~
2822 this state or of any qualified state to render a professional
2823 service permitted by the certificate of ~~formation~~
2824 incorporation of the professional corporation;

2825 b. A general partnership in which all the partners are
2826 qualified persons with respect to the professional
2827 corporation; and



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2828 c. A professional corporation, domestic or foreign, in
2829 which all the ~~shareholders~~ stockholders are qualified persons
2830 with respect to the professional corporation.

2831 d. A limited liability company in which all the members
2832 are qualified persons with respect to the professional
2833 corporation.

2834 "Qualified person" does not include any person during
2835 any period in which the person's authorization to render
2836 professional services has been completely terminated or
2837 suspended.

2838 (7) QUALIFIED STATE. Any state, other than ~~Alabama~~ this
2839 state, or territory of the United States or the District of
2840 Columbia which allows individuals authorized to render
2841 professional services in ~~Alabama~~ this state and not in the
2842 other state, or partnerships of the individuals, or domestic
2843 professional corporations or professional associations owned
2844 by the individuals to own ~~shares of~~ stock in professional
2845 corporations or to be members of professional associations
2846 organized under its laws."

2847 "§10A-4-2.01

2848 ~~Domestic~~ A domestic professional ~~corporations~~
2849 corporation may be organized under this chapter ~~only for the~~
2850 ~~purpose of rendering professional services and services~~
2851 ~~ancillary thereto within a single profession, except that the~~
2852 ~~same professional corporation or nonprofit professional~~
2853 ~~corporation may render medical, dental, and other health~~
2854 ~~related services~~ for the purpose of, and shall have the power
2855 to render, professional services if the domestic professional



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2856 corporation complies with the rules of the licensing authority
2857 for such profession; provided that in the case of a
2858 professional corporation, at least one ~~shareholder~~ stockholder
2859 of the professional corporation is duly licensed to provide
2860 each professional service for which the professional
2861 corporation is organized, or, in the case of a nonprofit
2862 professional corporation, all of the professional services
2863 rendered by the professional corporation are rendered by
2864 persons duly licensed to render the professional service."

2865 "§10A-4-2.02

2866 (a) Any corporation whose certificate of ~~formation~~
2867 incorporation includes as a stated purpose the performance of
2868 professional services may be incorporated under this chapter
2869 by stating in its certificate of ~~formation~~ incorporation that
2870 it is incorporated under this chapter.

2871 (b) A domestic professional ~~business~~ corporation, ~~other~~
2872 ~~than~~ that is not a nonprofit professional corporation, ~~which~~
2873 ~~is subject to this chapter~~ shall cease being governed by this
2874 chapter and shall be governed by the Alabama Business
2875 Corporation Law, ~~if it is a domestic corporation~~, if it amends
2876 its certificate of ~~formation~~ incorporation to delete the
2877 statement that it is organized under this chapter, and
2878 conforms its ~~articles~~ certificate of incorporation to the
2879 Alabama Business Corporation Law ~~and, if it is a foreign~~
2880 ~~corporation, complies with the provisions of this title~~
2881 ~~applicable to foreign entities~~. A domestic nonprofit
2882 professional corporation ~~which is subject to this chapter~~
2883 shall cease being governed by this chapter and shall be



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2884 governed by the Alabama Nonprofit Corporation Law, ~~if it is a~~
2885 ~~domestic corporation,~~ if it amends its certificate of
2886 ~~formation~~ incorporation to delete the statement that it is
2887 organized under this chapter, and conforms its certificate of
2888 incorporation to the Alabama Nonprofit Corporation Law ~~and, if~~
2889 ~~it is a foreign corporation, complies with the provisions of~~
2890 ~~this title applicable to foreign entities.~~

2891 (c) Any corporation which is not subject to this
2892 chapter may become subject to this chapter, if it is a
2893 domestic corporation, by conforming its ~~articles~~ certificate
2894 of incorporation to this chapter.

2895 (d) Any foreign professional corporation which renders
2896 professional services in ~~Alabama~~ this state shall be subject
2897 to this chapter."

2898 "§10A-4-2.03

2899 (a) Subject to Section 10A-4-5.07, a domestic
2900 professional corporation, including a professional corporation
2901 that is a nonprofit corporation, shall have all the powers
2902 necessary or convenient to effectuate its purposes, including
2903 those enumerated in Sections 10A-1-2.11, 10A-1-2.12, and
2904 10A-1-2.13.

2905 (b) A domestic professional corporation shall not
2906 engage in any profession other than the profession or
2907 professions permitted by its certificate of ~~formation~~
2908 incorporation, except that a domestic professional corporation
2909 may invest its funds in real estate, mortgages, stocks, bonds,
2910 or any other type investment."

2911 "§10A-4-2.04



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2912 A professional corporation, domestic or foreign, may
2913 render professional services in ~~Alabama~~ this state only
2914 through individuals permitted to render the services in
2915 ~~Alabama~~ this state; but nothing in this chapter shall be
2916 construed to require that any individual who is employed by a
2917 professional corporation be licensed to perform services for
2918 which no license is otherwise required or to prohibit the
2919 rendering of professional services by a licensed individual
2920 acting in ~~his or her~~ that person's individual capacity,
2921 notwithstanding the individual may be a ~~shareholder~~
2922 stockholder, member, director, officer, employee, or agent of
2923 a professional corporation, domestic or foreign."

2924 "§10A-4-3.01

2925 (a) A domestic professional corporation may issue
2926 ~~shares, fractional shares~~ stock, fractions of a share of
2927 stock, and rights or options to purchase ~~shares~~ stock only to
2928 qualified persons.

2929 (b) Where deemed necessary by the licensing authority
2930 for any profession in order to prevent violations of the
2931 ethical standards of the profession, the licensing authority
2932 may, within its rule-making power, by rule further restrict,
2933 condition, or abridge the authority of domestic professional
2934 corporations to issue ~~shares~~ stock, but no rule shall, of
2935 itself, have the effect of causing a ~~shareholder~~ stockholder
2936 of a professional corporation at the time the rule becomes
2937 effective to become a disqualified person unless and to the
2938 extent specified by the licensing authority.

2939 (c) A ~~shareholder~~ stockholder of a domestic



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2940 professional corporation may transfer or pledge ~~shares,~~
2941 ~~fractional shares~~ stock, fractions of a share of stock, and
2942 rights or options to purchase ~~shares~~ stock of the professional
2943 corporation only to qualified persons.

2944 (d) Any issuance or transfer of ~~shares~~ stock in
2945 violation of this section shall be void, however, nothing
2946 contained herein shall prohibit the transfer of ~~shares~~ stock
2947 of a domestic professional corporation by operation of law or
2948 court decree.

2949 (e) Nothing in this section shall require domestic
2950 nonprofit professional corporations to issue ~~shares~~ stock. ~~The~~
2951 Domestic nonprofit professional corporations may have members
2952 and all members must be qualified persons. A licensing
2953 authority may, within its rule-making power, by rule further
2954 restrict, condition, or abridge membership in domestic
2955 nonprofit corporations, but no rule shall, of itself, have the
2956 effect of causing a member of a domestic nonprofit
2957 professional corporation at the time the rule becomes
2958 effective to become a disqualified person unless and to the
2959 extent specified by the licensing authority."

2960 "§10A-4-3.02

2961 (a) Upon the death of a ~~shareholder~~ stockholder of a
2962 domestic professional corporation, or if a ~~shareholder~~
2963 stockholder of a domestic professional corporation becomes a
2964 disqualified person, or if ~~shares~~ stock of a domestic
2965 professional corporation ~~are~~ is transferred by operation of
2966 law or court decree to a disqualified person, the ~~shares of~~
2967 stock owned by the deceased ~~shareholder~~ stockholder or ~~of~~ the



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2968 disqualified person may be transferred to a qualified person
2969 and, if not so transferred, shall be purchased or redeemed by
2970 the domestic professional corporation to the extent of funds
2971 which may be legally made available for the purchase.

2972 (b) If the price for the ~~shares~~ stock is not fixed by
2973 the governing documents of the domestic professional
2974 corporation or by private agreement, the domestic professional
2975 corporation, within six months after the death or 30 days
2976 after the disqualification or transfer, as the case may be,
2977 shall make a written offer to pay for the ~~shares~~ stock at a
2978 specified price deemed by the domestic professional
2979 corporation to be the fair value thereof as of the date of the
2980 death, disqualification, or transfer. The offer shall be given
2981 to the executor or administrator of the estate of a deceased
2982 ~~shareholder~~ stockholder or to the disqualified ~~shareholder~~
2983 person or transferee and shall be accompanied by a balance
2984 sheet of the domestic professional corporation, as of the
2985 latest available date and not more than 12 months prior to the
2986 making of the offer, and a profit and loss statement of the
2987 domestic professional corporation for the 12 months' period
2988 ended on the date of the balance sheet.

2989 (c) If within 30 days after the date of the written
2990 offer from the domestic professional corporation the fair
2991 value of the ~~shares~~ stock is agreed upon between the
2992 disqualified person and the domestic professional corporation,
2993 payment therefor shall be made within 90 days, or other period
2994 as the parties may fix by agreement, after the date of the
2995 offer, upon surrender of the certificate or certificates



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2996 representing the ~~shares~~ stock. Upon payment of the agreed
2997 value the disqualified persons shall cease to have any
2998 interest in the ~~shares~~ stock.

2999 (d) If within 30 days from the date of the written
3000 offer from the domestic professional corporation, the
3001 disqualified person and the domestic professional corporation
3002 do not so agree, then either party may commence a civil action
3003 in the designated court, and if none, in the circuit court for
3004 the county in which the domestic professional corporation's
3005 principal office is located in this state, and if none in this
3006 state, in the circuit court for the county in which the
3007 domestic professional corporation's most recent registered
3008 office is located requesting that the fair value of the ~~shares~~
3009 stock be found and determined. The disqualified person,
3010 wherever residing, shall be made a party to the proceeding as
3011 an action against ~~his or her shares~~ the disqualified person's
3012 stock quasi in rem. Service shall be made in accordance with
3013 the rules of civil procedure. The disqualified person shall be
3014 entitled to judgment against the domestic professional
3015 corporation for the amount of the fair value of ~~his or her~~
3016 ~~shares~~ the disqualified person's stock as of the date of
3017 death, disqualification, or transfer upon surrender to the
3018 domestic professional corporation of the certificate or
3019 certificates representing the ~~shares~~ stock. The court may, in
3020 its discretion, order that the judgment be paid in
3021 installments and with interest and on terms as the court may
3022 determine. The court may, if it so elects, appoint one or more
3023 persons as appraisers to receive evidence and recommend a



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3024 decision on the question of fair value. The appraisers shall
3025 have the power and authority as shall be specified in the
3026 order of their appointment or an amendment thereof.

