

HB248 ENROLLED



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



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1 Enrolled, An Act,

2

3 Relating to the Alabama Business and Nonprofit Entities

4 Code; to amend Sections 10A-1-1.04, 10A-1-1.11, 10A-1-1.13,

5 10A-1-2.17, 10A-1-3.32, 10A-1-4.14, 10A-1-4.21, 10A-1-4.23,

6 10A-1-4.24, 10A-1-4.25, and 10A-1-5.31, Section 10A-1-7.01, as

7 amended by Act 2025-281, 2025 Regular Session, Sections

8 10A-1-7.11, 10A-2A-1.43, 10A-2A-2.02, 10A-2A-2.05,

9 10A-2A-2.07, 10A-2A-6.22, 10A-2A-8.27, 10A-2A-8.60,

10 10A-2A-14.10, 10A-2A-16.02, 10A-2A-16.03, 10A-2A-16.04,

11 10A-3A-1.60, 10A-3A-2.02, 10A-3A-2.07, 10A-3A-4.02,

12 10A-3A-4.03, and 10A-3A-4.04, Section 8 of Act 2025-281, now

13 appearing as Section 10A-3A-8.26, Sections 10A-3A-8.60,

14 10A-5A-4.09, and 10A-8A-4.10, Section 10A-8A-5.02, as amended

15 by Act 2025-281, 2025 Regular Session, Sections 10A-9A-3.04

16 and 10A-17-1.02, Code of Alabama 1975; to add Division G,

17 consisting of Section 10A-2A-8.70, to Article 8 of Chapter 2A,

18 Title 10A, Code of Alabama 1975; to add Sections 10A-3A-6.14,

19 10A-3A-8.61, and 10A-3A-8.62 to the Code of Alabama 1975; to

20 add Division G, consisting of Section 10A-3A-8.70, to Article

21 8 of Chapter 3A, Title 10A, Code of Alabama 1975; to make

22 technical corrections; to make technical corrections and

23 codify common law; to clarify the law governing entities and

24 clarify the internal affairs doctrine, thereby codifying

25 common law; to provide a new procedure to correct or nullify

26 filing instruments; to clarify that a registered agent may not

27 perform its duties virtually; to clarify the process for a

28 foreign entity doing business in the state that is withdrawing



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29 its certificate of authority to transact business in this
30 state; to clarify certain proxy matters allowed in bylaws of
31 business corporations and to clarify the forum selection
32 provisions for business corporations and nonprofit
33 corporations; to clarify the procedures, processes, rights,
34 and responsibilities of owners and entities regarding records
35 requests, to provide for expedited court review in the event
36 of noncompliance, and to allow the court in any expedited
37 review to determine the allocation among the parties to the
38 review; to clarify the duties of stockholders to business
39 corporations and fellow stockholders; to provide procedures
40 for officers, directors, stockholders, and members of business
41 corporations and nonprofit corporations to follow when the
42 officers, directors, stockholders, and members of business
43 corporations and nonprofit corporations are involved in a
44 conflicting transaction or a corporate opportunity
45 transaction, or both, which if followed would provide the
46 officers, directors, stockholders, and members of business
47 corporations and nonprofit corporations with certain safe
48 harbors; to authorize existing nonprofit corporations to opt
49 out of the amendatory provisions of this act pertaining to
50 Chapter 3A of Title 10A, Code of Alabama 1975; and to repeal
51 Sections 10A-2A-16.10 and 10A-3A-4.20, Code of Alabama 1975,
52 providing for financial statements for stockholders and
53 members, respectively.

54 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

55 Section 1. Sections 10A-1-1.04, 10A-1-1.11, 10A-1-1.13,
56 10A-1-2.17, 10A-1-3.32, 10A-1-4.14, 10A-1-4.21, 10A-1-4.23,



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57 10A-1-4.24, 10A-1-4.25, and 10A-1-5.31, Section 10A-1-7.01, as
58 amended by Act 2025-281, 2025 Regular Session, Sections
59 10A-1-7.11, 10A-2A-1.43, 10A-2A-2.02, 10A-2A-2.05,
60 10A-2A-2.07, 10A-2A-6.22, 10A-2A-8.27, 10A-2A-8.60,
61 10A-2A-14.10, 10A-2A-16.02, 10A-2A-16.03, 10A-2A-16.04,
62 10A-3A-1.60, 10A-3A-2.02, 10A-3A-2.07, 10A-3A-4.02,
63 10A-3A-4.03, and 10A-3A-4.04, Section 8 of Act 2025-281, now
64 appearing as Section 10A-3A-8.26, Sections 10A-3A-8.60,
65 10A-5A-4.09, and 10A-8A-4.10, Section 10A-8A-5.02, as amended
66 by Act 2025-281, 2025 Regular Session, and Sections
67 10A-9A-3.04 and 10A-17-1.02, Code of Alabama 1975, are amended
68 to read as follows:

69 "§10A-1-1.04

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

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

82 (1) is not a party to the contract or transaction or
83 materially involved in the conduct that is the subject of the
84 claim or challenge; and



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85 (2) does not have a material financial interest in the
86 outcome of the contract or transaction or the disposition of
87 the claim or challenge.

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

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

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

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

98 (2) the person receives normal fees or customary
99 compensation, reimbursement for expenses, or benefits as a
100 governing person of the entity;

101 (3) the person has a direct or indirect equity interest
102 in the entity;

103 (4) the entity has, or its subsidiaries have, an
104 interest in the contract or transaction or was affected by the
105 alleged conduct;

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

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

112 (A) the person is named as a defendant in the



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113 derivative proceeding regarding the matter or as a person who
114 engaged in the alleged conduct; or

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

122 "§10A-1-1.11

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

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

138 ~~(b)~~ (c) If the formation of an entity occurs when a
139 certificate of formation or similar instrument filed with a
140 foreign governmental authority takes effect, the laws of the



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141 state or other jurisdiction in which that foreign governmental
142 authority is located governs (i) the formation and internal
143 affairs of the entity, (ii) the duties and obligations of the
144 governing authorities, governing persons, officers, and
145 owners, and (iii) the liability of its ~~members~~ owners.

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

156 "§10A-1-1.13

157 For purposes of this title, the internal affairs of an
158 entity include, without limitation:

159 (1) the rights, powers, and duties of its governing
160 authority, governing persons, officers, owners, and members;
161 and

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

165 (3) matters which are peculiar to the relationships
166 among or between the entity and its governing authority,
167 governing persons, officers, owners, and members."

168 "§10A-1-2.17



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

175 "§10A-1-3.32

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

191 (b) With respect to a domestic entity covered by this
192 section, the books and records maintained under the chapter of
193 this title applicable to that entity and any other books and
194 records of that entity, wherever situated, are subject to
195 inspection and copying at the reasonable request, and at the
196 expense of, any owner or member or the owner's or member's



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

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

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

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

221 (iii) the owner's or member's demand describes with
222 reasonable particularity the owner's or member's purpose and
223 the records the owner or member desires to inspect; and

224 (iv) the records are directly related to the owner's or



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225 member's purpose.

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

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

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

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



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253 business or affairs, or that the entity is required by law or
254 by agreement with a third party to keep confidential. In any
255 dispute concerning the reasonableness of a restriction under
256 this subsection, the entity has the burden of proving
257 reasonableness.

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

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

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

276 (g) If an entity does not within a reasonable time
277 allow an owner or member who complies with the requirements of
278 this section to inspect and copy the records demanded by the
279 owner or member, then the demanding owner or member may apply
280 to the designated court, and if none, the circuit court for



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

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

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

305 (h) The rights and obligations of an owner or member of
306 an entity provided in this section shall apply to (1) the
307 personal representative or other legal representative of the
308 estate of a deceased owner or member, (2) the legal



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309 representative of an owner or member under legal disability,
310 and (3) a former owner or member, but only for books and
311 records pertaining to the period during which the former owner
312 or member was an owner or member of the entity."

313 "§10A-1-4.14

314 The effect of the following filing instruments may not
315 be delayed:

316 (1) a reservation of name as provided by Division B of
317 Article 5;

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

320 (3) a certificate of abandonment as provided by Section
321 10A-1-4.13; ~~i~~

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

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

326 "§10A-1-4.21

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



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

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

348 "§10A-1-4.23

349 (a) The certificate of correction must:

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

353 (2) identify the filing instrument to be corrected by
354 (i) description; and (ii) date of filing ~~with~~ by the filing
355 officer;

356 (3) identify the inaccuracy, error, or defect to be
357 corrected; and

358 (4) state in corrected form the portion of the filing
359 instrument to be corrected.

360 (b) The certificate of nullification must:

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

364 (2) identify the filing instrument to be nullified by



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365 (i) description; and (ii) date of filing by the filing
366 officer;

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

368 (4) state that the filing instrument is to be
369 nullified."

370 "§10A-1-4.24

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

375 "§10A-1-4.25

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

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

387 ~~(c) An acknowledgment of filing or a similar instrument~~
388 ~~issued by the filing officer before a filing instrument is~~
389 ~~corrected, with respect to the effect of filing the original~~
390 ~~filing instrument, applies to the corrected filing instrument~~
391 ~~as of the date the corrected filing instrument is considered~~
392 ~~to have been filed under this section.~~



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

403 "§10A-1-5.31

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

411 (1) a registered agent; and

412 (2) a registered office.

413 (b) A registered agent:

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

417 (2) may be:

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

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



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

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

429 (c) The registered office:

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

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

435 (3) may not be solely a mailbox service or a telephone
436 answering service."

437 "§10A-1-7.01

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

448 (2) For purposes of this Article 7, the term



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449 registration includes (i) a filed application for
450 registration; and (ii) a filed statement of foreign limited
451 liability partnership.

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

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

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

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

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

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

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

473 "§10A-1-7.11

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



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477 (b) A certificate of withdrawal for a foreign entity
478 described must state:

479 (1) the name of the foreign entity as set forth on its
480 registration;

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

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

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

490 (5) that the foreign entity:

491 (A) revokes the authority of the foreign entity's
492 registered agent in this state to accept service of process;
493 and

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

503 (6) (A) a mailing address to which process may be mailed
504 pursuant to the applicable service of process procedures of



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505 the Alabama Rules of Civil Procedure and to which any notice
506 or demand required or permitted by law to be served on the
507 foreign entity may be mailed; and

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

512 (7) that any money due or accrued to the state has been
513 paid or describes the provisions that have been made for the
514 payment of that money.

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

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

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

527 (f) The certificate of withdrawal of a foreign entity
528 described in subsection (b), other than a foreign limited
529 liability partnership, shall be executed by one or more
530 persons authorized to execute a certificate of withdrawal. A
531 certificate of withdrawal of a foreign limited liability
532 partnership shall be executed by one or more partners



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

541 "§10A-2A-1.43

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

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

552 (2) Section 10A-2A-8.53 or Section 10A-2A-8.55, (i) is
553 not a party to the proceeding, (ii) is not a director as to
554 whom a transaction is a ~~director's~~ conflicting interest
555 transaction or who sought a disclaimer of the corporation's
556 interest in a ~~business~~ corporate opportunity under Section
557 ~~10A-2A-8.60~~ 10A-2A-8.70, which transaction or disclaimer is
558 challenged, and (iii) does not have a material relationship
559 with a director described in either clause (i) or clause (ii)
560 of this subsection (a)(2); or



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

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

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

583 ~~(1)~~ As used in this chapter, unless otherwise specified
584 or unless the context otherwise requires, a "material
585 relationship" means a familial, financial, professional,
586 employment, or other relationship that (i) in the case of a
587 director, would reasonably be expected to impair the
588 objectivity of the director's judgment when participating in



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589 ~~the action to be taken; and~~ negotiation, authorization, or
590 approval of the act or transaction at issue and (ii) in the
591 case of a stockholder, would be material to that stockholder.

