



House Judiciary Reported Substitute for HB248

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A BILL
TO BE ENTITLED
AN ACT

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

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



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57 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

72 "§10A-1-1.04

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

125 "§10A-1-1.11

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

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



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

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

159 "§10A-1-1.13

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

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

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

168 (3) matters which are peculiar to the relationships

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

171 "§10A-1-2.17

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

178 "§10A-1-3.32

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

316 "§10A-1-4.14

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

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

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

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

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

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

329 "§10A-1-4.21

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

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

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

351 "§10A-1-4.23

352 (a) The certificate of correction must:

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

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

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

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

363 (b) The certificate of nullification must:

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

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

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

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

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

373 "§10A-1-4.24

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

378 "§10A-1-4.25

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

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

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

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

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

406 "§10A-1-5.31

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

414 (1) a registered agent; and

415 (2) a registered office.

416 (b) A registered agent:

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

420 (2) may be:



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

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

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

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

432 (c) The registered office:

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

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

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

440 "§10A-1-7.01

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

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

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

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

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

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

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

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

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

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

476 "§10A-1-7.11



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

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

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

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

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

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

493 (5) that the foreign entity:

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

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

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505 by the Alabama Rules of Civil Procedure;

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

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

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

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

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

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

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



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

544 "§10A-2A-1.43

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

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

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

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

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

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

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

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



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

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

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

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

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

614 "§10A-2A-2.02

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

616 Instead:



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

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

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

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

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

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

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

631 (2) provisions not inconsistent with law regarding:

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

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

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

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

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

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

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

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

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

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



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

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

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

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

693 (i) the individual's spouse;

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

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

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

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

703 (v) a domestic or foreign:

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

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

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

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

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

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

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

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

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

753 "§10A-2A-2.05

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

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

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

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

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

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

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

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

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

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

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

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

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

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

816 (vi) any other lawful condition.

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

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

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

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

833 (iv) any other lawful condition.

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

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

844 "§10A-2A-2.07

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

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

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

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

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

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

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

908 "§10A-2A-6.22

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

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

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

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

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

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

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

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

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

963 "§10A-2A-8.27

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

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

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

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

997 "§10A-2A-8.60

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

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

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

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

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

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

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

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

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1037 officer is a party;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1289 conflicting interest transaction shall be given effect.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1366 "§10A-2A-14.10

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

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



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1373 established that:

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

1420 "§10A-2A-16.02

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1610 "§10A-2A-16.03

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

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

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

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

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

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

1633 "§10A-2A-16.04

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

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

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

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

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

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

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

1676 "§10A-3A-1.60

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

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

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

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

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



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

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

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

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

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

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



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

1742 "§10A-3A-2.02

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

1744 Instead:

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

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

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

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

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

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

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

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

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

1763 (2) provisions not inconsistent with law regarding:

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

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1765 corporation is organized;

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

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

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

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

1777 (vi) the distribution of assets on dissolution;

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

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

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

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

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

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

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

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

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

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

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

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

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

1835 (i) the individual's spouse;-

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

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

1845 (v) a domestic or foreign:-

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

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

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

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

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

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

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

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

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

1900 "§10A-3A-2.07

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

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

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

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

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

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

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

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

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

1969 "§10A-3A-4.02

1970 Subject to subsection (h):

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

2089 (g) This section does not affect:

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

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

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

2108 "§10A-3A-4.03

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

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

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

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

2128 (d) The membership nonprofit corporation may impose a

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

2132 "§10A-3A-4.04

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

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

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

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

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

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

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

2182 "§10A-3A-8.26

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

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

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

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

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

2216 "§10A-3A-8.60

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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2353 the nonprofit corporation.

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

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

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

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

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

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



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2381 transaction."

2382 "§10A-5A-4.09

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2526 "§10A-8A-4.10

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

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

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

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

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



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

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

2553 (3) it is determined that:

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

2660 "§10A-8A-5.02



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

2663 (1) is permissible;

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

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

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

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

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

2676 (b) A transferee has a right:

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

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

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

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

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

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

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

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

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

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



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

2722 "§10A-9A-3.04

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2772 (3) the person meets the requirements of subsection

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2773 (b) .

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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



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2885 "§10A-17-1.02

2886 In this chapter:

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

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

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

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

2909 Division G Corporate Opportunities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3236 Division G Corporate Opportunities.

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

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

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

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

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

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

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

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