3027 (e) The judgment shall include an allowance for
3028 interest at the rate the court finds to be fair and equitable
3029 in all the circumstances, from the date of death,
3030 disqualification, or transfer.

3031 (f) The costs and expenses of any proceeding shall be
3032 determined by the court and shall be assessed against the
3033 domestic professional corporation, but all or any part of the
3034 costs and expenses may be apportioned and assessed as the
3035 court may deem equitable against the disqualified person if
3036 the court shall find that the action of the disqualified
3037 person in failing to accept the offer was arbitrary or
3038 vexatious or not in good faith. The expenses shall include
3039 reasonable compensation for and reasonable expenses of the
3040 appraisers and a reasonable attorney's fee but shall exclude
3041 the fees and expenses of counsel for and of experts employed
3042 by any party; but if the fair value of the ~~shares~~ stock as
3043 determined materially exceeds the amount which the domestic
3044 professional corporation offered to pay therefor, or if no
3045 offer was made, the court in its discretion may award to the
3046 disqualified person the sum the court determines to be
3047 reasonable compensation to any expert or experts employed by
3048 the disqualified person in the proceeding.

3049 (g) If a purchase, redemption, or transfer of the
3050 ~~shares~~ stock of a deceased stockholder or disqualified
3051 ~~shareholder~~ person or of a transferee who is a disqualified



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3052 person is not completed within 12 months after the death of
3053 the deceased ~~shareholder~~ stockholder or 12 months after the
3054 disqualification or transfer, as the case may be, the domestic
3055 professional corporation shall forthwith cancel the ~~shares~~
3056 stock on its books and the disqualified person shall have no
3057 further interest as a ~~shareholder~~ stockholder in the domestic
3058 professional corporation other than ~~his or her~~ the
3059 disqualified person's right to payment for the ~~shares~~ stock
3060 under this section.

3061 (h) ~~Shares acquired by a domestic professional~~
3062 ~~corporation pursuant to payment of the agreed value therefor~~
3063 ~~or to payment of the judgment entered therefor, as in this~~
3064 ~~section provided, may be held, cancelled, or disposed of by~~
3065 ~~the domestic professional corporation as in the case of other~~
3066 ~~treasury shares.~~ (1) A professional corporation may acquire its
3067 own stock, and, the stock so acquired shall constitute
3068 authorized but unissued stock, provided however:

3069 (A) the certificate of incorporation may provide that
3070 the acquired stock shall constitute authorized, issued, but
3071 not outstanding stock;

3072 (B) the certificate of incorporation may prohibit the
3073 reissue of the acquired stock, in which case, the number of
3074 authorized shares of stock is reduced by the number of shares
3075 of stock acquired; or

3076 (C) if the certificate incorporation does not (i)
3077 provide that the acquired stock shall constitute authorized
3078 but unissued stock, (ii) prohibit the reissuance of the
3079 acquired stock, or (iii) provide that the acquired stock shall



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3080 constitute authorized, issued, but not outstanding stock, then
3081 the board of directors may determine, at or prior to the time
3082 of the acquisition, that the acquired stock will constitute
3083 authorized, issued, but not outstanding stock.

3084 (2) If the board of directors determines that any
3085 acquired stock was to be authorized, issued, but not
3086 outstanding in accordance with subsection (h) (1) (C), then the
3087 board of directors may thereafter determine that the acquired
3088 stock shall be converted to stock that is authorized but not
3089 issued.

3090 (i) This section shall not be deemed to require the
3091 purchase of ~~shares~~ stock of a disqualified person where the
3092 period of the disqualification is for less than 12 months from
3093 the date of disqualification or transfer.

3094 (j) Any provision regarding purchase, redemption, or
3095 transfer of ~~shares~~ stock of a domestic professional
3096 corporation contained in the certificate of ~~formation~~
3097 incorporation, bylaws, or any private agreement shall be
3098 specifically enforceable in the courts of ~~Alabama~~ this state.

3099 (k) Nothing herein contained shall prevent or relieve a
3100 domestic professional corporation from paying pension benefits
3101 or other deferred compensation for services rendered to or on
3102 behalf of a former ~~shareholder~~ stockholder as otherwise
3103 permitted by law.

3104 (l) A domestic professional corporation may purchase
3105 its own ~~shares~~ stock from a disqualified person without regard
3106 to the availability of capital or surplus for the purchase;
3107 however, no purchase of or payment for the ~~shares~~ stock shall



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3108 be made at a time when the domestic professional corporation
3109 is insolvent or when the purchase or payment would make it
3110 insolvent.

3111 (m) The foregoing provisions of this section shall not
3112 apply to a domestic nonprofit professional corporation. Any
3113 member of a corporation who becomes a disqualified person must
3114 cease being a member not more than 12 months after the date of
3115 disqualification if he or she is then a disqualified person."

3116 "§10A-4-3.03

3117 (a) Every individual who renders professional services
3118 as an employee of a ~~domestic or~~ professional corporation shall
3119 be liable for any negligent or wrongful act or omission in
3120 which ~~he or she~~ that individual personally participates to the
3121 same extent as if ~~he or she~~ that individual rendered the
3122 services as a sole practitioner.

3123 (b) ~~The~~ Except as otherwise provided in subsection (a),
3124 the personal liability of a shareholder stockholder, employee,
3125 director, or officer of a domestic professional corporation,
3126 other than a domestic nonprofit professional corporation,
3127 shall be no greater in any respect than that of a ~~shareholder~~
3128 stockholder, employee, director, or officer of a corporation
3129 ~~organized under~~ governed by the Alabama Business Corporation
3130 Law.

3131 (c) ~~The~~ Except as otherwise provided in subsection (a),
3132 the personal liability of a member, employee, director, or
3133 officer of a domestic nonprofit professional corporation shall
3134 be no greater in any respect than that of a member, employee,
3135 director, or officer of a corporation ~~organized under~~ governed



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3136 by the Alabama Nonprofit Corporation Law.

3137 (d) ~~The~~ Except as otherwise provided in subsection (a),
3138 the personal liability of a ~~shareholder~~ stockholder, member,
3139 employee, director, or officer of a foreign professional
3140 corporation shall be determined under the law of the
3141 jurisdiction in which it is organized."

3142 "§10A-4-3.05

3143 A voting trust with respect to ~~shares~~ stock of a
3144 domestic professional corporation shall not be valid unless
3145 all the trustees and beneficiaries thereof are qualified
3146 persons, except that a voting trust may be validly continued
3147 for a period of 12 months after the death of a deceased
3148 beneficiary or after a beneficiary has become a disqualified
3149 person."

3150 "§10A-4-3.06

3151 At least one director of a domestic professional
3152 corporation and the president of a domestic professional
3153 corporation shall be qualified persons with respect to the
3154 domestic professional corporation; provided, however, that the
3155 foregoing restriction shall not apply for a period of 12
3156 months after the death of the sole ~~shareholder~~ stockholder of
3157 a domestic professional corporation."

3158 "§10A-4-4.01

3159 Administrators, executors, guardians, conservators, or
3160 receivers of the estates of ~~shareholders~~ stockholders of a
3161 domestic professional corporation who hold all of the
3162 outstanding ~~shares~~ stock of the domestic professional
3163 corporation may amend the certificate of ~~formation~~



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3164 incorporation by signing a written consent to the certificate
3165 of amendment and delivering the certificate of amendment for
3166 filing to the Secretary of State. The certificate of amendment
3167 shall set forth, in addition to the information required to be
3168 included in the certificate of amendment by the Alabama
3169 Business Corporation Law, a statement that the administrators,
3170 executors, guardians, conservators, or receivers own all the
3171 outstanding ~~shares~~ stock."

3172 "§10A-4-4.02

3173 (a) A domestic professional corporation may convert to
3174 or merge with another corporation, professional corporation,
3175 or another type of entity, domestic or foreign, if permitted
3176 under the Alabama Business Corporation Law, the Alabama
3177 Nonprofit Corporation Law, ~~or may merge with or convert to~~
3178 ~~another type of entity as permitted by~~ Article 8 of Chapter 1.
3179 Upon the merger, ~~consolidation,~~ or conversion, if the
3180 surviving or new corporation or converted entity, as the case
3181 may be, is to render professional services in ~~Alabama~~ this
3182 state, it shall comply with ~~the provisions of~~ this chapter.

3183 (b) An unincorporated professional association
3184 organized under Article 1 of Chapter 30 may merge ~~or~~
3185 ~~consolidate~~ with a domestic professional corporation ~~organized~~
3186 ~~under this chapter~~. In the merger, the unincorporated
3187 professional association shall follow the procedure specified
3188 in the Alabama Business Corporation Law ~~shall apply~~, provided
3189 that:

3190 (1) The surviving corporation shall be a domestic
3191 professional corporation,



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3192 (2) The following terms, when used in the Alabama
3193 Business Corporation Law to refer to an unincorporated
3194 professional association, shall have the following meanings:

3195 a. ~~"Board of directors" shall mean~~ BOARD OF DIRECTORS
3196 means "board of governors,".

3197 b. ~~"Corporation" shall mean~~ CORPORATION means
3198 "unincorporated association,".

3199 c. ~~"Shares or securities" shall mean~~ STOCK or SECURITIES in the
3200 case of an unincorporated professional association which is a
3201 nonstock organization, ~~shall mean~~ means the undivided
3202 interests of the members in the assets of the association~~,"~~.

3203 d. ~~"Shareholder" shall mean~~ STOCKHOLDER in the case of an
3204 unincorporated association which is a nonstock organization,
3205 ~~shall mean~~ means "member."