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

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

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

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

611 "§10A-2A-2.02

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

613 Instead:

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

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



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617 (2) the number of shares of stock the corporation is
618 authorized to issue;

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

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

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

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

628 (2) provisions not inconsistent with law regarding:

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

631 (ii) managing the business and regulating the affairs
632 of the corporation;

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

635 (iv) a par value for authorized stock or classes of
636 stock; or

637 (v) subject to subsection (f), a provision imposing
638 personal liability for the debts of the corporation on its
639 stockholders to a specified extent and upon specified
640 conditions; otherwise, the stockholders of a corporation shall
641 not be personally liable for the payment of the corporation's
642 debts, except as they may be liable by reason of their own
643 conduct or acts;

644 (3) any provision that under this chapter is permitted



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645 to be set forth in the certificate of incorporation or
646 required or permitted to be set forth in the bylaws;

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

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

667 (6) a provision limiting or eliminating any duty of a
668 director or any other person to offer the corporation the
669 right to have or participate in any, or one or more classes or
670 categories of, ~~business~~ corporate opportunities, before the
671 pursuit or taking of the corporate opportunity by the director
672 or other person; provided that any application of that



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673 provision to an officer or a related person of that officer
674 (i) also requires approval of that application by the board of
675 directors, subsequent to the effective date of the provision,
676 by action of qualified directors taken in compliance with the
677 same procedures as are set forth in Section 10A-2A-8.60; and
678 (ii) may be limited by the authorizing action of the board of
679 directors.

680 (c) The certificate of incorporation need not set forth
681 any of the corporate powers enumerated in Sections 10A-1-2.11,
682 10A-1-2.12, and 10A-1-2.13.

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

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

690 (i) the individual's spouse;

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

695 (iii) a natural person living in the same home as the
696 individual;

697 (iv) an entity (other than the corporation or an entity
698 controlled by the corporation) controlled by the individual or
699 any person specified above in this definition;

700 (v) a domestic or foreign:



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701 (A) business or nonprofit corporation (other than the
702 corporation or an entity controlled by the corporation) of
703 which the individual is a director,

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

706 (C) individual, trust, or estate for whom or of which
707 the individual is a trustee, guardian, personal
708 representative, or like fiduciary, or

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

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

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

723 (h) For purposes of subsection (b)(4) only, unless the
724 certificate of incorporation otherwise provides, "officer"
725 means an individual appointed or elected in accordance with
726 Section 10A-2A-8.40 as (i) president, chief executive officer,
727 chief operating officer, chief financial officer, chief legal
728 officer, secretary, controller, treasurer, or chief accounting



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729 officer of the corporation; and (ii) any officer of the
730 corporation designated by resolution of the board of directors
731 as an "officer" for purposes of subsection (b) (4). The board
732 of directors may, from time to time, by resolution determine
733 that one or more of the officers designated in accordance with
734 subsection (h) (ii) shall no longer be an officer for purposes
735 of subsection (b) (4), but no such resolution shall be
736 effective as to any such officer, or any act or omission of
737 any such officer, prior to the adoption of the resolution.

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

750 "§10A-2A-2.05

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

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

756 (c) The bylaws may contain one or ~~both~~ more of the



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757 ~~following provisions: set forth in subsections (c)(1) and~~
758 ~~(c)(2) below, provided that no provision so adopted shall~~
759 ~~apply to elections for which any record date precedes its~~
760 ~~adoption.~~

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

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

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

784 (i) a provision requiring a minimum record or



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785 beneficial ownership, or duration of ownership, of shares of
786 the corporation's capital stock, by the nominating
787 stockholder, and defining beneficial ownership to take into
788 account options or other rights in respect of or related to
789 such stock;

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

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

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

808 (v) a provision requiring that the nominating
809 stockholder undertake to indemnify the corporation in respect
810 of any loss arising as a result of any false or misleading
811 information or statement submitted by the nominating
812 stockholder in connection with a nomination; and



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813 (vi) any other lawful condition.

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

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

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

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

830 (iv) any other lawful condition.

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

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



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841 "§10A-2A-2.07

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

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

866 ~~(c) No provision of the certificate of incorporation or~~
867 ~~the bylaws may prohibit bringing an internal corporate claim~~
868 ~~in the courts of this state or require those claims to be~~



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869 ~~determined by arbitration.~~

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

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



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897 pursuant to Sections 10A-2A-7.30, 10A-2A-7.31, or 10A-2A-7.32
898 to which the corporation is a party or a stated beneficiary
899 thereof, or (iv) ~~any action asserting a claim~~ that is governed
900 by the internal affairs doctrine that is not included in (i)
901 through (iii) above.

902 (d) This section does not prohibit any corporation from
903 consenting, or require any corporation to consent, to any
904 alternative forum in any instance."

905 "§10A-2A-6.22

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

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

916 (c) Except for controlling stockholders and control
917 groups in a controlling stockholder transaction (as defined in
918 Section 10A-2A-8.60), a stockholder, regardless of the
919 stockholder's relative beneficial ownership of shares or
920 relative voting power, may, and shall be entitled to, exercise
921 or withhold the voting power of such shares in the
922 stockholder's personal interest and without regard to any
923 other person or interest.

924 (d) Except as set forth in subsection (e), a



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925 stockholder, in that person's capacity as a stockholder and
926 regardless of the stockholder's relative beneficial ownership
927 of shares or relative voting power, shall not have any duty to
928 the corporation or any other stockholder.

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

946 (f) A controlling stockholder and a control group are
947 presumed to have not breached the duty imposed by subsection
948 (e) with respect to a controlling stockholder transaction if
949 the controlling stockholder transaction has been authorized or
950 approved in accordance with Section 10A-2A-8.60.

951 (g) A stockholder of a corporation is not individually
952 liable to the corporation or its stockholders or creditors for



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953 any damages as a result of any act or failure to act in such
954 person's capacity as a stockholder under subsection (e) unless
955 (i) the stockholder is a controlling stockholder or a member
956 of a control group, (ii) the presumption established by
957 subsection (f) has been rebutted, and (iii) it is proven that
958 the stockholder's act or failure to act constituted a breach
959 of the stockholder's duty imposed by subsection (e)."

960 "§10A-2A-8.27

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

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



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981 board of directors and to satisfy any requirement under this
982 chapter that the board of directors approve or take other
983 action with respect to the agreement, instrument, plan, or
984 document in a specific manner or sequence.

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

994 "§10A-2A-8.60

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

1006 ~~(1) The material facts as to the director's or~~
1007 ~~officer's relationship or interest and as to the contract or~~
1008 ~~transaction are disclosed or are known to the board of~~



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1009 ~~directors or the committee, and the board or committee in good~~
1010 ~~faith authorizes the contract or transaction by the~~
1011 ~~affirmative votes of a majority of the qualified directors,~~
1012 ~~even though the qualified directors be less than a quorum; or~~

1013 ~~(2) The material facts as to the director's or~~
1014 ~~officer's relationship or interest and as to the contract or~~
1015 ~~transaction are disclosed or are known to the stockholders~~
1016 ~~entitled to vote thereon, and the contract or transaction is~~
1017 ~~specifically approved in good faith by vote of the~~
1018 ~~stockholders; or~~

1019 ~~(3) The contract or transaction is fair as to the~~
1020 ~~corporation as of the time it is authorized, approved or~~
1021 ~~ratified, by the board of directors, a committee, or the~~
1022 ~~stockholders.~~

1023 ~~(b) Common or interested directors may be counted in~~
1024 ~~determining the presence of a quorum at a meeting of the board~~
1025 ~~of directors or of a committee which authorizes the contract~~
1026 ~~or transaction.~~

1027 (a) As used in this chapter, unless otherwise specified
1028 or unless the context otherwise requires, the following terms
1029 shall mean:

1030 (1) CONFLICTING INTEREST TRANSACTION means an act or
1031 transaction effected or proposed to be effected by the
1032 corporation (or by an entity controlled by the corporation):

1033 (i) to which, at the relevant time, a director or
1034 officer is a party;

1035 (ii) respecting which, at the relevant time, the
1036 director or officer had knowledge and a material financial



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1037 interest known to the director or officer; or

1038 (iii) respecting which, at the relevant time, the

1039 director or officer knew that a related person was a party or

1040 had a material financial interest.

1041 (2) CONTROL or CONTROLLED BY means (i) having the

1042 power, directly or indirectly, to elect or remove a majority

1043 of the members of the board of directors or other governing

1044 authority of an entity, whether through the ownership of

1045 voting shares or interests, by contract, or otherwise or (ii)

1046 being subject to a majority of the risk of loss from the

1047 entity's activities or entitled to receive a majority of the

1048 entity's residual returns.

1049 (3) CONTROL GROUP means two or more persons that are

1050 not controlling stockholders that, by virtue of an agreement,

1051 arrangement, or understanding between or among those persons,

1052 constitute a controlling stockholder.

1053 (4) CONTROLLING STOCKHOLDER means any person that,

1054 together with (i) any related person and (ii) any person that

1055 controls, is controlled by, or is under common control with

1056 that person:

1057 (A) owns or controls a majority in voting power of the

1058 outstanding stock of the corporation entitled to vote

1059 generally in the election of directors or in the election of

1060 directors who have a majority in voting power of the votes of

1061 all directors on the board of directors;

1062 (B) has the right, by contract or otherwise, to cause

1063 the election of nominees who are selected at the discretion of

1064 that person and who constitute either a majority of the



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1065 members of the board of directors or directors entitled to
1066 cast a majority in voting power of the votes of all directors
1067 on the board of directors;

1068 (C) has the power functionally equivalent to that of a
1069 stockholder that owns or controls a majority in voting power
1070 of the outstanding stock of the corporation entitled to vote
1071 generally in the election of directors by virtue of ownership
1072 or control of at least one-third in voting power of the
1073 outstanding stock of the corporation entitled to vote
1074 generally in the election of directors or in the election of
1075 directors who have a majority in voting power of the votes of
1076 all directors on the board of directors and the power to
1077 exercise managerial authority over the business and affairs of
1078 the corporation; or

1079 (D) owns or controls a majority in voting power of the
1080 outstanding stock of the corporation entitled to vote
1081 generally when the board of directors has been eliminated
1082 under Section 10A-2A-7.32.

1083 (5) CONTROLLING STOCKHOLDER TRANSACTION means an act or
1084 transaction between the corporation or one or more of its
1085 subsidiaries, on the one hand, and a controlling stockholder
1086 or a control group, on the other hand, or an act or
1087 transaction from which a controlling stockholder or a control
1088 group receives a material financial or other benefit not
1089 shared with the corporation's stockholders generally; provided
1090 that a merger under Section 10A-2A-11.05 is not a controlling
1091 stockholder transaction.

1092 (6) DISINTERESTED STOCKHOLDER means any stockholder



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1093 that does not have a material financial interest in the act or
1094 transaction at issue or, if applicable, a material
1095 relationship with the controlling stockholder or other member
1096 of the control group, or any other person that has a material
1097 financial interest in the act or transaction.