3206 (3) The plan of merger or plan of conversion shall be
3207 approved by a vote of ~~two-thirds~~ two-thirds of the members of
3208 the professional association."

3209 "§10A-4-5.01

3210 The Attorney General may institute proceedings to
3211 involuntarily dissolve a domestic professional corporation ~~or~~
3212 ~~a domestic nonprofit professional corporation~~. A licensing
3213 authority may request that the Attorney General institute ~~such~~
3214 the proceedings."

3215 "§10A-4-5.02

3216 (a) A foreign professional corporation shall be
3217 entitled to register under Article 7 of Chapter 1 for
3218 authority to render professional services in ~~Alabama~~ this
3219 state only if:



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3220 (1) A domestic professional corporation ~~incorporated~~
3221 ~~under this chapter~~ would be allowed to register or procure a
3222 certificate of authority or equivalent authorization to render
3223 professional services in the state under whose laws the
3224 foreign professional corporation is organized;

3225 (2) The foreign professional corporation meets the
3226 requirements of Section 10A-4-2.01;

3227 (3) The foreign professional corporation designates the
3228 Alabama licensed individual or individuals through whom it
3229 will render professional services in ~~Alabama~~ this state and
3230 the individual or individuals are not, at the time of the
3231 designation, so designated by any other foreign professional
3232 corporation;

3233 (4) The name of the foreign professional corporation
3234 meets the requirements of Section 10A-1-5.08, provided that
3235 the foreign professional corporation can meet the requirements
3236 of Section 10A-1-5.08 by adding at the end of its name, for
3237 use in ~~Alabama~~ this state, the words "professional
3238 corporation" or the abbreviation "P.C."; and

3239 (5) All the ~~shareholders~~ stockholders, or all the
3240 members, in the case of a nonprofit professional corporation
3241 which has members, at least one director, and the president of
3242 the foreign professional corporation are licensed in at least
3243 one state or territory of the United States or the District of
3244 Columbia to render the professional services which the foreign
3245 professional corporation would render in ~~Alabama~~ this state.

3246 (6) The foreign professional corporation includes in
3247 its application a statement acknowledging that it will be



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3248 subject to the jurisdiction of the Alabama regulatory and
3249 licensing authorities with respect to any professional
3250 services rendered to clients or patients in ~~Alabama~~ this
3251 state.

3252 (b) No foreign professional corporation shall maintain
3253 an office in ~~Alabama~~ this state for the conduct of business or
3254 professional practice until it has obtained a certificate of
3255 authority to render professional services in ~~Alabama~~ this
3256 state."

3257 "§10A-4-5.03

3258 The certificate of authority of a foreign professional
3259 corporation may be revoked by the Secretary of State if the
3260 foreign professional corporation fails to comply with any
3261 provision of this chapter applicable to ~~it~~ the foreign
3262 professional corporation. Each licensing authority in ~~Alabama~~
3263 this state shall certify to the Secretary of State, from time
3264 to time, the names of all foreign professional corporations
3265 which have given cause for revocation as provided in this
3266 chapter, together with the facts pertinent thereto. Whenever a
3267 licensing authority shall certify the name of a foreign
3268 professional corporation to the Secretary of State as having
3269 given cause for revocation, the licensing authority shall
3270 concurrently mail to the foreign professional corporation at
3271 its registered office in ~~Alabama~~ this state notice that the
3272 certification has been made. No certificate of authority of a
3273 foreign professional corporation shall be revoked by the
3274 Secretary of State unless ~~he or she~~ the Secretary of State
3275 shall have given the foreign professional corporation not less



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3276 than 60 days' notice thereof and the foreign professional
3277 corporation shall fail prior to revocation to correct the
3278 noncompliance."

3279 "§10A-4-5.04

3280 (a) Every business professional corporation, domestic
3281 or foreign, is required to file an annual report under the
3282 Alabama Business Corporation Law, and shall include in the
3283 annual report, in addition to the items required by the
3284 Alabama Business Corporation Law:

3285 (1) A statement that all the ~~shareholders~~ stockholders,
3286 at least one director, and the president of the corporation
3287 are qualified persons with respect to the corporation, and

3288 (2) In the case of a foreign professional corporation,
3289 the name or names of the Alabama licensed professional or
3290 professionals through whom the foreign professional
3291 corporation will render professional services in ~~Alabama~~ this
3292 state.

3293 (b) Financial information contained in the annual
3294 report of a professional corporation, other than the amount of
3295 stated capital of the corporation, shall not be open to public
3296 inspection nor shall the licensing authority disclose any
3297 facts or information obtained therefrom except insofar as its
3298 official duty may require the same to be made public or in the
3299 event the information is required for evidence in any criminal
3300 proceedings or in any other action by the State of Alabama."

3301 "§10A-4-5.05

3302 (a) Each licensing authority of ~~Alabama~~ this state may
3303 propound to any professional corporation, domestic or foreign,



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3304 organized to practice a profession within the jurisdiction of
3305 the licensing authority, and to any officer or director
3306 thereof, the interrogatories as may be reasonably necessary
3307 and proper to enable the licensing authority to ascertain
3308 whether the professional corporation has complied with all the
3309 provisions of this chapter applicable to the professional
3310 corporation. The interrogatories shall be answered within 30
3311 days after the mailing thereof, or within the additional time
3312 as shall be fixed by the licensing authority, and the answers
3313 thereto shall be full and complete and shall be made in
3314 writing and under oath. If the interrogatories be directed to
3315 an individual they shall be answered by him or her, and if
3316 directed to a professional corporation they shall be answered
3317 by the president, vice president, secretary, or assistant
3318 secretary thereof. The licensing authority shall certify to
3319 the Attorney General, for such action as the Attorney General
3320 may deem appropriate, all interrogatories and answers thereto
3321 which disclosed a violation of any of the provisions of this
3322 chapter.

3323 (b) Interrogatories propounded by a licensing authority
3324 and the answers thereto shall not be open to public inspection
3325 nor shall the licensing authority disclose any facts or
3326 information obtained therefrom except insofar as its official
3327 duty may require the same to be made public or in the event
3328 the interrogatories or the answers thereto are required for
3329 evidence in any criminal proceedings or in any other action by
3330 ~~the State of Alabama~~ this state."

3331 "§10A-4-5.06



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3332 (a) Each officer and director of a professional
3333 corporation, domestic or foreign, who signs any ~~articles~~
3334 certificate, statement, report, application, answer to an
3335 interrogatory, or other document filed pursuant to this
3336 article with the licensing authority having jurisdiction which
3337 is known to the officer or director to be false in any
3338 material respect, shall be deemed to be guilty of a Class C
3339 misdemeanor.

3340 (b) If any professional corporation, domestic or
3341 foreign, or individual shall fail to answer interrogatories
3342 directed to the professional corporation or to the individual
3343 under Section 10A-4-5.05, the licensing authority which
3344 propounded the interrogatories may seek an order from ~~the~~ a
3345 circuit court compelling with competent jurisdiction to compel
3346 an answer."

3347 "§10A-4-5.08

3348 (a) The provisions of this chapter shall apply to all
3349 existing corporations organized under the statute formerly
3350 codified as Article 11 of Chapter 4, Title 10 and repealed by
3351 Acts 1983, No. 83-514, effective January 1, 1984; provided,
3352 that any professional corporation, or nonprofit corporation,
3353 in existence on December 31, 1983, in which duly licensed
3354 medical and dental professionals are ~~shareholders~~
3355 stockholders, or in the case of a nonprofit professional
3356 corporation, render medical and dental services, shall be
3357 deemed to be in compliance with Sections 10A-4-2.01 and
3358 10A-4-2.03, as amended, and other applicable provisions of
3359 this chapter. The repeal of a prior act by this chapter shall



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3360 not impair, or otherwise affect, the organization or continued
3361 existence of an existing domestic professional corporation nor
3362 the right of any foreign professional corporation presently
3363 qualified to render professional services in ~~Alabama~~ this
3364 state to continue to do so without again qualifying to render
3365 professional services in ~~Alabama~~ this state.

3366 (b) Any unincorporated professional association
3367 organized under ~~Section 10A-30-1.01~~ Article 1 of Chapter 30
3368 may become subject to the provisions of this chapter by
3369 amending its certificate of association as a certificate of
3370 ~~formation~~ incorporation in compliance with this chapter, and
3371 delivering its certificate of ~~formation~~ incorporation to the
3372 Secretary of State for filing.

3373 (c) Any domestic nonprofit corporation rendering
3374 professional services may become subject to the provisions of
3375 this chapter by amending its certificate of ~~formation~~
3376 incorporation in compliance with this chapter and delivering
3377 the amendment to its certificate of ~~formation~~ incorporation to
3378 the Secretary of State for filing.

3379 (d) The provisions of this chapter shall not apply to
3380 any unincorporated professional association now in existence
3381 under Section 10A-30-1.01, or to any domestic nonprofit
3382 corporation rendering professional services unless the
3383 association or nonprofit corporation voluntarily becomes
3384 subject to this chapter as herein provided, and nothing
3385 contained in this chapter shall alter or affect any existing
3386 or future right or privilege permitting or not prohibiting
3387 performance of professional services through the use of any



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3388 other form of business organization."

3389 "§10A-5A-1.08

3390 (a) Except as otherwise provided in subsections (b) and
3391 (c):

3392 (1) the limited liability company agreement governs
3393 relations among the members as members and between the members
3394 and the limited liability company; and

3395 (2) to the extent the limited liability company
3396 agreement does not otherwise provide for a matter described in
3397 subsection (a)(1), this chapter governs the matter.

3398 (b)(1) To the extent that, at law or in equity, a
3399 member or other person has duties, including fiduciary duties,
3400 to the limited liability company, or to another member or to
3401 another person that is a party to or is otherwise bound by a
3402 limited liability company agreement, the member's or other
3403 person's duties may be expanded or restricted or eliminated by
3404 a written limited liability company agreement, but the implied
3405 contractual covenant of good faith and fair dealing may not be
3406 eliminated.

3407 (2) A written limited liability company agreement may
3408 provide for the limitation or elimination of any and all
3409 liabilities for breach of contract and breach of duties,
3410 including fiduciary duties, of a member or other person to a
3411 limited liability company or to another member or to another
3412 person that is a party to or is otherwise bound by a limited
3413 liability company agreement, but a limited liability company
3414 agreement may not limit or eliminate liability for any act or
3415 omission that constitutes a bad faith violation of the implied



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3416 contractual covenant of good faith and fair dealing.

3417 (3) A member or other person shall not be liable to a
3418 limited liability company or to another member or to another
3419 person that is a party to or is otherwise bound by a limited
3420 liability company agreement for breach of fiduciary duty for
3421 the member's or other person's good faith reliance on the
3422 limited liability company agreement.

3423 (4) A limited liability company agreement may provide
3424 ~~that~~ any or all of the following:

3425 (A) a member, dissociated member, or transferee who
3426 fails to perform in accordance with, or to comply with the
3427 terms and conditions of, the limited liability company
3428 agreement shall be subject to specified penalties or specified
3429 consequences; ~~and~~

3430 (B) at the time or upon the happening of events
3431 specified in the limited liability company agreement, a
3432 member, dissociated member, or transferee may be subject to
3433 specified penalties or specified consequences; and

3434 (C) subject to Section 10A-5A-1.08(c), an act or
3435 transaction under the limited liability company agreement by
3436 the limited liability company, a member, dissociated member,
3437 or transferee is void or voidable.

3438 (5) A penalty or consequence that may be specified
3439 under paragraph (4) of this subsection may include and take
3440 the form of reducing or eliminating the defaulting member's or
3441 transferee's proportionate interest in a limited liability
3442 company, subordinating the member's or transferee's
3443 transferable interest to that of non-defaulting members or



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3444 transferees, forcing a sale of that transferable interest,
3445 forfeiting the defaulting member's or transferee's
3446 transferable interest, the lending by other members or
3447 transferees of the amount necessary to meet the defaulting
3448 member's or transferee's commitment, a fixing of the value of
3449 the defaulting member's or transferee's transferable interest
3450 by appraisal or by formula and redemption or sale of the
3451 transferable interest at that value, or other penalty or
3452 consequence.

3453 (6) A written limited liability company agreement may
3454 supersede, in whole or in part, the provisions of Division C
3455 of Article 3 of Chapter 1.

3456 (c) A limited liability company agreement may not:

3457 (1) vary the nature of the limited liability company as
3458 a separate legal entity under Section 10A-5A-1.04(a);

3459 (2) vary the law applicable under Section 10A-5A-1.05;

3460 (3) restrict the rights under this chapter of a person
3461 other than a member, dissociated member, or transferee;

3462 (4) vary the power of the court under Section
3463 10A-5A-2.05;

3464 (5) eliminate the implied contractual covenant of good
3465 faith and fair dealing as provided under Section
3466 10A-5A-1.08(b)(1);

3467 (6) eliminate or limit the liability of a member or
3468 other person for any act or omission that constitutes a bad
3469 faith violation of the implied contractual covenant of good
3470 faith and fair dealing as provided under Section
3471 10A-5A-1.08(b)(2);



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3472 (7) waive the requirements of Section 10A-5A-4.04(c);

3473 (8) vary the law applicable under Section

3474 10A-5A-4.06(c);

3475 (9) reduce the limitations period specified under
3476 Section 10A-5A-4.06(d) for an action commenced under other
3477 applicable law;

3478 (10) waive the prohibition on issuance of a certificate
3479 of a transferable interest in bearer form under Section
3480 10A-5A-5.02(c);

3481 (11) vary the power of a court to decree dissolution in
3482 the circumstances specified in Section 10A-5A-7.01(d) or in
3483 Section 10A-5A-11.09(e);

3484 (12) vary the requirement to wind up a limited
3485 liability company's activities and affairs as specified in
3486 Section 10A-5A-7.02(a);

3487 (13) vary the provisions of Section 10A-5A-8.01;

3488 (14) vary the right of a member under Section
3489 10A-5A-10.09; ~~or~~

3490 (15) waive the requirements of Section
3491 10A-5A-11.02(b) ~~;~~ or

3492 (16) vary the provisions of Section 10A-5A-1.11(c),
3493 (d), or (e)."

3494 "§10A-5A-2.01

3495 (a) In order to form a limited liability company, one
3496 or more organizers must execute a certificate of formation and
3497 deliver it for filing to the filing officer provided for in
3498 subsection (e). Section 10A-1-3.05 shall not apply to this
3499 chapter. Instead, the certificate of formation shall set



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3500 forth:

3501 (1) the name of the limited liability company, which
3502 must comply with Article 5 of Chapter 1;

3503 (2) the street address in this state, including the
3504 county, of the registered office required by Article 5 of
3505 Chapter 1;

3506 (3) the name of the registered agent at the registered
3507 office required by Article 5 of Chapter 1;

3508 (4) a statement that there is at least one member of
3509 the limited liability company;

3510 (5) if applicable, a statement as provided in Section
3511 10A-5A-11.02(b) (3); and

3512 (6) any other matters the members determine to include
3513 therein.

3514 (b) A limited liability company is formed when its
3515 certificate of formation becomes effective in accordance with
3516 Article 4 of Chapter 1.

3517 (c) The fact that a certificate of formation has been
3518 filed and is effective in accordance with Article 4 of Chapter
3519 1 is notice of the matters required to be included by
3520 subsections (a) (1), (a) (2), (a) (3), and (a) (4) and if
3521 applicable, (a) (5), but is not notice of any other fact.

3522 (d) A limited liability company agreement shall be
3523 entered into either before, after, or at the time of the
3524 filing of the certificate of formation and, whether entered
3525 into before, after, or at the time of the filing, may be made
3526 effective as of the filing of the certificate of formation or
3527 at any other time or date provided in the limited liability



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3528 company agreement.

3529 (e) A certificate of formation shall be delivered for
3530 filing to the Secretary of State."

3531 "§10A-5A-2.02

3532 Division B of Article 3 of Chapter 1 shall not apply to
3533 this chapter. Instead:

3534 (a) A certificate of formation may be amended at any
3535 time.

3536 (b) A certificate of formation may be restated with or
3537 without amendment at any time.

3538 (c) To amend its certificate of formation, a limited
3539 liability company must deliver a certificate of amendment for
3540 filing to the Secretary of State which certificate of
3541 amendment shall state:

3542 (1) the name of the limited liability company;

3543 (2) the unique identifying number or other designation
3544 as assigned by the Secretary of State; and

3545 (3) the changes the amendment makes to the certificate
3546 of formation as most recently amended or restated.

3547 (d) To restate its certificate of formation, a limited
3548 liability company must deliver a restated certificate of
3549 formation for filing to the Secretary of State. A restated
3550 certificate of formation must:

3551 (1) be designated as such in the heading;

3552 (2) state the limited liability company's name;

3553 (3) state the unique identifying number or other
3554 designation as assigned by the Secretary of State; and

3555 (4) set forth any amendment or change effected in



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3556 connection with the restatement of the certificate of
3557 formation.

3558 Any such restatement that effects an amendment shall be
3559 subject to any other provision of this chapter, not
3560 inconsistent with this section, which would apply if a
3561 separate certificate of amendment were filed to effect the
3562 amendment or change.

3563 (e) The original certificate of formation, as
3564 theretofore amended, shall be superseded by the restated
3565 certificate of formation and thenceforth, the restated
3566 certificate of formation, including any further amendment or
3567 changes made thereby, shall be the certificate of formation of
3568 the limited liability company, but the original effective date
3569 of formation shall remain unchanged.

3570 (f) An amended or restated certificate of formation may
3571 contain only provisions that would be permitted at the time of
3572 the amendment if the amended or restated certificate of
3573 formation were a newly filed original certificate of
3574 formation.

3575 (g) A restated certificate of formation may omit any
3576 information that is not required to be in the certificate of
3577 formation under this chapter, including the name and address
3578 of the initial registered agent or registered office, if a
3579 statement of change is on file with the Secretary of State.
3580 Any omission other than the initial registered agent, shall be
3581 an amendment to the certificate of formation, which amendment
3582 must be approved in accordance with the limited liability
3583 company agreement, and if the limited liability company



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3584 agreement does not state the approval required for an
3585 amendment of the certificate of formation, then the amendment
3586 must be approved by all of the members."

3587 "§10A-5A-3.02

3588 No person shall have the power to bind the limited
3589 liability company, or a series thereof, except:

3590 (a) to the extent the person is authorized to act as
3591 the agent of the limited liability company or a series thereof
3592 under or pursuant to the limited liability company agreement;

3593 (b) to the extent the person is authorized to act as
3594 the agent of the limited liability company or a series thereof
3595 ~~pursuant to~~ in accordance with Sections 10A-5A-4.07,
3596 10A-5A-7.03, or 10A-5A-11.11; or

3597 (c) to the extent provided by law other than this
3598 chapter."

3599 "§10A-5A-8.01

3600 (a) A limited liability company shall have the power to
3601 render professional services if it complies with the rules of
3602 the licensing authority for such profession.

3603 (b) Every individual who renders professional services
3604 as a member or as an employee of a limited liability company
3605 shall be liable for any negligent or wrongful act or omission
3606 in which the individual personally participates to the same
3607 extent the individual would be liable if the individual
3608 rendered the services as a sole practitioner.

3609 (c) Except as otherwise provided in subsection (b), the
3610 personal liability of a member of any limited liability
3611 company engaged in providing professional services shall be



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3612 governed by Section 10A-5A-3.01.

3613 (d) ~~The~~ Except as otherwise provided in subsection (b),
3614 the personal liability of a member, manager, or employee of a
3615 foreign limited liability company engaged in providing
3616 professional services shall be determined under the law of the
3617 jurisdiction in which the foreign limited liability company is
3618 organized.

3619 (e) Nothing in this article shall restrict or limit in
3620 any manner the authority or duty of a licensing authority with
3621 respect to individuals rendering a professional service within
3622 the jurisdiction of the licensing authority. Nothing in this
3623 article shall restrict or limit any law, rule, or regulation
3624 pertaining to standards of professional conduct.

3625 (f) Nothing in this article shall limit the authority
3626 of a licensing authority to impose requirements in addition to
3627 those stated in this chapter on any limited liability company
3628 or foreign limited liability company rendering professional
3629 services within the jurisdiction of the licensing authority.