1098 (7) FAIR TO THE CORPORATION means the act or
1099 transaction at issue, as a whole, is beneficial to the
1100 corporation or its stockholders in their capacity as
1101 stockholders, given the consideration paid to or received by
1102 the corporation or its stockholders or other benefit conferred
1103 on the corporation or its stockholders and taking into
1104 appropriate account whether the act or transaction meets both
1105 of the following: (i) it is fair in terms of the director's,
1106 officer's, controlling stockholder's, or control group's
1107 dealings with the corporation, as the case may be; and (ii) it
1108 is comparable to what might have been obtainable in an arm's
1109 length transaction available to the corporation.

1110 (8) GOING PRIVATE TRANSACTION means, other than a
1111 merger under Section 10A-2A-11.05:

1112 (i) for a corporation with a class of equity securities
1113 subject to Section 12(g) or Section 15(d) of the Securities
1114 Exchange Act of 1934 [15 U.S.C. § 781(g) or § 78o(d)] or
1115 listed on a national securities exchange, a "Rule 13e-3
1116 transaction" (as defined in 17 CFR § 240.13e-3(a)(3) or any
1117 successor provision); and

1118 (ii) for any other corporation to which subsection
1119 (a)(8)(i) does not apply, a transaction that (A) is a
1120 controlling stockholder transaction, including a merger,



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

1130 (9) MATERIAL FINANCIAL INTEREST means a nonspeculative
1131 financial interest in an act or transaction, other than one
1132 that would devolve on the corporation or the stockholders
1133 generally, that (i) in the case of a director or officer,
1134 would reasonably be expected to impair the objectivity of the
1135 director's or officer's judgment when participating in the
1136 negotiation, authorization, or approval of the act or
1137 transaction at issue or (ii) in the case of a stockholder or
1138 any other person (other than a director or officer), would be
1139 material to such stockholder or such other person.

1140 (10) MATERIAL RELATIONSHIP has the meaning set forth in
1141 Section 10A-2A-1.43.

1142 (11) QUALIFIED DIRECTOR has the meaning set forth in
1143 Section 10A-2A-1.43.

1144 (12) RELATED PERSON has the meaning set forth in
1145 Section 10A-2A-2.02.

1146 (13) RELEVANT TIME means (i) the time at which a
1147 directors' action respecting the act or transaction is taken
1148 in compliance with subsection (c) or (ii) if the act or



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1149 transaction is not brought before the board of directors (or a
1150 committee thereof) for action under subsection (c), at the
1151 time the corporation (or an entity controlled by the
1152 corporation) becomes legally obligated to consummate the act
1153 or transaction.

1154 (14) REQUIRED DISCLOSURE means disclosure of (i) the
1155 existence and nature of the director's or officer's
1156 conflicting interest and (ii) all facts known to the director
1157 or officer respecting the subject matter of the act or
1158 transaction that a qualified director would reasonably believe
1159 to be material in deciding whether to proceed with the act or
1160 transaction.

1161 (b) (1) An act or transaction effected or proposed to be
1162 effected by a corporation (or by an entity controlled by the
1163 corporation) may not be the subject of equitable relief, or
1164 give rise to an award of damages or other sanctions against a
1165 director or officer of the corporation, on the grounds that
1166 the director or officer has an interest respecting the act or
1167 transaction, if the act or transaction is not a conflicting
1168 interest transaction.

1169 (2) Except for a controlling stockholder transaction
1170 under subsection (e), a conflicting interest transaction may
1171 not be the subject of equitable relief, or give rise to an
1172 award of damages or other sanctions against a director or
1173 officer of the corporation, in a proceeding by a stockholder
1174 or by or in the right of the corporation, on the grounds that
1175 the director or officer has an interest respecting the
1176 conflicting interest transaction, if:



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1177 (i) the directors' action respecting the act or
1178 transaction was taken in compliance with subsection (c) at any
1179 time; or

1180 (ii) the stockholders' action respecting the act or
1181 transaction was taken in compliance with subsection (d) at any
1182 time; or

1183 (iii) the act or transaction is at the relevant time
1184 fair to the corporation.

1185 (c) (1) Directors' action respecting a conflicting
1186 interest transaction is effective for purposes of subsection
1187 (b) (2)(i) if the conflicting interest transaction has been
1188 authorized, after required disclosure by the conflicted
1189 director or officer of information not already known by the
1190 qualified directors, or after modified disclosure in
1191 compliance with subsection (c) (2), by (A) the affirmative vote
1192 of a majority (but no fewer than two) of the qualified
1193 directors who voted on the conflicting interest transaction or
1194 (B) the affirmative vote of a majority of the members of a
1195 board committee that is composed of only qualified directors
1196 (but no fewer than two). Directors' action respecting a
1197 conflicting interest transaction is effective even though the
1198 conflicted director or officer is present at or participates
1199 in the meeting of the board or committee which authorizes the
1200 act or transaction or was involved in the initiation,
1201 negotiation, or approval of the act or transaction.

1202 (2) Notwithstanding subsection (c) (1), when a
1203 transaction is a conflicting interest transaction only because
1204 a related person described in clause (v) or (vi) of the



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

1215 (i) all information required to be disclosed that is
1216 not so violative;

1217 (ii) the existence and nature of the director's or
1218 officer's conflicting interest; and

1219 (iii) the nature of the conflicted director's or
1220 officer's duty not to disclose the confidential information.

1221 (3) A majority (but no fewer than two) of all the
1222 qualified directors on the board of directors, or on the board
1223 committee, constitutes a quorum for purposes of action that
1224 complies with this section.

1225 (4) Where directors' action under this subsection (c)
1226 does not satisfy a quorum or voting requirement applicable to
1227 the authorization of the conflicting interest transaction by
1228 reason of the certificate of incorporation, the bylaws, or
1229 another provision of this chapter, independent action to
1230 satisfy those authorization requirements shall be taken by the
1231 board of directors or a board committee, in which action
1232 directors who are not qualified directors may participate.



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1233 (5) Where directors' action under this subsection (c)
1234 is taken without a meeting in accordance with Section
1235 10A-2A-8.21, the action is effective even though a conflicted
1236 director signs a consent to that action.

1237 (d) (1) Stockholders' action respecting a conflicting
1238 interest transaction is effective for purposes of subsection
1239 (b) (2) (ii) if a majority of the votes cast by the holders of
1240 all qualified shares are in favor of the conflicting interest
1241 transaction after (i) notice to stockholders describing the
1242 action to be taken respecting the conflicting interest
1243 transaction, (ii) provision to the corporation of the
1244 information referred to in subsection (d) (2), and (iii)
1245 communication to the stockholders entitled to vote on the
1246 conflicting interest transaction of the information that is
1247 the subject of required disclosure, to the extent the
1248 information is not already known by them. In the case of
1249 stockholders' action at a meeting, the stockholders entitled
1250 to vote shall be determined as of the record date for notice
1251 of the meeting.

1252 (2) A director or officer who has a conflicting
1253 interest respecting the conflicting interest transaction
1254 shall, before the stockholders' vote, inform the secretary or
1255 other officer or agent of the corporation authorized to
1256 tabulate votes, in writing, of the number of shares that the
1257 director or officer knows are not qualified shares under
1258 subsection (c), and the identity of the holders of those
1259 shares.

1260 (3) For purposes of this section: (i) "holder" means



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1261 and "held by" refers to shares held by a record stockholder, a
1262 beneficial stockholder, and an unrestricted voting trust
1263 beneficial owner and (ii) "qualified shares" means all shares
1264 entitled to be voted with respect to the conflicting interest
1265 transaction except for shares that the secretary or other
1266 officer or agent of the corporation authorized to tabulate
1267 votes either knows, or under subsection (b) is notified, are
1268 held by (A) a director or officer who has a conflicting
1269 interest respecting the conflicting interest transaction or
1270 (B) a related person of the director or officer (excluding a
1271 person described in clause (vi) of the definition of a related
1272 person in Section 10A-2A-2.02).

1273 (4) A majority of the votes entitled to be cast by the
1274 holders of all qualified shares constitutes a quorum for
1275 purposes of compliance with this section. Subject to the
1276 provisions of subsection (e), stockholders' action that
1277 otherwise complies with this section is not affected by the
1278 presence of holders, or by the voting, of shares that are not
1279 qualified shares.

1280 (5) If a stockholders' vote does not comply with
1281 subsection (d)(1) solely because of a director's or officer's
1282 failure to comply with subsection (d)(2), and if the director
1283 or officer establishes that the failure was not intended to
1284 influence and did not in fact determine the outcome of the
1285 vote, then the action by the stockholders respecting the
1286 conflicting interest transaction shall be given effect.

1287 (6) Where stockholders' action under this section does
1288 not satisfy a quorum or voting requirement applicable to the



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1289 authorization of the conflicting interest transaction by
1290 reason of the certificate of incorporation, the bylaws, or
1291 another provision of this chapter, independent action to
1292 satisfy those authorization requirements shall be taken by the
1293 stockholders, in which action shares that are not qualified
1294 shares may participate.

1295 (7) Where stockholders' action under this subsection
1296 (d) is taken without a meeting in accordance with Section
1297 10A-2A-7.04, the action is effective even though stockholders
1298 holding shares that are not qualified shares sign a consent to
1299 that action.

1300 (e) (1) An act or transaction effected or proposed to be
1301 effected by the corporation (or by an entity controlled by the
1302 corporation) may not be the subject of equitable relief, or
1303 give rise to an award of damages or other sanctions against a
1304 stockholder of the corporation, on the grounds that the
1305 stockholder has an interest respecting the act or transaction,
1306 if the act or transaction is not a controlling stockholder
1307 transaction.

1308 (2) A controlling stockholder transaction (other than a
1309 going private transaction) may not be the subject of equitable
1310 relief, or give rise to an award of damages or other
1311 sanctions, against a director or officer of the corporation or
1312 any controlling stockholder or member of a control group, by
1313 reason of a claim based on a breach of fiduciary duty by a
1314 director or officer, or a duty (as described in Section
1315 10A-2A-6.22) of a controlling stockholder or member of a
1316 control group, if:



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1317 (i) the material facts as to the controlling
1318 stockholder transaction (including the controlling
1319 stockholder's or control group's interest therein) are
1320 disclosed or are known to all members of the board of
1321 directors or a committee of the board of directors to which
1322 the board of directors has expressly delegated the authority
1323 to negotiate (or oversee the negotiation of) and to reject the
1324 controlling stockholder transaction, and the controlling
1325 stockholder transaction is approved (or recommended for
1326 approval) by the affirmative vote of a majority (but no fewer
1327 than two) of the qualified directors who voted on the
1328 controlling stockholder transaction; or

1329 (ii) the controlling stockholder transaction is
1330 conditioned, by its terms, as in effect at the time it is
1331 submitted to stockholders for their approval or ratification,
1332 on the approval of or ratification by disinterested
1333 stockholders, and the controlling stockholder transaction is
1334 approved or ratified by an informed, uncoerced, affirmative
1335 vote of a majority of the votes cast by the disinterested
1336 stockholders; or

1337 (iii) the controlling stockholder transaction is at the
1338 relevant time fair to the corporation.

1339 (3) A controlling stockholder transaction constituting
1340 a going private transaction may not be the subject of
1341 equitable relief, or give rise to an award of damages or other
1342 sanctions, against a director or officer of the corporation or
1343 any controlling stockholder or member of a control group by
1344 reason of a claim based on breach of fiduciary duty by a



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1345 director or officer or a duty (described in Section
1346 10A-2A-6.22) of a controlling stockholder or member of a
1347 control group, if:

1348 (i) the controlling stockholder transaction is approved
1349 (or recommended for approval) in accordance with subsection
1350 (e) (2) (i) and approved in accordance with subsection
1351 (e) (2) (ii); or

1352 (ii) the controlling stockholder transaction is at the
1353 relevant time fair to the corporation.