3630 (g) A member's transferrable interest in a limited
3631 liability company organized to render professional services
3632 may be voluntarily transferred only to a qualified person."

3633 "§10A-8A-1.08

3634 (a) Except as otherwise provided in subsections (b) and
3635 (c) :

3636 (1) the partnership agreement governs relations among
3637 the partners as partners and between the partners and the
3638 partnership; and

3639 (2) to the extent the partnership agreement does not



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3640 otherwise provide for a matter described in subsection (a)(1),
3641 this chapter governs the matter.

3642 (b)(1) To the extent that, at law or in equity, a
3643 partner or other person has duties, including fiduciary
3644 duties, to a partnership or to another partner or to another
3645 person that is a party to or is otherwise bound by a
3646 partnership agreement, the partner's or other person's duties
3647 may be expanded or restricted or eliminated by provisions in a
3648 written partnership agreement, but the implied contractual
3649 covenant of good faith and fair dealing may not be eliminated.

3650 (2) A written partnership agreement may provide for the
3651 limitation or elimination of any and all liabilities for
3652 breach of contract and breach of duties, including fiduciary
3653 duties, of a partner or other person to a partnership or to
3654 another partner or to another person that is a party to or is
3655 otherwise bound by a partnership agreement, but a partnership
3656 agreement may not limit or eliminate liability for any act or
3657 omission that constitutes a bad faith violation of the implied
3658 contractual covenant of good faith and fair dealing.

3659 (3) A partner or other person shall not be liable to a
3660 partnership or to another partner or to another person that is
3661 a party to or is otherwise bound by a partnership agreement
3662 for breach of fiduciary duty for the partner's or other
3663 person's good faith reliance on the partnership agreement.

3664 (4) A partnership agreement may provide that:

3665 (A) a partner, dissociated partner, or transferee who
3666 fails to perform in accordance with, or to comply with the
3667 terms and conditions of, the partnership agreement shall be



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3668 subject to specified penalties or specified consequences;~~and~~

3669 (B) at the time or upon the happening of events
3670 specified in the partnership agreement, a partner, dissociated
3671 partner, or transferee may be subject to specified penalties
3672 or specified consequences~~;~~ and

3673 (C) subject to Section 10A-8A-1.08(c), an act or
3674 transaction under the partnership agreement by the
3675 partnership, a partner, a dissociated partner, or a transferee
3676 is void or voidable.

3677 (5) A penalty or consequence that may be specified
3678 under paragraph (4) of this subsection may include and take
3679 the form of reducing or eliminating the defaulting partner's
3680 or transferee's proportionate transferable interest in a
3681 partnership, subordinating the partner's or transferee's
3682 transferable interest to that of non-defaulting partners or
3683 transferees, forcing a sale of that transferable interest,
3684 forfeiting the defaulting partner's or transferee's
3685 transferable interest, the lending by other partners or
3686 transferees of the amount necessary to meet the defaulting
3687 partner's or transferee's commitment, a fixing of the value of
3688 the defaulting partner's or transferee's transferable interest
3689 by appraisal or by formula and redemption or sale of the
3690 transferable interest at that value, or other penalty or
3691 consequence.

3692 (6) A written partnership agreement may supersede, in
3693 whole or in part, the provisions of Division C and Division D
3694 of Article 3 of Chapter 1.

3695 (c) A partnership agreement may not:



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- 3696 (1) vary the nature of the partnership as a separate
3697 legal entity under Section 10A-8A-1.04(a);
- 3698 (2) vary a partnership's power under Section
3699 10A-8A-1.05 to sue, be sued, and defend in its own name;
- 3700 (3) vary the law applicable to a limited liability
3701 partnership under Section 10A-8A-1.06;
- 3702 (4) restrict rights under this chapter of a person
3703 other than a partner, a dissociated partner, or a transferee;
- 3704 (5) vary the requirements of Section 10A-8A-2.03;
- 3705 (6) unreasonably restrict the right of access to books
3706 and records under Section 10A-8A-4.10, but the partnership
3707 agreement may impose reasonable restrictions on the
3708 availability and use of information obtained under those
3709 sections and may define appropriate remedies, including
3710 liquidated damages, for a breach of any reasonable restriction
3711 on use;
- 3712 (7) eliminate the implied contractual covenant of good
3713 faith and fair dealing as provided under Section
3714 10A-8A-1.08(b)(1);
- 3715 (8) eliminate or limit the liability of a partner or
3716 other person for any act or omission that constitutes a bad
3717 faith violation of the implied contractual covenant of good
3718 faith and fair dealing as provided under Section
3719 10A-8A-1.08(b)(2);
- 3720 (9) waive the requirements of Section 10A-8A-4.04(e);
- 3721 (10) reduce the limitations period specified under
3722 Section 10A-8A-4.09(e) for an action commenced under other
3723 applicable law;



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3724 (11) waive the prohibition on issuance of a certificate
3725 of a transferable interest in bearer form under Section
3726 10A-8A-5.02(c);

3727 (12) vary the power of a person to dissociate as a
3728 partner under Section 10A-8A-6.02(a) except that the
3729 partnership agreement may require that the notice under
3730 Section 10A-8A-6.01(1) be in a writing or in a specific form
3731 thereof;

3732 (13) vary the right of a court to expel a partner in
3733 the events specified in Section 10A-8A-6.01(5);

3734 (14) vary the power of a court to decree dissolution in
3735 the circumstances specified in Section 10A-8A-8.01(4) or (5);

3736 (15) vary the requirement to wind up the partnership's
3737 business or not for profit activity as specified in Section
3738 10A-8A-8.01(4), (5), (6), or (7);

3739 (16) vary the right of a partner to approve or consent
3740 to the cancellation of a statement of limited liability
3741 partnership as specified in Section 10A-8A-10.01(m); ~~or~~

3742 (17) vary the rights of a partner under Section
3743 10A-8A-9.10~~+~~; or

3744 (18) vary the provisions of Section 10A-8A-1.14(c),
3745 (d), or (e)."

3746 "§10A-8A-10.02

3747 (a) A limited liability partnership shall have the
3748 power to render professional services if it complies with the
3749 rules of the licensing authority for such profession.

3750 (b) Every individual who renders professional services
3751 as a partner or as an employee of a limited liability



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3752 partnership shall be liable for any negligent or wrongful act
3753 or omission in which the individual personally participates to
3754 the same extent the individual would be liable if the
3755 individual rendered the services as a sole practitioner.

3756 (c) Except as otherwise provided in subsection (b), the
3757 personal liability of a partner of any limited liability
3758 partnership engaged in providing professional services shall
3759 be governed by Section 10A-8A-3.06.

3760 (d) ~~The~~ Except as otherwise provided in subsection (b),
3761 the personal liability of a partner or employee of a foreign
3762 limited liability partnership engaged in providing
3763 professional services shall be determined under the law of the
3764 jurisdiction which governs the foreign limited liability
3765 partnership.

3766 (e) Nothing in this article shall restrict or limit in
3767 any manner the authority or duty of a licensing authority with
3768 respect to individuals rendering a professional service within
3769 the jurisdiction of the licensing authority. Nothing in this
3770 article shall restrict or limit any law, rule, or regulation
3771 pertaining to standards of professional conduct.

3772 (f) Nothing in this article shall limit the authority
3773 of a licensing authority to impose requirements in addition to
3774 those stated in this chapter on any limited liability
3775 partnership or foreign limited liability partnership rendering
3776 professional services within the jurisdiction of the licensing
3777 authority.

3778 (g) A partner's transferable interest in a limited
3779 liability partnership organized to render professional



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3780 services may be voluntarily transferred only to a qualified
3781 person."

3782 "§10A-9A-1.08

3783 (a) Except as otherwise provided in subsections (b) and
3784 (c):

3785 (1) the partnership agreement governs relations among
3786 the partners as partners and between the partners and the
3787 partnership; and

3788 (2) to the extent the partnership agreement does not
3789 otherwise provide for a matter described in subsection (a)(1),
3790 this chapter governs the matter.

3791 (b)(1) To the extent that, at law or in equity, a
3792 partner or other person has duties, including fiduciary
3793 duties, to a limited partnership or to another partner or to
3794 another person that is a party to or is otherwise bound by a
3795 partnership agreement, the partner's or other person's duties
3796 may be expanded or restricted or eliminated by provisions in a
3797 written partnership agreement, but the implied contractual
3798 covenant of good faith and fair dealing may not be eliminated.

3799 (2) A written partnership agreement may provide for the
3800 limitation or elimination of any and all liabilities for
3801 breach of contract and breach of duties, including fiduciary
3802 duties, of a partner or other person to a limited partnership
3803 or to another partner or to another person that is a party to
3804 or is otherwise bound by a partnership agreement, but a
3805 partnership agreement may not limit or eliminate liability for
3806 any act or omission that constitutes a bad faith violation of
3807 the implied contractual covenant of good faith and fair



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3808 dealing.

3809 (3) A partner or other person shall not be liable to a
3810 limited partnership or to another partner or to another person
3811 that is a party to or is otherwise bound by a partnership
3812 agreement for breach of fiduciary duty for the partner's or
3813 other person's good faith reliance on the partnership
3814 agreement.

3815 (4) A partnership agreement may provide ~~that~~ any of the
3816 following:

3817 (A) a partner, dissociated partner, or transferee who
3818 fails to perform in accordance with, or to comply with the
3819 terms and conditions of, the partnership agreement shall be
3820 subject to specified penalties or specified consequences; ~~and~~

3821 (B) at the time or upon the happening of events
3822 specified in the partnership agreement, a partner, dissociated
3823 partner, or transferee may be subject to specified penalties
3824 or specified consequences; and

3825 (C) subject to Section 10A-9A-1.08(c), an act or
3826 transaction under the partnership agreement by the
3827 partnership, a partner, a dissociated partner, or a transferee
3828 is void or voidable.

3829 (5) A penalty or consequence that may be specified
3830 under paragraph (4) of this subsection may include and take
3831 the form of reducing or eliminating the defaulting partner's
3832 or transferee's proportionate interest in a limited
3833 partnership, subordinating the partner's or transferee's
3834 transferable interest to that of non-defaulting partners or
3835 transferees, forcing a sale of that transferable interest,



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3836 forfeiting the defaulting partner's or transferee's
3837 transferable interest, the lending by other partners or
3838 transferees of the amount necessary to meet the defaulting
3839 partner's or transferee's commitment, a fixing of the value of
3840 the defaulting partner's or transferee's transferable interest
3841 by appraisal or by formula and redemption or sale of the
3842 transferable interest at that value, or other penalty or
3843 consequence.

3844 (6) A written partnership agreement may supersede, in
3845 whole or in part, the provisions of Division C and Division D
3846 of Article 3 of Chapter 1.

3847 (c) A partnership agreement may not:

3848 (1) vary the nature of the limited partnership as a
3849 separate legal entity under Section 10A-9A-1.04(a);

3850 (2) vary a limited partnership's power under Section
3851 10A-9A-1.05 to sue, be sued, and defend in its own name;

3852 (3) vary the law applicable to a limited partnership
3853 under Section 10A-9A-1.06;

3854 (4) restrict rights under this chapter of a person
3855 other than a partner, a dissociated partner, or a transferee;

3856 (5) vary the requirements of Section 10A-9A-2.03;

3857 (6) vary the information required under Section
3858 10A-9A-1.11 or unreasonably restrict the right to information
3859 under Sections 10A-9A-3.04 or 10A-9A-4.07, but the partnership
3860 agreement may impose reasonable restrictions on the
3861 availability and use of information obtained under those
3862 sections and may define appropriate remedies, including
3863 liquidated damages, for a breach of any reasonable restriction



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3864 on use;

3865 (7) vary the power of the court under Section
3866 10A-9A-2.04;

3867 (8) eliminate the implied contractual covenant of good
3868 faith and fair dealing as provided under Section
3869 10A-9A-1.08(b)(1);

3870 (9) eliminate or limit the liability of a partner or
3871 other person for any act or omission that constitutes a bad
3872 faith violation of the implied contractual covenant of good
3873 faith and fair dealing as provided under Section
3874 10A-9A-1.08(b)(2);

3875 (10) waive the requirements of Section 10A-9A-5.02(e);

3876 (11) reduce the limitations period specified under
3877 Section 10A-9A-5.08(d) for an action commenced under other
3878 applicable law;

3879 (12) waive the prohibition on issuance of a certificate
3880 of a transferable interest in bearer form under Section
3881 10A-9A-7.02(c);

3882 (13) vary the power of a person to dissociate as a
3883 general partner under Section 10A-9A-6.04(a) except that the
3884 partnership agreement may require that the notice under
3885 Section 10A-9A-6.03(1) be in a writing or in a specific form
3886 thereof;

3887 (14) vary the power of a court to decree dissolution in
3888 the circumstances specified in Section 10A-9A-8.01(f);

3889 (15) vary the requirement to wind up the partnership's
3890 activities and affairs as specified in Section 10A-9A-8.02; ~~or~~

3891 (16) vary the rights of a partner under Section



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3892 10A-9A-10.10~~;~~ or

3893 (17) vary the provisions of Section 10A-9A-1.15(c),
3894 (d), or (e)"

3895 "§10A-9A-2.01

3896 (a) In order to form a limited partnership, a person
3897 must deliver a certificate of formation for filing to the
3898 Secretary of State. Section 10A-1-3.05 shall not apply to this
3899 chapter. Instead, the certificate of formation shall set
3900 forth:

3901 (1) the name of the limited partnership, which must
3902 comply with Article 5 of Chapter 1;

3903 (2) the street address in this state, including the
3904 county, of the registered office required by Article 5 of
3905 Chapter 1;

3906 (3) the name of the registered agent at the registered
3907 office as required by Article 5 of Chapter 1;

3908 (4) the name and the street and mailing address of each
3909 general partner;

3910 (5) whether the limited partnership is a limited
3911 liability limited partnership;

3912 (6) any additional information required by Article 8 of
3913 Chapter 1 or by Article 10 of this chapter; and

3914 (7) any other matters the partners determine to include
3915 therein which comply with Section 10A-9A-1.08.

3916 (b) A limited partnership is formed when the
3917 certificate of formation becomes effective in accordance with
3918 Article 4 of Chapter 1.

3919 (c) The fact that a certificate of formation has been



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3920 filed and is effective in accordance with Article 4 of Chapter
3921 1 is notice of the matters required to be included by
3922 subsections (a)(1), (a)(2), (a)(3), (a)(4), if applicable,
3923 (a)(5), and (a)(6), but is not notice of any other fact.

3924 (d) A partnership agreement shall be entered into
3925 either before, after, or at the time of filing the certificate
3926 of formation and, whether entered into before, after, or at
3927 the time of filing, may be made effective as of the filing of
3928 the certificate of formation or at any other time or date
3929 provided in the partnership agreement."

3930 "§10A-9A-2.02

3931 Division B of Article 3 of Chapter 1 shall not apply to
3932 this chapter. Instead:

3933 (a) A certificate of formation may be amended at any
3934 time.

3935 (b) A certificate of formation may be restated with or
3936 without amendment at any time.

3937 (c) To amend its certificate of formation, a limited
3938 partnership must deliver a certificate of amendment for filing
3939 to the Secretary of State which certificate of amendment shall
3940 state:

3941 (1) the name of the limited partnership;

3942 (2) the unique identifying number or other designation
3943 as assigned by the Secretary of State; and

3944 (3) the changes the amendment makes to the certificate
3945 of formation as most recently amended or restated.

3946 (d) Prior to a statement of dissolution being delivered
3947 to the Secretary of State for filing, a limited partnership



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3948 shall promptly deliver a certificate of amendment for filing
3949 with the Secretary of State to reflect:

3950 (1) the admission of a new general partner; or

3951 (2) the dissociation of a person as a general partner.

3952 (e) Prior to a statement of dissolution being delivered
3953 to the Secretary of State for filing, if a general partner
3954 knows that any information in a filed certificate of formation
3955 was inaccurate when the certificate of formation was filed or
3956 has become inaccurate due to changed circumstances and if ~~such~~
3957 the information is required to be set forth in a newly filed
3958 certificate of formation under this chapter, the general
3959 partner shall promptly:

3960 (1) cause the certificate of formation to be amended;

3961 or

3962 (2) if appropriate, deliver for filing with the
3963 Secretary of State a certificate of correction in accordance
3964 with Chapter 1.

3965 (f) A certificate of formation may be amended at any
3966 time pursuant to this section for any other proper purpose as
3967 determined by the limited partnership. A certificate of
3968 formation may also be amended in a statement of merger
3969 pursuant to Article 8 of Chapter 1 or Article 10 of this
3970 chapter.

3971 (g) In order to restate its certificate of formation, a
3972 limited partnership must deliver a restated certificate of
3973 formation for filing with the Secretary of State. A restated
3974 certificate of formation must:

3975 (1) be designated as such in the heading;



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3976 (2) state the name of the limited partnership;

3977 (3) state the unique identifying number or other
3978 designation as assigned by the Secretary of State;

3979 (4) set forth any amendment or change effected in
3980 connection with the restatement of the certificate of
3981 formation. Any such restatement that effects an amendment
3982 shall be subject to any other provision of this chapter not
3983 inconsistent with this section, which would apply if a
3984 separate certificate of amendment were filed to effect the
3985 amendment or change;

3986 (5) set forth the text of the restated certificate of
3987 formation; and

3988 (6) state that the restated certificate of formation
3989 consolidates all amendments into a single document.

3990 (h) The original certificate of formation, as
3991 theretofore amended, shall be superseded by the restated
3992 certificate of formation and thenceforth, the restated
3993 certificate of formation, including any further amendment or
3994 changes made thereby, shall be the certificate of formation of
3995 the limited partnership, but the original effective date of
3996 formation shall remain unchanged.

3997 (i) An amended or restated certificate of formation may
3998 contain only the provisions that would be permitted at the
3999 time of the amendment if the amended or restated certificate
4000 of formation were a newly filed original certificate of
4001 formation.

4002 (j) (1) An amendment to a certificate of formation takes
4003 effect when the filing of the certificate of amendment takes



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4004 effect as provided by Article 4 of Chapter 1.

4005 (2) An amendment to a certificate of formation does not
4006 affect:

4007 (i) an existing cause of action in favor of or against
4008 the limited partnership for which the certificate of amendment
4009 is sought;

4010 (ii) a pending suit to which the limited partnership is
4011 a party; or

4012 (iii) an existing right of a person other than an
4013 existing partner.

4014 (3) If the name of a limited partnership is changed by
4015 amendment, an action brought by or against the limited
4016 partnership in the former name of that limited partnership
4017 does not abate because of the name change.

4018 (k) (1) A restated certificate of formation takes effect
4019 when the filing of the restated certificate of formation takes
4020 effect as provided by Article 4 of Chapter 1.

4021 (2) On the date and time the restated certificate of
4022 formation takes effect, the original certificate of formation
4023 and each prior amendment or restatement of the certificate of
4024 formation is superseded and the restated certificate of
4025 formation is the effective certificate of formation.

4026 (3) Subsections (j) (2) and ~~(3)~~ (j) (3) apply to an
4027 amendment effected by a restated certificate of formation.

4028 (1) A restated certificate of formation may omit any
4029 information that is not required to be in the certificate of
4030 formation under this chapter, including the name and address
4031 of the initial registered agent or registered office, if a



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4032 statement of change is on file with the Secretary of State.
4033 Any omission other than the initial registered agent, shall be
4034 an amendment to the certificate of formation, which amendment
4035 must be approved in accordance with the partnership agreement,
4036 and if the partnership agreement does not state the approval
4037 required for an amendment of the certificate of formation,
4038 then the amendment must be approved by all of the partners."

4039 Section 2. Sections 10A-5A-1.11, 10A-8A-1.14, and
4040 10A-9A-1.15, are added to the Code of Alabama 1975 to read as
4041 follows:

4042 §10A-5A-1.11

4043 (a) If a limited liability company agreement provides
4044 that an act or transaction is void or voidable when taken,
4045 then that act or transaction may be ratified or waived by:

4046 (1) the members or other persons entitled to ratify or
4047 waive that act or transaction under the limited liability
4048 company agreement;

4049 (2) if the limited liability company agreement does not
4050 specify the approval required for the ratification or waiver,
4051 then those members or other persons entitled to approve the
4052 amendment of the limited liability company agreement; or

4053 (3) if the limited liability company agreement does not
4054 specify the approval required for the amendment of the limited
4055 liability company agreement, then all of the members.