1354 (4) No person shall be deemed a controlling stockholder
1355 unless that person satisfies the criteria in subsection
1356 (a) (4). No two or more persons that are not controlling
1357 stockholders shall be a control group unless they satisfy the
1358 criteria in subsection (a) (3).

1359 (f) For purposes of this section, if a corporation has
1360 eliminated its board of directors under Section 10A-2A-7.32,
1361 each stockholder of that corporation shall be deemed to be a
1362 director, in addition to their capacity as a stockholder."

1363 "§10A-2A-14.10

1364 (a) The circuit court for the county in which the
1365 corporation's principal office is located in this state, and
1366 if none in this state, the circuit court for the county in
1367 which the corporation's most recent registered office is
1368 located may dissolve a corporation:

1369 (1) in a proceeding by the Attorney General if it is
1370 established that:

1371 (i) the corporation obtained its certificate of
1372 incorporation through fraud; or



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1373 (ii) the corporation has continued to exceed or abuse
1374 the authority conferred upon it by law;

1375 (2) in a proceeding by a stockholder if it is
1376 established that:

1377 (i) the directors are deadlocked in the management of
1378 the corporate affairs, the stockholders are unable to break
1379 the deadlock, and irreparable injury to the corporation is
1380 threatened or being suffered, or the business and affairs of
1381 the corporation can no longer be conducted to the advantage of
1382 the stockholders generally, because of the deadlock;

1383 (ii) the directors or those in control of the
1384 corporation have acted, are acting, or will act in a manner
1385 that is illegal, ~~oppressive,~~ or fraudulent;

1386 (iii) the stockholders are deadlocked in voting power
1387 and have failed, for a period that includes at least two
1388 consecutive annual meeting dates, to elect successors to
1389 directors whose terms have expired; or

1390 (iv) the corporate assets are being misapplied or
1391 wasted;

1392 (3) in a proceeding by a creditor if it is established
1393 that:

1394 (i) the creditor's claim has been reduced to judgment,
1395 the execution on the judgment returned unsatisfied, and the
1396 corporation is insolvent; or

1397 (ii) the corporation has admitted in writing that the
1398 creditor's claim is due and owing and the corporation is
1399 insolvent;

1400 (4) in a proceeding by the corporation to have its



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1401 voluntary dissolution continued under court supervision; or

1402 (5) in a proceeding by a stockholder if the corporation
1403 has abandoned its business and has failed within a reasonable
1404 time to liquidate and distribute its assets and dissolve.

1405 (b) Subsection (a)(2) shall not apply in the case of a
1406 corporation that, on the date of the filing of the proceeding,
1407 has a class or series of stock which is:

1408 (1) a covered security under Section 18(b)(1)(A) or (B)
1409 of the Securities Act of 1933; or

1410 (2) not a covered security, but is held by at least
1411 2,000 stockholders.

1412 (c) In subsection (a), "stockholder" means a record
1413 stockholder, a beneficial stockholder, and an unrestricted
1414 voting trust beneficial owner, and in subsection (b),
1415 "stockholder" means a record stockholder, a beneficial
1416 stockholder, and a voting trust beneficial owner."

1417 "§10A-2A-16.02

1418 Subject to subsections (i) and (j) of this section:

1419 (a) A stockholder of a corporation is entitled to
1420 inspect and copy, during regular business hours at the
1421 corporation's principal office, any of the records of the
1422 corporation described in Section 10A-2A-16.01(a), excluding
1423 minutes of meetings of, and records of actions taken without a
1424 meeting by, the corporation's board of directors and board
1425 committees established under Section 10A-2A-8.25, if the
1426 stockholder gives the corporation a signed written notice of
1427 the stockholder's demand at least five business days before
1428 the date on which the stockholder wishes to inspect and copy



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1429 and the demand provides the information required in subsection
1430 (h) if the stockholder is not a record stockholder as defined
1431 in clause (i) of the definition of record stockholder in
1432 Section 10A-2A-1.40.

1433 (b) A stockholder of a corporation is entitled to
1434 inspect and copy, during regular business hours at a
1435 reasonable location specified by the corporation, any of the
1436 following records of the corporation if the stockholder meets
1437 the requirements of subsection (c) and gives the corporation a
1438 signed written notice of the stockholder's demand at least
1439 five business days before the date on which the stockholder
1440 wishes to inspect and copy:

1441 (1) the financial statements of the corporation
1442 maintained in accordance with Section 10A-2A-16.01(b);
1443 provided, however, that the corporation may deliver or make
1444 available the financial statements to the requesting
1445 stockholder by posting them on the corporation's website or by
1446 other generally recognized means. If financial statements have
1447 been prepared for the corporation on the basis of generally
1448 accepted accounting principles for that specified period, the
1449 corporation shall deliver or make available those financial
1450 statements to the requesting stockholder. If the annual
1451 financial statements to be delivered or made available to the
1452 requesting stockholder are audited or otherwise reported upon
1453 by a public accountant, the report shall also be delivered or
1454 made available to the requesting stockholder. The corporation
1455 may also fulfill its responsibilities under this section by
1456 delivering the specified financial statements, or otherwise



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1457 making them available, in any manner permitted by the
1458 applicable rules and regulations of the United States
1459 Securities and Exchange Commission;

1460 (2) the accounting records of the corporation
1461 maintained in accordance with Section 10A-2A-16.01(c) that
1462 permitted the preparation of the financial statements
1463 maintained in accordance with Section 10A-2A-16.01(b);

1464 (3) excerpts from minutes of any meeting of, or records
1465 of any actions taken without a meeting by, the corporation's
1466 board of directors and board committees maintained in
1467 accordance with Section 10A-2A-16.01(a); and

1468 (4) the record of stockholders maintained in accordance
1469 with Section 10A-2A-16.01(d); provided however, the
1470 corporation may withhold the record of stockholders maintained
1471 in accordance with Section 10A-2A-16.01(d) if the demanding
1472 stockholder of the corporation has, without the consent of the
1473 corporation, within two years preceding the stockholder's
1474 demand sold or offered for sale any list of the stockholders
1475 of the corporation or has aided or abetted any person in
1476 selling or offering to sell any list of the stockholders of
1477 the corporation.

1478 (c) (1) A stockholder may inspect and copy the records
1479 described in subsection (b) only if:

1480 ~~(1)~~ (i) the stockholder has delivered to the corporation
1481 a signed written notice of the stockholder's demand at least
1482 five business days before the date on which the stockholder
1483 wishes to inspect and copy;

1484 (ii) the stockholder's demand provides the information



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1485 required in subsection (h) if the stockholder is not a record
1486 stockholder as defined in clause (i) of the definition of
1487 record stockholder in Section 10A-2A-1.40;

1488 (iii) the stockholder's demand is made in good faith
1489 and for a proper purpose;

1490 ~~(2)~~ (iv) the stockholder's demand describes with
1491 reasonable particularity the stockholder's purpose and the
1492 records the stockholder desires to inspect; and

1493 ~~(3)~~ (v) the records are directly connected with related
1494 to the stockholder's purpose.

1495 (2) For purposes of this subsection (c), a proper
1496 purpose shall mean a purpose directly related to the
1497 stockholder's interest as a stockholder; provided, however,
1498 that a demand shall not be for a proper purpose if the
1499 corporation reasonably determines that the demand is in
1500 connection with:

1501 (i) an active or pending derivative proceeding in the
1502 right of the corporation under Division D of Article 7 of this
1503 chapter that is or is expected to be instituted or maintained
1504 by the stockholder or the stockholder's affiliate; or

1505 (ii) an active or pending civil lawsuit to which the
1506 corporation, or its affiliate, and the stockholder, or the
1507 stockholder's affiliate, are, or are expected to be,
1508 adversarial named parties.

1509 (d) ~~(1)~~ The corporation may redact portions of the
1510 records to be inspected and copied under subsections (a) and
1511 (b) to the extent the portions so redacted are not directly
1512 related to the stockholder's purpose. The corporation may also



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

1528 ~~(2) If a stockholder is entitled to inspect and copy~~
1529 ~~the records described in subsection (a) or having met the~~
1530 ~~requirements of subsection (c) is entitled to inspect and copy~~
1531 ~~the records described in subsection (b), and an officer of the~~
1532 ~~corporation with the authority to bind the corporation who, or~~
1533 ~~a corporation which, without reasonable cause, refuses to~~
1534 ~~allow that stockholder to inspect and copy those records shall~~
1535 ~~be liable to that stockholder for a penalty of an amount not~~
1536 ~~to exceed 10 percent of the value of the shares of stock owned~~
1537 ~~by that stockholder, in addition to any other damages or~~
1538 ~~remedy afforded that stockholder by law. It shall be a defense~~
1539 ~~to an action brought to collect the penalty specified in this~~
1540 ~~section that the stockholder suing therefor has previously~~



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1541 ~~sold or offered for sale any list of stockholders of the~~
1542 ~~corporation, or any other corporation or knowingly has aided~~
1543 ~~or abetted any person in procuring any list of stockholders,~~
1544 ~~or improperly has used any information secured through any~~
1545 ~~prior inspection of those records of the corporation, or was~~
1546 ~~not acting in good faith or for a proper purpose in making~~
1547 ~~this demand.~~

1548 (e) For any meeting of stockholders for which the
1549 record date for determining stockholders entitled to vote at
1550 the meeting is different than the record date for notice of
1551 the meeting, any person who becomes a stockholder subsequent
1552 to the record date for notice of the meeting and is entitled
1553 to vote at the meeting is entitled to obtain from the
1554 corporation upon request the notice and any other information
1555 provided by the corporation to stockholders in connection with
1556 the meeting, unless the corporation has made that information
1557 generally available to stockholders by posting it on its
1558 website or by other generally recognized means. Failure of a
1559 corporation to provide that information does not affect the
1560 validity of action taken at the meeting.

1561 (f) The right of inspection granted by this section may
1562 not be abolished or limited by a corporation's certificate of
1563 incorporation or bylaws, but the right of inspection granted
1564 by this section may be limited to the extent permitted under
1565 Section 10A-2A-7.32.

1566 (g) This section does not affect:

1567 ~~(1)~~ the right of a stockholder to inspect records under
1568 Section 10A-2A-7.20 or, if the stockholder is in litigation



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1569 with the corporation, to the same extent as any other
1570 litigant; ~~or.~~

1571 ~~(2) the power of a court, independently of this~~
1572 ~~chapter, to compel the production of corporate records for~~
1573 ~~examination and to impose reasonable restrictions as provided~~
1574 ~~in Section 10A-2A-16.04(e), provided that, in the case of~~
1575 ~~production of records described in subsection (b) of this~~
1576 ~~section at the request of a stockholder, the stockholder has~~
1577 ~~met the requirements of subsection (e).~~

1578 (h) For purposes of this section, "stockholder" means a
1579 record stockholder, a beneficial stockholder, and an
1580 unrestricted voting trust beneficial owner. If a stockholder
1581 is not a record stockholder as defined in clause (i) of the
1582 definition of record stockholder in Section 10A-2A-1.40, the
1583 demand described in subsections (a) and (b) shall state the
1584 person's status as a beneficial stockholder or an unrestricted
1585 voting trust beneficial owner, be accompanied by documentary
1586 evidence thereof, and state that such documentary evidence is
1587 a true and correct copy of what it purports to be.

1588 (i) The right of a stockholder to inspect and copy the
1589 records described in subsections (a) and (b) may be denied by
1590 the corporation if the corporation determines that the
1591 demanding stockholder has within two years preceding his, her,
1592 or its demand improperly used any information secured through
1593 any prior examination of the records of the corporation.

1594 (j) The right to inspect and copy the records described
1595 in subsections (a) and (b) shall not be available for any
1596 stockholder of a corporation that has been subject to the



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1597 filing requirements pursuant to Section 13 or Section 15(d) of
1598 the Securities Exchange Act of 1934, as amended, 15 U.S.C. §§
1599 78m or 78o(d) for at least the preceding 12 months and the
1600 corporation has filed with the Securities and Exchange
1601 Commission all reports required to be filed thereunder;
1602 provided, however, the corporation shall provide the
1603 requesting stockholder with the information regarding the
1604 stockholders of the corporation as may be required by the
1605 Securities Exchange Act of 1934, as amended, and the rules and
1606 regulations thereunder."

1607 "§10A-2A-16.03

1608 If a stockholder is entitled to inspection and copying
1609 rights under Section 10A-2A-16.02:

1610 (a) A stockholder may appoint an agent or attorney to
1611 exercise the stockholder's inspection and copying rights under
1612 Section 10A-2A-16.02. In that case, the demand shall be
1613 accompanied by a power of attorney or other writing which
1614 authorizes the agent or attorney to so act on behalf of the
1615 stockholder.

1616 (b) The corporation may, if reasonable, satisfy the
1617 right of a stockholder to copy records under Section
1618 10A-2A-16.02 by furnishing to the stockholder copies by
1619 photocopy or other means chosen by the corporation, including
1620 furnishing copies through an electronic transmission.

1621 (c) The corporation may comply at its expense with a
1622 stockholder's demand to inspect the record of stockholders
1623 under Section 10A-2A-16.02 (b) (4) by providing the stockholder
1624 with a list of stockholders that was compiled no earlier than



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1625 the date of the stockholder's demand.

1626 (d) The corporation may impose a reasonable charge to
1627 cover the costs of providing copies of documents to the
1628 stockholder, which may be based on an estimate of those
1629 costs."

1630 "§10A-2A-16.04

1631 If a stockholder is entitled to inspection and copying
1632 rights under Section 10A-2A-16.02:

1633 (a) If a corporation does not allow a stockholder who
1634 complies with Section 10A-2A-16.02(a) to inspect and copy any
1635 records required by that section to be available for
1636 inspection, the designated court, and if none, the circuit
1637 court for the county in which the corporation's principal
1638 office is located in this state, and if none in this state,
1639 the circuit court for the county in which the corporation's
1640 most recent registered office is located may summarily order
1641 inspection and copying of the records demanded at the
1642 corporation's expense upon application of the stockholder.

1643 (b) If a corporation does not within a reasonable time
1644 allow a stockholder who complies with Section 10A-2A-16.02(b)
1645 to inspect and copy the records required by that section, the
1646 stockholder who complies with Section 10A-2A-16.02(c) may
1647 apply to the designated court, and if none, the circuit court
1648 for the county in which the corporation's principal office is
1649 located in this state, and if none in this state, the circuit
1650 court for the county in which the corporation's most recent
1651 registered office is located for an order to permit inspection
1652 and copying of the records demanded. The court shall dispose



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1653 of an application under this subsection on an expedited basis.

1654 (c) If the court orders inspection and copying of the
1655 records demanded under Section 10A-2A-16.02(b), it may impose
1656 reasonable restrictions on their confidentiality, use, or
1657 distribution by the demanding stockholder and it shall also
1658 order the corporation to pay the stockholder's expenses
1659 incurred to obtain the order unless the corporation
1660 establishes that it refused inspection in good faith because
1661 the corporation had:

1662 (1) a reasonable basis for doubt about the right of the
1663 stockholder to inspect the records demanded; or

1664 (2) required reasonable restrictions on the
1665 confidentiality, use, or distribution of the records demanded
1666 to which the demanding stockholder had been unwilling to
1667 agree. If the corporation has declined to deliver or make
1668 available the records because the stockholder had been
1669 unwilling to agree to restrictions proposed by the corporation
1670 on the confidentiality, use, or distribution of the records,
1671 the corporation shall have the burden of demonstrating that
1672 the restrictions proposed by the corporation were reasonable."

1673 "§10A-3A-1.60

1674 (a) ~~A~~ As used in this chapter, unless otherwise
1675 specified or unless the context otherwise requires, "qualified
1676 director" is a director who, at the time action is to be taken
1677 under:

1678 (1) Section 10A-3A-2.02(b)(6), is not a director (i) to
1679 whom the limitation or elimination of the duty of an officer
1680 to offer potential ~~business~~ corporate opportunities to the



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1681 nonprofit corporation would apply, or (ii) who has a material
1682 relationship with any other person to whom the limitation or
1683 elimination would apply;

1684 (2) Section 10A-3A-8.53 or Section 10A-3A-8.55, (i) is
1685 not a party to the proceeding, (ii) is not a director as to
1686 whom a transaction is a ~~director's~~ conflicting interest
1687 transaction or who sought a disclaimer of the nonprofit
1688 corporation's interest in a ~~business~~ corporate opportunity
1689 under Section ~~10A-2A-8.60~~ 10A-3A-8.70, which transaction or
1690 disclaimer is challenged, and (iii) does not have a material
1691 relationship with a director described in either clause (i) or
1692 clause (ii) of this subsection (a) (2); ~~or~~

1693 (3) ~~Section 10A-2A-8.60~~ Sections 10A-3A-8.61 or
1694 10A-3A-8.62, is not a director (i) as to whom the ~~contract~~ act
1695 or transaction is a ~~director's~~ conflicting interest
1696 transaction, (ii) who has a material relationship with another
1697 director as to whom the act or transaction is a ~~director's~~
1698 conflicting interest transaction, or (iii) who ~~pursues or~~
1699 ~~takes advantage of the business opportunity, directly, or~~
1700 ~~indirectly through or on behalf of another person, or (iv) has~~
1701 a material relationship with a controlling person that has a
1702 material financial interest in the act or transaction; or

1703 (4) Section 10A-3A-8.70, is not a director who (i)
1704 pursues or takes advantage of a corporate opportunity,
1705 directly, or indirectly through or on behalf of another person
1706 or (ii) has a material relationship with a director or officer
1707 who pursues or takes advantage of ~~the business~~ a corporate
1708 opportunity, directly, or indirectly through or on behalf of



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1709 another person.

1710 (b) ~~For purposes of this section:~~

1711 ~~(1) "MATERIAL RELATIONSHIP"~~ As used in this chapter,
1712 unless otherwise specified or unless the context otherwise
1713 requires, a "material relationship" means a familial,
1714 financial, professional, employment, or other relationship
1715 that would reasonably be expected to impair the objectivity of
1716 the director's judgment when participating in the ~~action to be~~
1717 ~~taken; and~~ negotiation, authorization, or approval of the act
1718 or transaction at issue.

1719 ~~(2) "MATERIAL INTEREST" means an actual or potential~~
1720 ~~benefit or detriment (other than one which would devolve on~~
1721 ~~the nonprofit corporation or the members generally) that would~~
1722 ~~reasonably be expected to impair the objectivity of the~~
1723 ~~director's judgment when participating in the action to be~~
1724 ~~taken.~~

1725 (c) The presence of one or more of the following
1726 circumstances shall not automatically prevent a director from
1727 being a qualified director:

1728 (1) designation, nomination, or vote in the election of
1729 the director to the current board of directors by any director
1730 who is not a qualified director with respect to the matter (or
1731 by any person that has a ~~material relationship with that~~
1732 director financial interest in an act or transaction), acting
1733 alone or participating with others; or

1734 (2) service as a director of another nonprofit
1735 corporation of which a director who is not a qualified
1736 director with respect to the matter (or any individual who has



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1737 a material relationship with that director), is or was also a
1738 director."

1739 "§10A-3A-2.02

1740 Section 10A-1-3.05 shall not apply to this chapter.

1741 Instead:

1742 (a) The certificate of incorporation must set forth:

1743 (1) a name for the nonprofit corporation that satisfies
1744 the requirements of Article 5 of Chapter 1;

1745 (2) the street and mailing address of the nonprofit
1746 corporation's initial registered office, the county within
1747 this state in which the street and mailing address is located,
1748 and the name of the nonprofit corporation's initial registered
1749 agent at that office as required by Article 5 of Chapter 1;

1750 (3) that the nonprofit corporation is incorporated
1751 under this chapter;

1752 (4) the name and address of each incorporator; and

1753 (5) (i) if the nonprofit corporation will have members,
1754 a statement to that effect; or

1755 (ii) if the nonprofit corporation will not have
1756 members, a statement to that effect.

1757 (b) The certificate of incorporation may set forth:

1758 (1) the names and addresses of the individuals who are
1759 to serve as the initial directors;

1760 (2) provisions not inconsistent with law regarding:

1761 (i) the purpose or purposes for which the nonprofit
1762 corporation is organized;

1763 (ii) managing the activities and regulating the affairs
1764 of the nonprofit corporation;



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1765 (iii) defining, limiting, and regulating the powers of
1766 the nonprofit corporation, its board of directors, and the
1767 members;

1768 (iv) the characteristics, qualifications, rights,
1769 limitations, and obligations attaching to each or any class of
1770 members;

1771 (v) ~~subject to Section 10A-3A-4.20,~~ limiting a member's
1772 right to inspect and copy the records of the nonprofit
1773 corporation under Section 10A-3A-4.02 (b);

1774 (vi) the distribution of assets on dissolution;

1775 (vii) provisions for the election, appointment, or
1776 designation of directors;

1777 (viii) provisions granting inspection rights to a
1778 person or group of persons under Section 10A-3A-4.07; and

1779 (ix) provisions specifying a person or group of persons
1780 whose approval is required under Sections 10A-3A-9.30,
1781 10A-3A-10.04, 10A-3A-11.04, 10A-3A-12.08, or 10A-3A-13.08;

1782 (3) any provision that under this chapter is permitted
1783 to be set forth in the certificate of incorporation or
1784 required or permitted to be set forth in the bylaws;

1785 (4) a provision eliminating or limiting the liability
1786 of a director or officer to a nonprofit corporation or its
1787 members for money damages for any action taken, or any failure
1788 to take any action, as a director or officer, except liability
1789 for (i) the amount of a financial benefit received by a
1790 director or officer to which the director or officer is not
1791 entitled, (ii) an intentional infliction of harm on the
1792 nonprofit corporation or its members, (iii) in the case of a



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1793 director, a violation of Section 10A-3A-8.32, (iv) an
1794 intentional violation of criminal law, or (v) in the case of
1795 an officer, any claim by or in the right of the nonprofit
1796 corporation;

1797 (5) a provision permitting or making obligatory
1798 indemnification of a director for liability as defined in
1799 Section 10A-3A-8.50 to any person for any action taken, or any
1800 failure to take any action, as a director, except liability
1801 for (i) receipt of a financial benefit to which the director
1802 is not entitled, (ii) an intentional infliction of harm on the
1803 nonprofit corporation or its members, (iii) a violation of
1804 Section 10A-3A-8.32, or (iv) an intentional violation of
1805 criminal law;

1806 (6) a provision limiting or eliminating any duty of a
1807 director or any other person to offer the nonprofit
1808 corporation the right to have or participate in any, or one or
1809 more classes or categories of, corporate opportunities, before
1810 the pursuit or taking of the corporate opportunity by the
1811 director or other person; provided that the application of
1812 that provision to an officer or a related person of that
1813 officer (i) also requires approval of that application by the
1814 board of directors, subsequent to the effective date of the
1815 provision, by action of the disinterested or qualified
1816 directors taken in compliance with the same procedures as are
1817 set forth in Section ~~10A-3A-8.60~~, 10A-3A-8.70; and (ii) may be
1818 limited by the authorizing action of the board of directors;
1819 and

1820 (7) provisions required if the nonprofit corporation is



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1821 to be exempt from taxation under federal, state, or local law.