4056 (b) If the void or voidable act or transaction was the
4057 issuance or transfer of any transferable interest, then for
4058 purposes of determining who may ratify or waive any act or
4059 transaction, the transferable interest purportedly issued or



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4060 transferred shall be deemed not to have been issued or
4061 transferred.

4062 (c) Any act or transaction ratified, or with respect to
4063 which the failure to comply with any requirements of the
4064 limited liability company agreement is waived, pursuant to
4065 this section shall be deemed validly taken at the time of the
4066 act or transaction.

4067 (d) Upon application of the limited liability company,
4068 any member, or any person claiming to be substantially and
4069 adversely affected by a ratification or waiver pursuant to
4070 this section, the designated court, and if none, the circuit
4071 court for the county in which the limited liability company's
4072 principal office is located in this state, and if none in this
4073 state, in the circuit court for the county in which the
4074 limited liability company's most recent registered office is
4075 located, may hear and determine the validity and effectiveness
4076 of the ratification of, or waiver with respect to, any void or
4077 voidable act or transaction effectuated pursuant to this
4078 section, and in any such application, the limited liability
4079 company shall be named as a party and service of the
4080 application upon the registered agent of the limited liability
4081 company shall be deemed to be service upon the limited
4082 liability company, and no other party need be joined in order
4083 for the court to adjudicate the validity and effectiveness of
4084 the ratification or waiver, and the court may make such order
4085 respecting further or other notice of the application as the
4086 court deems proper under the circumstances; provided, that
4087 nothing herein limits or affects the right to serve process in



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4088 any other manner now or hereafter provided by law, and this
4089 sentence is an extension of and not a limitation upon the
4090 right otherwise existing of service of legal process upon
4091 nonresidents.

4092 (e) The provisions of this section shall not be
4093 construed to limit the accomplishment of a ratification or
4094 waiver of a void or voidable act or transaction by other means
4095 permitted by law.

4096 §10A-8A-1.14

4097 (a) If a partnership agreement provides that an act or
4098 transaction is void or voidable when taken, then that act or
4099 transaction may be ratified or waived by:

4100 (1) the partners or other persons entitled to ratify or
4101 waive that act or transaction under the partnership agreement;

4102 (2) if the partnership agreement does not specify the
4103 approval required for the ratification or waiver, then those
4104 partners or other persons entitled to approve the amendment of
4105 the partnership agreement; or

4106 (3) if the partnership agreement does not specify the
4107 approval required for the amendment of the partnership
4108 agreement, then all of the partners.

4109 (b) If the void or voidable act or transaction was the
4110 issuance or transfer of any transferable interest, then for
4111 purposes of determining who may ratify or waive any act or
4112 transaction, the transferable interest purportedly issued or
4113 transferred shall be deemed not to have been issued or
4114 transferred.

4115 (c) Any act or transaction ratified, or with respect to



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4116 which the failure to comply with any requirements of the
4117 partnership agreement is waived, pursuant to this section
4118 shall be deemed validly taken at the time of the act or
4119 transaction.

4120 (d) Upon application of the partnership, any partner,
4121 or any person claiming to be substantially and adversely
4122 affected by a ratification or waiver pursuant to this section,
4123 the designated court, and if none, the circuit court for the
4124 county in which the partnership's principal office is located
4125 in this state, and if none in this state, in the circuit court
4126 for the county in which the partnership's most recent
4127 registered office is located, may hear and determine the
4128 validity and effectiveness of the ratification of, or waiver
4129 with respect to, any void or voidable act or transaction
4130 effectuated pursuant to this section, and in any such
4131 application, the partnership shall be named as a party and
4132 service of the application upon the registered agent of the
4133 partnership shall be deemed to be service upon the
4134 partnership, and no other party need be joined in order for
4135 the court to adjudicate the validity and effectiveness of the
4136 ratification or waiver, and the court may make such order
4137 respecting further or other notice of the application as the
4138 court deems proper under the circumstances; provided, that
4139 nothing herein limits or affects the right to serve process in
4140 any other manner now or hereafter provided by law, and this
4141 sentence is an extension of and not a limitation upon the
4142 right otherwise existing of service of legal process upon
4143 nonresidents.



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4144 (e) The provisions of this section shall not be
4145 construed to limit the accomplishment of a ratification or
4146 waiver of a void or voidable act or transaction by other means
4147 permitted by law.

4148 §10A-9A-1.15

4149 (a) If a partnership agreement provides that an act or
4150 transaction is void or voidable when taken, then that act or
4151 transaction may be ratified or waived by:

4152 (1) the partners or other persons entitled to ratify or
4153 waive that act or transaction under the partnership agreement;

4154 (2) if the partnership agreement does not specify the
4155 approval required for the ratification or waiver, then those
4156 partners or other persons entitled to approve the amendment of
4157 the partnership agreement; or

4158 (3) if the partnership agreement does not specify the
4159 approval required for the amendment of the partnership
4160 agreement, then all of the partners.

4161 (b) If the void or voidable act or transaction was the
4162 issuance or transfer of any transferable interest, then for
4163 purposes of determining who may ratify or waive any act or
4164 transaction, the transferable interest purportedly issued or
4165 transferred shall be deemed not to have been issued or
4166 transferred.

4167 (c) Any act or transaction ratified, or with respect to
4168 which the failure to comply with any requirements of the
4169 partnership agreement is waived, pursuant to this section
4170 shall be deemed validly taken at the time of the act or
4171 transaction.



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4172 (d) Upon application of the partnership, any partner,
4173 or any person claiming to be substantially and adversely
4174 affected by a ratification or waiver pursuant to this section,
4175 the designated court, and if none, the circuit court for the
4176 county in which the partnership's principal office is located
4177 in this state, and if none in this state, in the circuit court
4178 for the county in which the partnership's most recent
4179 registered office is located, may hear and determine the
4180 validity and effectiveness of the ratification of, or waiver
4181 with respect to, any void or voidable act or transaction
4182 effectuated pursuant to this section, and in any such
4183 application, the partnership shall be named as a party and
4184 service of the application upon the registered agent of the
4185 partnership shall be deemed to be service upon the
4186 partnership, and no other party need be joined in order for
4187 the court to adjudicate the validity and effectiveness of the
4188 ratification or waiver, and the court may make such order
4189 respecting further or other notice of the application as the
4190 court deems proper under the circumstances; provided, that
4191 nothing herein limits or affects the right to serve process in
4192 any other manner now or hereafter provided by law, and this
4193 sentence is an extension of and not a limitation upon the
4194 right otherwise existing of service of legal process upon
4195 nonresidents.

4196 (e) The provisions of this section shall not be
4197 construed to limit the accomplishment of a ratification or
4198 waiver of a void or voidable act or transaction by other means
4199 permitted by law.



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4200 Section 3. Chapter 18 is added to Title 10A of the Code
4201 of Alabama 1975, to read as follows:

4202 CHAPTER 18. Alabama Statewide Trade Associations.

4203 §10A-18-1.01. Short title.

4204 This chapter and the provisions of Chapter 1, to the
4205 extent applicable to Alabama statewide trade associations, may
4206 be cited as the Alabama Statewide Trade Association Law.

4207 §10A-18-1.02. Applicability of Alabama Nonprofit
4208 Corporation Law.

4209 The provisions of the Alabama Nonprofit Corporation Law
4210 shall apply to Alabama statewide trade associations, except to
4211 the extent they are inconsistent with the provisions of this
4212 chapter.

4213 §10A-18-1.03. Definitions.

4214 As used in this chapter, unless the context otherwise
4215 requires, the term:

4216 (a) Alabama statewide trade association means a
4217 domestic entity that is formed under or is governed by the
4218 Alabama Nonprofit Corporation Law and that:

4219 (1) is a membership nonprofit corporation as defined in
4220 the Alabama Nonprofit Corporation Law;

4221 (2) was formed on or before January 1, 2024, and is in
4222 existence as of January 1, 2024;

4223 (3) has its principal office or other headquarters in
4224 the City of Montgomery, Alabama;

4225 (4) represents or promotes the common business,
4226 professional, or industry interests of its members on a
4227 statewide basis;



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4228 (5) has elected to be governed by this chapter on or
4229 before December 31, 2024, by amending its certificate of
4230 incorporation in accordance with Section 10A-18-1.09(a); and

4231 (6) has not ceased to be governed by this chapter in
4232 accordance with Section 10A-18-1.09(b) or Section
4233 10A-18-1.09(c).

4234 (b) Policies and procedures means guidelines that
4235 provide detailed instructions on how specific tasks,
4236 activities, or situations should be handled within an Alabama
4237 statewide trade association, including areas such as
4238 membership application and renewal processes, event planning
4239 and execution, code of conduct and ethics, financial
4240 management and reporting, dispute resolution, communication
4241 protocols, and operational aspects relevant to the Alabama
4242 statewide trade association's functioning.

4243 §10A-18-1.04. Alabama statewide trade association
4244 records.

4245 (a) In lieu of any records required to be maintained by
4246 a membership nonprofit corporation under the Alabama Nonprofit
4247 Corporation Law, a statewide trade association must maintain
4248 the following records:

4249 (1) its certificate of incorporation as currently in
4250 effect;

4251 (2) its bylaws as currently in effect;

4252 (3) its policies and procedures as currently in effect;

4253 (4) minutes of all meetings of its board of directors
4254 and its members;

4255 (5) a list of the names and business addresses of its



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4256 current directors and officers;

4257 (6) its annual financial statements, annual audits, and
4258 annual federal and state income tax returns for its last three
4259 fiscal years (or such shorter period of existence); and

4260 (7) a list of its current members in alphabetical order
4261 by class of membership showing the address for each member to
4262 which notices and other communications from the Alabama
4263 statewide trade association are to be sent.