1822 (c) The certificate of incorporation need not set forth
1823 any of the corporate powers enumerated in Sections 10A-1-2.11,
1824 10A-1-2.12, and 10A-1-2.13.

1825 (d) Provisions of the certificate of incorporation may
1826 be made dependent upon facts objectively ascertainable outside
1827 the certificate of incorporation in accordance with Section
1828 10A-3A-1.04.

1829 (e) As used in this section, the term "control" or
1830 "controlled" has the meaning specified in Section 10A-3A-8.60
1831 and the term "related person" means:-

1832 (i) the individual's spouse;-

1833 (ii) a child, stepchild, grandchild, parent,
1834 stepparent, grandparent, sibling, stepsibling, half sibling,
1835 aunt, uncle, niece, or nephew (or spouse of any such person)
1836 of the individual or of the individual's spouse;-

1837 (iii) a natural person living in the same home as the
1838 individual; (iv) an entity (other than the nonprofit
1839 corporation or an entity controlled by the nonprofit
1840 corporation) controlled by the individual or any person
1841 specified above in this definition;-

1842 (v) a domestic or foreign:-

1843 (A) business or nonprofit corporation (other than the
1844 nonprofit corporation or an entity controlled by the nonprofit
1845 corporation) of which the individual is a director,-

1846 (B) unincorporated entity of which the individual is a
1847 general partner or a member of the governing authority, or

1848 (C) individual, trust, or estate for whom or of which



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1849 the individual is a trustee, guardian, personal
1850 representative, or like fiduciary; or

1851 (vi) a person that is, or an entity that is, controlled
1852 by, an employer of the individual.

1853 (f) The certificate of incorporation may not contain
1854 any provision that would impose liability on a member or a
1855 director for the attorney's fees or expenses of the nonprofit
1856 corporation or any other party in connection with an internal
1857 corporate claim, as defined in Section ~~10A-3A-2.07(d)~~
1858 10A-3A-2.07(c), or in connection with a claim that a member,
1859 director, or a person or group of persons specified in the
1860 certificate of incorporation, acting in that person's capacity
1861 as a member, director, or person or group of persons specified
1862 in the certificate of incorporation, has brought in an action,
1863 suit, or proceeding described in Section 10A-3A-2.07(b).

1864 (g) The certificate of incorporation is a part of a
1865 binding contract between the nonprofit corporation and (i) the
1866 members in a membership nonprofit corporation; and (ii) the
1867 directors in a nonmembership nonprofit corporation, subject to
1868 the provisions of this chapter.

1869 (h) For purposes of subsection (b)(4) only, unless the
1870 certificate of incorporation otherwise provides, "officer"
1871 means an individual appointed or elected in accordance with
1872 Section 10A-3A-8.40 as (i) president, chief executive officer,
1873 chief operating officer, chief financial officer, chief legal
1874 officer, secretary, controller, treasurer, or chief accounting
1875 officer of the nonprofit corporation and (ii) any officer of
1876 the nonprofit corporation designated by resolution of the



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

1885 (i) No provision in the certificate of incorporation
1886 pursuant to subsection (b) (4) shall eliminate or limit the
1887 liability of a director or officer for any act or omission
1888 occurring prior to the date when the provision in the
1889 certificate of incorporation becomes effective. Any amendment,
1890 repeal, or elimination of a provision in the certificate of
1891 incorporation pursuant to subsection (b) (4) shall not affect
1892 its application with respect to an act or omission by a
1893 director or officer occurring before the amendment, repeal, or
1894 elimination unless the provision in the certificate of
1895 incorporation provides otherwise at the time of the act or
1896 omission."

1897 "§10A-3A-2.07

1898 (a) The certificate of incorporation or the bylaws may
1899 require, consistent with applicable jurisdictional
1900 requirements, that any or all internal corporate claims shall
1901 be brought exclusively in any specified court or courts of
1902 this state and, if so specified, in any additional courts in
1903 this state or in any other jurisdictions with which the
1904 nonprofit corporation has a reasonable relationship and no



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1905 provision of the certificate of incorporation or the bylaws
1906 may prohibit bringing those claims in the courts of this state
1907 or require those claims to be determined by arbitration.

1908 ~~(b) A provision of the certificate of incorporation or~~
1909 ~~bylaws adopted under subsection (a) shall not have the effect~~
1910 ~~of conferring jurisdiction on any court or over any person or~~
1911 ~~claim, and shall not apply if none of the courts specified by~~
1912 ~~that provision has the requisite personal and subject matter~~
1913 ~~jurisdiction. If the court or courts of this state specified~~
1914 ~~in a provision adopted under subsection (a) do not have the~~
1915 ~~requisite personal and subject matter jurisdiction and another~~
1916 ~~court of this state does have jurisdiction, then the internal~~
1917 ~~corporate claim may be brought in the other court of this~~
1918 ~~state, notwithstanding that the other court of this state is~~
1919 ~~not specified in that provision, and in any other court~~
1920 ~~specified in that provision that has the requisite~~
1921 ~~jurisdiction.~~

1922 ~~(c) No provision of the certificate of incorporation or~~
1923 ~~the bylaws may prohibit bringing an internal corporate claim~~
1924 ~~in the courts of this state or require those claims to be~~
1925 ~~determined by arbitration.~~

1926 (b) With respect to claims that are not internal
1927 corporate claims, the certificate of incorporation or bylaws
1928 may require members, directors, officers, and the person or
1929 group of persons specified in the certificate of
1930 incorporation, when acting in that person's capacity as a
1931 member, director, officer, or person or group of persons
1932 specified in the certificate of incorporation, to bring any or



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

1947 ~~(d)~~(c) "Internal corporate claim" means, for the
1948 purposes of this section, ~~-(i)~~ any claim, action, suit, or
1949 proceeding (i) that is based upon a violation of a duty under
1950 the laws of this state by a current or former director,
1951 officer, or member in their capacities as such, (ii) ~~any~~
1952 ~~action asserting a claim arising pursuant to any provision of~~
1953 ~~this chapter or the certificate of incorporation or bylaws,~~
1954 that arises from, is pursuant to, or seeks to interpret,
1955 apply, enforce, or determine the validity of, any provision of
1956 this chapter, the certificate of incorporation, the bylaws, or
1957 any agreement entered into pursuant to Section 10A-3A-7.30 to
1958 which the nonprofit corporation is a party or a stated
1959 beneficiary thereof, or (iii) ~~any action asserting a claim~~
1960 that is governed by the internal affairs doctrine that is not



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1961 included in (i) through (ii) above.

1962 (d) This section does not prohibit any nonprofit
1963 corporation from consenting, or require any nonprofit
1964 corporation to consent, to any alternative forum in any
1965 instance."

1966 "§10A-3A-4.02

1967 Subject to subsection (h):

1968 (a) A member of a membership nonprofit corporation is
1969 entitled to inspect and copy, during regular business hours at
1970 the membership nonprofit corporation's principal office, any
1971 of the records of the membership nonprofit corporation
1972 described in Section 10A-3A-4.01(a), excluding minutes of
1973 meetings of, and records of actions taken without a meeting
1974 by, the membership nonprofit corporation's board of directors
1975 and board committees established under Section 10A-3A-8.25, if
1976 the member gives the membership nonprofit corporation a signed
1977 written notice of the member's demand at least five business
1978 days before the date on which the member wishes to inspect and
1979 copy.

1980 (b) A member of a membership nonprofit corporation is
1981 entitled to inspect and copy, during regular business hours at
1982 a reasonable location specified by the membership nonprofit
1983 corporation, any of the following records of the membership
1984 nonprofit corporation if the member meets the requirements of
1985 subsection (c) and gives the membership nonprofit corporation
1986 a signed written notice of the member's demand at least five
1987 business days before the date on which the member wishes to
1988 inspect and copy:



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1989 (1) the financial statements of the membership
1990 nonprofit corporation maintained in accordance with Section
1991 10A-3A-4.01(b); provided, however, that the membership
1992 nonprofit corporation may deliver or make available the
1993 financial statements to the requesting member by posting them
1994 on the membership nonprofit corporation's website or by other
1995 generally recognized means. If financial statements have been
1996 prepared for the membership nonprofit corporation on the basis
1997 of generally accepted accounting principles for that specified
1998 period, the membership nonprofit corporation shall deliver or
1999 make available those financial statements to the requesting
2000 member. If the annual financial statements to be delivered or
2001 made available to the requesting member are audited or
2002 otherwise reported upon by a public accountant, the report
2003 shall also be delivered or made available to the requesting
2004 member.

2005 (2) the accounting records of the membership nonprofit
2006 corporation maintained in accordance with Section
2007 10A-3A-4.01(c) that permitted the preparation of the financial
2008 statements maintained in accordance with Section
2009 10A-3A-4.01(b); and

2010 (3) excerpts from minutes of any meeting of, or records
2011 of any actions taken without a meeting by, the board of
2012 directors and board committees maintained in accordance with
2013 Section 10A-3A-4.01(a); and

2014 (4) subject to Section 10A-3A-4.06, the record of
2015 members maintained in accordance with Section 10A-3A-4.01(d);
2016 provided however, the membership nonprofit corporation may



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

2022 (c) (1) A member may inspect and copy the records
2023 described in subsection (b) only if:

2024 ~~(1)~~ (i) the member has delivered to the membership
2025 nonprofit corporation a signed written notice of the member's
2026 demand at least five business days before the date on which
2027 the member wishes to inspect and copy;

2028 (ii) the member's demand is made in good faith and for
2029 a proper purpose;

2030 ~~(2)~~ (iii) the member's demand describes with reasonable
2031 particularity the member's purpose and the records the member
2032 desires to inspect; and

2033 ~~(3)~~ (iv) the records are directly ~~connected with~~ related
2034 to the member's purpose.

2035 (2) For purposes of this subsection (c), a proper
2036 purpose shall mean a purpose directly related to the member's
2037 interest as a member; provided, however, that a demand shall
2038 not be for a proper purpose if the membership nonprofit
2039 corporation reasonably determines that the demand is in
2040 connection with an active or pending civil lawsuit to which
2041 the membership nonprofit corporation, or its affiliate, and
2042 the member, or the member's affiliate, are, or are expected to
2043 be, adversarial named parties.

2044 (d) The membership nonprofit corporation may redact



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2045 portions of the records to be inspected and copied under
2046 subsections (a) and (b) to the extent the portions so redacted
2047 are not directly related to the member's purpose. The
2048 membership nonprofit corporation may also impose reasonable
2049 restrictions and conditions on access to and use of the
2050 records to be inspected and copied under subsections (a) and
2051 (b), including designating information confidential and
2052 imposing nondisclosure and safeguarding, and may further keep
2053 confidential from its members and other persons, for a period
2054 of time as the membership nonprofit corporation deems
2055 reasonable any information that the membership nonprofit
2056 corporation reasonably believes to be in the nature of a trade
2057 secret or other information the disclosure of which the
2058 membership nonprofit corporation in good faith believes is not
2059 in the best interest of the membership nonprofit corporation
2060 or could damage the membership nonprofit corporation or its
2061 activities or affairs, or that the membership nonprofit
2062 corporation is required by law or by agreement with a third
2063 party to keep confidential. In any dispute concerning the
2064 reasonableness of a restriction under this subsection, the
2065 membership nonprofit corporation has the burden of proving
2066 reasonableness.

2067 (e) For any meeting of members for which the record
2068 date for determining members entitled to vote at the meeting
2069 is different than the record date for notice of the meeting,
2070 any person who becomes a member subsequent to the record date
2071 for notice of the meeting and is entitled to vote at the
2072 meeting is entitled to obtain from the membership nonprofit



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2073 corporation upon request the notice and any other information
2074 provided by the membership nonprofit corporation to members in
2075 connection with the meeting, unless the membership nonprofit
2076 corporation has made that information generally available to
2077 members by posting it on ~~its~~ the membership nonprofit
2078 corporation's website or by other generally recognized means.
2079 Failure of a membership nonprofit corporation to provide that
2080 information does not affect the validity of action taken at
2081 the meeting.

2082 (f) ~~Subject to Section 10A-3A-4.20, the~~ The right of
2083 inspection granted by subsection (b) may be limited by a
2084 membership nonprofit corporation's certificate of
2085 incorporation.

2086 (g) This section does not affect:

2087 ~~(1)~~ the right of a member to inspect records under
2088 Section 10A-3A-7.20 or, if the member is in litigation with
2089 the membership nonprofit corporation, to the same extent as
2090 any other litigant; ~~or.~~

2091 ~~(2) the power of a court, independently of this~~
2092 ~~chapter, to compel the production of corporate records for~~
2093 ~~examination and to impose reasonable restrictions as provided~~
2094 ~~in Section 10A-3A-4.04(c), provided that, in the case of~~
2095 ~~production of records described in subsection (b) of this~~
2096 ~~section at the request of the member, the member has met the~~
2097 ~~requirements of subsection (c) of this section.~~

2098 (h) The right of a member to inspect and copy the
2099 records described in subsections (a) and (b) may be denied by
2100 the membership nonprofit corporation if the membership



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2101 nonprofit corporation determines that the demanding member has
2102 within two years preceding his, her, or its demand improperly
2103 used any information secured through any prior examination of
2104 the records of the membership nonprofit corporation."

2105 "§10A-3A-4.03

2106 If a member is entitled to inspection and copying
2107 rights under Section 10A-3A-4.02:

2108 (a) A member may appoint an agent or attorney to
2109 exercise the member's inspection and copying rights under
2110 Section 10A-3A-4.02. In that case, the demand shall be
2111 accompanied by a power of attorney or other writing which
2112 authorizes the agent or attorney to so act on behalf of the
2113 member.

2114 (b) The membership nonprofit corporation may, if
2115 reasonable, satisfy the right of a member to copy records
2116 under Section 10A-3A-4.02 by furnishing to the member copies
2117 by photocopy or other means as are chosen by the membership
2118 nonprofit corporation, including furnishing copies through
2119 electronic transmission.

2120 (c) The membership nonprofit corporation may comply at
2121 its expense with a member's demand to inspect the record of
2122 members under Section 10A-3A-4.02(b)(4) by providing the
2123 member with a list of members that was compiled no earlier
2124 than the date of the member's demand.

2125 (d) The membership nonprofit corporation may impose a
2126 reasonable charge to cover the costs of providing copies of
2127 documents to the member, which may be based on an estimate of
2128 those ~~cost~~ costs."



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2129 "§10A-3A-4.04

2130 If a member is entitled to inspection and copying
2131 rights under Section 10A-3A-4.02:

2132 (a) If a membership nonprofit corporation does not
2133 allow a member who complies with Section 10A-3A-4.02(a) to
2134 inspect and copy any records required by that section to be
2135 available for inspection, the designated court, and if none,
2136 the circuit court for the county in which the membership
2137 nonprofit corporation's principal office is located in this
2138 state, and if none in this state, the circuit court for the
2139 county in which the membership nonprofit corporation's most
2140 recent registered office is located may summarily order
2141 inspection and copying of the records demanded at the
2142 membership nonprofit corporation's expense upon application of
2143 the member.

2144 (b) If a membership nonprofit corporation does not
2145 within a reasonable time allow a member who complies with
2146 Section 10A-3A-4.02(b) to inspect and copy the records as
2147 required by that section, the member who complies with Section
2148 10A-3A-4.02(c) may apply to the designated court, and if none,
2149 the circuit court for the county in which the membership
2150 nonprofit corporation's principal office is located in this
2151 state, and if none in this state, the circuit court for the
2152 county in which the membership nonprofit corporation's most
2153 recent registered office is located for an order to permit
2154 inspection and copying of the records demanded. The court
2155 shall dispose of an application under this subsection on an
2156 expedited basis.



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2157 (c) If the court orders inspection and copying of the
2158 records demanded under Section 10A-3A-4.02(b), it may impose
2159 reasonable restrictions on their confidentiality, use, or
2160 distribution by the demanding member and ~~it~~ the court shall
2161 also order the membership nonprofit corporation to pay the
2162 member's expenses incurred to obtain the order unless the
2163 membership nonprofit corporation establishes that it refused
2164 inspection in good faith because the membership nonprofit
2165 corporation had:

2166 (1) a reasonable basis for doubt about the right of the
2167 member to inspect the records demanded; or

2168 (2) required reasonable restrictions on the
2169 confidentiality, use, or distribution of the records demanded
2170 to which the demanding member had been unwilling to agree. If
2171 the membership nonprofit corporation has declined to deliver
2172 or make available the records because the member had been
2173 unwilling to agree to restrictions proposed by the membership
2174 nonprofit corporation on the confidentiality, use, or
2175 distribution of the records, the membership nonprofit
2176 corporation shall have the burden of demonstrating that the
2177 restrictions proposed by the membership nonprofit corporation
2178 were reasonable."

2179 "§10A-3A-8.26

2180 (a) Whenever this chapter expressly requires the board
2181 of directors to approve or take other action with respect to
2182 any agreement, instrument, plan, or document, such agreement,
2183 instrument, plan, or document may be approved by the board of
2184 directors in final form or in substantially final form.



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

2191 (b) If the board of directors shall have acted to
2192 approve or take other action with respect to an agreement,
2193 instrument, plan, or document that is expressly required by
2194 this chapter to be approved by the board of directors, the
2195 board of directors may, but is not required to, at any time
2196 after providing the approval or taking such other action adopt
2197 a resolution ratifying the agreement, instrument, plan, or
2198 document, and the ratification shall be deemed to be effective
2199 as of the time of the original approval or other action by the
2200 board of directors and to satisfy any requirement under this
2201 chapter that the board of directors approve or take other
2202 action with respect to the agreement, instrument, plan, or
2203 document in a specific manner or sequence.

2204 (c) At the time of the approval of any agreement,
2205 instrument, plan, or document by the board of directors, the
2206 agreement, instrument, plan, or document is not required to
2207 contain or have attached thereto any disclosure letter,
2208 disclosure schedules, or similar documents or instruments
2209 contemplated by the agreement, instrument, plan, or document
2210 that modify, supplement, qualify, or make exceptions to
2211 representations, warranties, covenants, or conditions
2212 contained in the agreement, instrument, plan, or document."



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2213 "§10A-3A-8.60

2214 ~~(a) No contract or transaction between a nonprofit~~
2215 ~~corporation and one or more of its directors or officers, or~~
2216 ~~between a nonprofit corporation and any other corporation,~~
2217 ~~partnership, association, or other entity in which one or more~~
2218 ~~of its directors or officers, are directors or officers, or~~
2219 ~~have a financial interest, shall be void or voidable solely~~
2220 ~~for this reason, or solely because the director or officer is~~
2221 ~~present at or participates in the meeting of the board of~~
2222 ~~directors or committee which authorizes the contract or~~
2223 ~~transaction, or solely because the director's or officer's~~
2224 ~~votes are counted for that purpose, if:~~

2225 ~~(1) The material facts as to the director's or~~
2226 ~~officer's relationship or interest and as to the contract or~~
2227 ~~transaction are disclosed or are known to the board of~~
2228 ~~directors or the committee of a nonmembership nonprofit~~
2229 ~~corporation, and the board or committee in good faith~~
2230 ~~authorizes the contract or transaction by the affirmative~~
2231 ~~votes of a majority of the qualified directors, even though~~
2232 ~~the qualified directors be less than a quorum; or~~

2233 ~~(2) The material facts as to the director's or~~
2234 ~~officer's relationship or interest and as to the contract or~~
2235 ~~transaction are disclosed or are known to (i) the members in a~~
2236 ~~membership nonprofit corporation entitled to vote thereon or~~
2237 ~~(ii) the qualified directors of the board of directors in a~~
2238 ~~membership nonprofit corporation, and the contract or~~
2239 ~~transaction is specifically approved in good faith by vote of~~
2240 ~~the members in a membership nonprofit corporation or the~~



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2241 ~~qualified directors of the board of directors in a membership~~
2242 ~~nonprofit corporation; or~~

2243 ~~(3) The contract or transaction is fair as to the~~
2244 ~~nonprofit corporation as of the time it is authorized,~~
2245 ~~approved or ratified, by the board of directors, a committee,~~
2246 ~~or the members.~~

2247 ~~(b) Common or interested directors may be counted in~~
2248 ~~determining the presence of a quorum at a meeting of the board~~
2249 ~~of directors or of a committee which authorizes the contract~~
2250 ~~or transaction.~~

2251 As used in this chapter, unless otherwise specified or
2252 unless the context otherwise requires, the following terms
2253 shall mean:

2254 (a) CONFLICTING INTEREST TRANSACTION means an act or
2255 transaction effected or proposed to be effected by the
2256 nonprofit corporation (or by an entity controlled by the
2257 nonprofit corporation):

2258 (1) to which, at the relevant time, a director or
2259 officer is a party;

2260 (2) respecting which, at the relevant time, the
2261 director or officer had knowledge and a material financial
2262 interest known to the director or officer; or

2263 (3) respecting which, at the relevant time, the
2264 director or officer knew that a related person was a party or
2265 had a material financial interest.

2266 (b) CONTROL or CONTROLLED BY means (i) having the
2267 power, directly or indirectly, to elect or remove a majority
2268 of the members of the board of directors or other governing



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2269 authority of an entity, whether through the ownership of
2270 voting shares or interests, by contract, or otherwise or (ii)
2271 being subject to a majority of the risk of loss from the
2272 entity's activities or entitled to receive a majority of the
2273 entity's residual returns.

2274 (c) CONTROL GROUP means two or more persons that, by
2275 virtue of an agreement, arrangement, or understanding between
2276 or among those persons, constitute a controlling person.

2277 (d) CONTROLLING PERSON means any person that, together
2278 with (i) any related person; and (ii) any person that
2279 controls, is controlled by, or is under common control with
2280 that person:

2281 (1) With respect to a membership nonprofit corporation:

2282 (i) owns or controls a majority in voting power of the
2283 outstanding membership interests entitled to vote generally in
2284 the election of directors or in the election of directors who
2285 have a majority in voting power of the votes of all directors
2286 on the board of directors;

2287 (ii) has the right, by contract or otherwise, to cause
2288 the election of nominees who are selected at the discretion of
2289 that person and who constitute either a majority of the
2290 members of the board of directors of a membership nonprofit
2291 corporation or directors entitled to cast a majority in voting
2292 power of the votes of all directors on the board of directors
2293 of a membership nonprofit corporation;

2294 (iii) has the power functionally equivalent to that of
2295 a member that owns or controls a majority in voting power of
2296 the outstanding membership interests entitled to vote



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2297 generally in the election of directors by virtue of ownership
2298 or control of at least one-third in voting power of the
2299 outstanding membership interests entitled to vote generally in
2300 the election of directors or in the election of directors who
2301 have a majority in voting power of the votes of all directors
2302 on the board of directors and the power to exercise managerial
2303 authority over the business and affairs of the membership
2304 nonprofit corporation; or

2305 (iv) either (A) has the power and authority to exercise
2306 and perform certain corporate powers, activities and affairs
2307 pursuant to a provision in the certificate of incorporation
2308 permitted by Section 10A-3A-8.01 or (B) has the right to
2309 approve certain matters as permitted by Section
2310 10A-3A-2.02(b) (2) (ix).