4264 (b) An Alabama statewide trade association shall
4265 maintain its books and records for its last three fiscal years
4266 (or such shorter period of existence) in a form that permits
4267 preparation of the financial statements in accordance with
4268 generally accepted accounting principles as applied to
4269 nonprofit corporations. Financial statements shall mean
4270 balance sheets, income statements, statements of activities,
4271 notes to financial statements, statements of financial
4272 position, and any investment summaries.

4273 (c) An Alabama statewide trade association shall have
4274 an annual audit of its financial statements. The audit shall
4275 be conducted by an independent certified public accounting
4276 firm that regularly audits nonprofit entities. The independent
4277 certified public accounting firm shall be appointed annually
4278 by the board of directors.

4279 §10A-18-1.05. Inspection rights of members.

4280 In lieu of any inspection rights of the members of a
4281 membership nonprofit corporation under the Alabama Nonprofit
4282 Corporation Law:

4283 (a) A member of an Alabama statewide trade association



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4284 is entitled to inspect the records required to be maintained
4285 by the Alabama statewide trade association under Sections
4286 10A-18-1.04(a)(1) through (6) during regular business hours at
4287 the principal office of the Alabama statewide trade
4288 association provided that the member gives the Alabama
4289 statewide trade association written notice of the member's
4290 demand at least five business days before the date on which
4291 the member wishes to inspect.

4292 (b) A member may inspect the records Sections
4293 10A-18-1.04(a)(1) through (6) only if:

4294 (1) the member's request is made in good faith and for
4295 a proper purpose;

4296 (2) the member's request describes with reasonable
4297 particularity the member's purpose and the records the member
4298 desires to inspect; and

4299 (3) the records are directly connected with the
4300 member's purpose.

4301 (c) An Alabama statewide trade association may impose
4302 reasonable restrictions and conditions on access to and use of
4303 the records to be inspected under subsection (a), including
4304 designating information confidential and imposing
4305 nondisclosure and safeguarding, and may further keep
4306 confidential from its members and other persons, for a period
4307 of time as the Alabama statewide trade association deems
4308 reasonable, any information that the Alabama statewide trade
4309 association reasonably believes to be in the nature of a trade
4310 secret or other information the disclosure of which the
4311 Alabama statewide trade association in good faith believes is



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4312 not in the best interest of the Alabama statewide trade
4313 association or could damage the Alabama statewide trade
4314 association or its activities or affairs or that the Alabama
4315 statewide trade association is required by law or by agreement
4316 with a third party to keep confidential. In any dispute
4317 concerning the reasonableness of a restriction under this
4318 subsection, the Alabama statewide trade association has the
4319 burden of proving reasonableness.

4320 (d) A member's right of inspection set forth in this
4321 section may be further limited by the certificate of
4322 incorporation of an Alabama statewide trade association.

4323 (e) The certificate of incorporation may provide that a
4324 member or group of members has additional inspection rights to
4325 those provided by this section. Any provision in the
4326 certificate of incorporation for additional inspection rights
4327 under this subsection shall set forth the scope, rights,
4328 limits, restrictions, conditions, confidentiality, and any
4329 other matter related to the additional inspection rights.

4330 (f) This section does not limit the power of a court,
4331 upon showing of good cause, to compel the production of the
4332 books and records of an Alabama statewide trade association,
4333 including records not set forth in Section 10A-18-1.04, to the
4334 court for examination by a court appointed professional and to
4335 impose reasonable restrictions on the use of those books and
4336 records by that court appointed professional.

4337 §10A-18-1.06. Court ordered action.

4338 (a) If an Alabama statewide trade association does not,
4339 within the time period set forth in Section 10A-18-1.05, allow



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4340 a member who complies with Section 10A-18-1.05 to inspect the
4341 records required to be maintained by Sections
4342 10A-18-1.04(a)(1) through (6), a member may petition the
4343 Montgomery County Circuit Court, and the court may summarily
4344 order inspection of the records demanded at the Alabama
4345 statewide trade association's expense upon application of the
4346 member.

4347 (b) If the court orders inspection of the records
4348 demanded under Section 10A-18-1.05, it shall impose reasonable
4349 restrictions on the confidentiality, use, or distribution of
4350 the records by the demanding member and the court shall also
4351 order the Alabama statewide trade association to pay the
4352 member's expenses incurred to obtain the order, unless the
4353 Alabama statewide trade association establishes that it
4354 refused inspection in good faith because the Alabama statewide
4355 trade association had:

4356 (1) a reasonable basis for doubt about the right of the
4357 member to inspect the records demanded; or

4358 (2) required reasonable restrictions on the
4359 confidentiality, use, or distribution of the records demanded
4360 to which the demanding member had been unwilling to agree.

4361 §10A-18-1.07. Financial review.

4362 (a) If a member of an Alabama statewide trade
4363 association has a reasonable belief that financial fraud or
4364 malfeasance has occurred or is occurring at the Alabama
4365 statewide trade association, that member may petition the
4366 Montgomery County Circuit Court for an independent audit of
4367 the financial statements of the Alabama statewide trade



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4368 association. For good cause shown, the court may order an
4369 independent audit of the financial statements of the Alabama
4370 statewide trade association with that independent audit report
4371 to be made to the court. If the court does not find good
4372 cause, the court costs shall be assessed to the petitioning
4373 member. If the court does find good cause, the court costs and
4374 the cost of the audit shall be assessed to the Alabama
4375 statewide trade association.

4376 (b) In making its determination, the court may review
4377 among other matters, whether the Alabama statewide trade
4378 association (i) prepared its annual financial statements for
4379 its last three fiscal years (or such shorter period of
4380 existence), (ii) had an independent audit of its financial
4381 statements for its last three fiscal years (or such shorter
4382 period of existence), (iii) timely filed its federal or state
4383 income tax returns for its last three fiscal years (or such
4384 shorter period of existence), or (iv) incurred negative
4385 financial performance without a reasonable basis and/or board
4386 approval.

4387 §10A-18-1.08. Limitations on use of membership list.

4388 In addition to the restrictions on the use of
4389 membership lists under the Alabama Nonprofit Corporation Law:

4390 (a) In an effort to prevent cybercrime, identity fraud,
4391 and financial crimes, an Alabama statewide trade association
4392 shall take reasonable precautions to safeguard member data,
4393 information, and contact information, including membership
4394 lists.

4395 (b) An Alabama statewide trade association's



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4396 certificate of incorporation may provide that the Alabama
4397 statewide trade association may not disclose member lists and
4398 member data.

4399 (c) The membership list of an Alabama statewide trade
4400 association is the property of the Alabama statewide trade
4401 association and shall be used solely for official use of the
4402 Alabama statewide trade association. The Alabama statewide
4403 trade association may provide member mailing lists for
4404 official business purposes consistent with its purpose and its
4405 certificate of incorporation.

4406 (d) Electronic mail addresses and other electronic
4407 transmission information for members may be used in the
4408 historical and routine business of an Alabama statewide trade
4409 association and shall not be rented, sold, or otherwise
4410 provided to any other individual or organization for any other
4411 purpose unless authorized by the board of directors.

4412 (e) Unless otherwise permitted by the certificate of
4413 incorporation or bylaws of an Alabama statewide trade
4414 association, a membership list or any part thereof may not be
4415 obtained or used by a member or members of the Alabama
4416 statewide trade association for any purpose unrelated to the
4417 interest of that member or members with respect to the
4418 member's capacity as a member of the Alabama statewide trade
4419 association without the consent of the board of directors,
4420 including without limitation:

4421 (1) to solicit money or property unless the money or
4422 property will be used solely to solicit the votes of the
4423 members in an election to be held by the Alabama statewide



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4424 trade association;

4425 (2) for any commercial purpose; or

4426 (3) to be sold to, or purchased by, any person.

4427 §10A-18-1.09. Required statement in certificate of formation.

4428 (a) A membership nonprofit corporation formed under or
4429 governed by the Alabama Nonprofit Corporation Law that elects
4430 to be governed by this chapter shall amend its certificate of
4431 incorporation by setting forth in its certificate of
4432 incorporation a statement that it is an Alabama statewide
4433 trade association as defined in Sections 10A-18-1.03(a) (1)
4434 through (6) and that it elects to be governed by this chapter.

4435 (b) An Alabama statewide trade association shall cease
4436 to be governed by this chapter if it amends its certificate of
4437 incorporation by removing the statement required in Section
4438 10A-18-1.09(a) and shall thereafter be governed solely by the
4439 Alabama Nonprofit Corporation Law, with no right to elect to
4440 be governed by this chapter thereafter.

4441 (c) An Alabama statewide trade association shall cease
4442 to be governed by this chapter if it no longer meets the
4443 definition of an Alabama statewide trade association as set
4444 forth in Section 10A-18-1.03. If an Alabama statewide trade
4445 association ceases to be governed by this chapter in
4446 accordance with this section, then that Alabama statewide
4447 trade association shall thereafter be governed solely by the
4448 Alabama Nonprofit Corporation Law, with no right to elect to
4449 be governed by this chapter thereafter.

4450 Section 4. Although this bill would have as its purpose
4451 or effect the requirement of a new or increased expenditure of



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4452 local funds, the bill is excluded from further requirements
4453 and application under Section 111.05 of the Constitution of
4454 Alabama of 2022, because the bill defines a new crime or
4455 amends the definition of an existing crime.

4456 Section 5. Section 3 and Section 4 shall become
4457 effective on June 1, 2024; Section 1 and Section 2, with the
4458 exception of Sections 10A-1-1.03, 10A-1-1.08, and 10A-1-3.32,
4459 Code of Alabama 1975, as amended by Section 1 of this act,
4460 shall become effective on August 1, 2024; and Sections
4461 10A-1-1.03, 10A-1-1.08, and 10A-1-3.32, Code of Alabama 1975,
4462 as amended by Section 1 of this act, shall become effective
4463 January 1, 2025.

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4464
4465
4466 Senate

4467 Read for the first time and referred20-Feb-24
4468 to the Senate committee on Fiscal
4469 Responsibility and Economic
4470 Development
4471
4472 Read for the second time and placed19-Mar-24
4473 on the calendar:
4474 0 amendments
4475
4476 Read for the third time and passed04-Apr-24
4477 as amended
4478 Yeas 34
4479 Nays 0
4480 Abstains 0
4481
4482
4483
4484
4485

Patrick Harris,
Secretary.