2311 (2) With respect to a nonmembership nonprofit
2312 corporation:

2313 (i) has the right, by contract or otherwise, to cause
2314 the election of nominees who are selected at the discretion of
2315 that person and who constitute either a majority of the
2316 members of the board of directors of a nonmembership nonprofit
2317 corporation or directors entitled to cast a majority in voting
2318 power of the votes of all directors on the board of directors
2319 of a nonmembership nonprofit corporation; or

2320 (ii) either (A) has the power and authority to exercise
2321 and perform certain corporate powers, activities, and affairs
2322 pursuant to a provision in the certificate of incorporation
2323 permitted by Section 10A-3A-8.01 or (B) has the right to
2324 approve certain matters as permitted by Section



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2325 10A-3A-2.02(b)(2)(ix).

2326 (e) CONTROLLING PERSON TRANSACTION means an act or
2327 transaction between the nonprofit corporation or one or more
2328 of its subsidiaries, on the one hand, and a controlling person
2329 or a control group, on the other hand, or an act or
2330 transaction from which a controlling person or a control group
2331 receives a material financial interest.

2332 (f) DISINTERESTED PERSON means any member or other
2333 person that does not have a material financial interest in the
2334 act or transaction at issue or, if applicable, a material
2335 relationship with the controlling person or other member of
2336 the control group, or any other person that has a material
2337 financial interest in the act or transaction.

2338 (g) FAIR TO THE NONPROFIT CORPORATION means the act or
2339 transaction at issue, as a whole, is beneficial to the
2340 nonprofit corporation or its members, if any, in their
2341 capacity as members, given the consideration paid to or
2342 received by the nonprofit corporation or its members or other
2343 benefit conferred on the nonprofit corporation or its members,
2344 if any, and taking into appropriate account whether the act or
2345 transaction meets both of the following: (i) it is fair in
2346 terms of the director's, officer's, controlling person's, or
2347 control group's dealings with the nonprofit corporation, as
2348 the case may be; and (ii) it is comparable to what might have
2349 been obtainable in an arm's length transaction available to
2350 the nonprofit corporation.

2351 (h) MATERIAL FINANCIAL INTEREST means a nonspeculative
2352 financial interest in an act or transaction, other than one



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2353 that would devolve on the nonprofit corporation or the members
2354 generally, that would reasonably be expected to impair the
2355 objectivity of the director's or officer's judgment when
2356 participating in the negotiation, authorization, or approval
2357 of the act or transaction at issue.

2358 (i) MATERIAL RELATIONSHIP has the meaning set forth in
2359 Section 10A-3A-1.60.

2360 (j) QUALIFIED DIRECTOR has the meaning set forth in
2361 Section 10A-3A-1.60.

2362 (k) RELATED PERSON has the meaning set forth in Section
2363 10A-3A-2.02.

2364 (l) RELEVANT TIME means (i) the time at which
2365 directors' action respecting the act or transaction is taken
2366 in compliance with Sections 10A-3A-8.61(c) or 10A-3A-8.62(c)
2367 or (ii) if the act or transaction is not brought before the
2368 board of directors (or a committee) for action under Section
2369 10A-3A-8.61(d), at the time the nonprofit corporation (or an
2370 entity controlled by the nonprofit corporation) becomes
2371 legally obligated to consummate the act or transaction.

2372 (m) REQUIRED DISCLOSURE means disclosure of (i) the
2373 existence and nature of the director's or officer's
2374 conflicting interest and (ii) all facts known to the director
2375 or officer respecting the subject matter of the act or
2376 transaction that a qualified director would reasonably believe
2377 to be material in deciding whether to proceed with the act or
2378 transaction."

2379 "§10A-5A-4.09

2380 ~~Notwithstanding Sections 10A-1-3.32 and 10A-1-3.33:~~



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2381 (a) Each limited liability company shall maintain the
2382 following records:

2383 (1) A current list of the full name and last known
2384 business or residence street address of each member.

2385 (2) A copy of the filed certificate of formation and
2386 all amendments thereto, together with executed copies of any
2387 powers of attorney pursuant to which any documents have been
2388 executed.

2389 (3) Copies of the limited liability company's federal,
2390 state, and local income tax returns and reports, if any, for
2391 the three most recent years.

2392 (4) Copies of the then effective limited liability
2393 company agreement including any amendments thereto.

2394 (5) Copies of any financial statements of the limited
2395 liability company for the three most recent years.

2396 (b) Subject to subsection (g), a member may demand (i)
2397 on 10 days' notice made in a writing received by the limited
2398 liability company, the records set forth in subsection (a)
2399 above, and (ii) on 30 days' notice made in writing received by
2400 the limited liability company, any other books and records of
2401 the limited liability company, wherever situated, ~~are subject~~
2402 ~~to inspection and copying~~ to inspect and copy for any proper
2403 purpose by ~~any~~ the demanding member or the member's agent or
2404 attorney during regular business hours. ~~Subject to subsection~~
2405 ~~(g), any person with the authority to bind the limited~~
2406 ~~liability company under Section 10A-5A-3.02 and any person~~
2407 ~~with the authority to direct and oversee the activities and~~
2408 ~~affairs of a limited liability company who, without reasonable~~



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2409 ~~cause, refuses to allow any member or the member's agent or~~
2410 ~~attorney to inspect or copy any books or records of the~~
2411 ~~limited liability company for any proper purpose shall be~~
2412 ~~personally liable to the member for a penalty in an amount not~~
2413 ~~to exceed 10 percent of the fair market value of the~~
2414 ~~transferable interest of the member, in addition to any other~~
2415 ~~damages or remedy.~~

2416 (c) Subject to subsection (g), on 30 days' notice made
2417 in a writing received by a limited liability company, a
2418 dissociated member may inspect and copy, during regular
2419 business hours, at a reasonable location specified by the
2420 limited liability company, any record maintained by the
2421 limited liability company, to the extent the information
2422 pertains to the period during which the person was a member,
2423 was material to the person's rights and duties under the
2424 limited liability company agreement or this chapter when the
2425 person was a member, and the person seeks the information in
2426 good faith and for a proper purpose.

2427 (d) A limited liability company may charge a person
2428 that makes a demand under this section the reasonable costs of
2429 labor and material for copying.

2430 (e) A member or dissociated member may exercise rights
2431 under this section through an agent or attorney, or in the
2432 case of an individual under legal disability, a legal
2433 representative. Any restriction or condition imposed by the
2434 limited liability company agreement or under subsection (g)
2435 applies both to the agent, attorney, or legal representative
2436 and to the member or dissociated member. If the demanding



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2437 person's agent or attorney is to inspect and copy the books
2438 and records of the limited liability company, the demand shall
2439 be accompanied by a power of attorney or other writing which
2440 authorizes the attorney or other agent to so act on behalf of
2441 the demanding person.

2442 (f) The rights under this section do not extend to a
2443 transferee.

2444 (g) (1) In addition to any restriction or condition
2445 stated in its limited liability company agreement, a limited
2446 liability company, as a matter within the ordinary course of
2447 its activities and affairs, may:

2448 ~~a.~~ (A) impose reasonable restrictions and conditions on
2449 access to and use of information to be furnished under this
2450 section, including designating information confidential and
2451 imposing nondisclosure and safeguarding obligations on the
2452 recipient; ~~and~~

2453 ~~b.~~ (B) keep confidential from the members and any other
2454 persons, for such period of time as the limited liability
2455 company deems reasonable, any information that the limited
2456 liability company reasonably believes to be in the nature of
2457 trade secrets or other information the disclosure of which the
2458 limited liability company in good faith believes is not in the
2459 best interest of the limited liability company or could damage
2460 the limited liability company or its activities and affairs,
2461 or that the limited liability company is required by law or by
2462 agreement with a third party to keep confidential; ~~and~~

2463 (C) redact portions of the records to be inspected and
2464 copied to the extent the portions so redacted are not directly



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2465 related to the member's or other person's purpose.

2466 (2) In any dispute concerning the reasonableness of a
2467 restriction under this subsection, the limited liability
2468 company has the burden of proving reasonableness.

2469 (h) The rights under this section may be denied by the
2470 limited liability company if the limited liability company
2471 determines that the demanding person has within two years
2472 preceding his, her, or its demand improperly used any
2473 information secured through any prior examination of the
2474 records of the limited liability company.

2475 (i) For purposes of this section, a proper purpose
2476 shall mean a purpose directly related to the member or
2477 dissociated member's interest as a member or dissociated
2478 member, as the case may be; provided, however, that a demand
2479 shall not be for a proper purpose if the limited liability
2480 company reasonably determines that the demand is in connection
2481 with:

2482 (1) an active or pending derivative proceeding in the
2483 right of the limited liability company under Article 9 of this
2484 chapter that is or is expected to be instituted or maintained
2485 by the member or the member's affiliate; or

2486 (2) an active or pending civil lawsuit to which the
2487 limited liability company, or its affiliate, and the member or
2488 dissociated member, or the affiliate thereof, are, or are
2489 expected to be, adversarial named parties.

2490 (j) If a limited liability company does not within a
2491 reasonable time allow a person who complies with the
2492 requirements of this section to inspect and copy the records



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2493 required by this section, the person who complies with this
2494 section may apply to the designated court, and if none, the
2495 circuit court for the county in which the limited liability
2496 company's principal office is located in this state, and if
2497 none in this state, the circuit court for the county in which
2498 the limited liability company's most recent registered office
2499 is located for an order to permit inspection and copying of
2500 the records demanded. The court shall dispose of an
2501 application under this subsection on an expedited basis. If
2502 the court orders inspection and copying of the records
2503 demanded under this section, it may impose reasonable
2504 restrictions on their confidentiality, use, or distribution by
2505 the demanding person and the court shall also order the
2506 limited liability company to pay the demanding person's
2507 expenses incurred to obtain the order unless the limited
2508 liability company establishes that the limited liability
2509 company refused inspection in good faith because the limited
2510 liability company had:

2511 (1) a reasonable basis for doubt about the right of the
2512 demanding person to inspect the records demanded; or

2513 (2) required reasonable restrictions on the
2514 confidentiality, use, or distribution of the records demanded
2515 to which the demanding person had been unwilling to agree. If
2516 the limited liability company has declined to deliver or make
2517 available the records because the demanding person had been
2518 unwilling to agree to restrictions proposed by the limited
2519 liability company on the confidentiality, use, or distribution
2520 of the records, the limited liability company shall have the



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2521 burden of demonstrating that the restrictions proposed by the
2522 limited liability company were reasonable."

2523 "§10A-8A-4.10

2524 (a) Subject to subsection (f), a partner, without
2525 having any particular purpose for seeking the information, may
2526 inspect and copy during regular hours at a reasonable location
2527 specified by the partnership, required information and any
2528 other records maintained by the partnership regarding the
2529 partnership's business or not for profit activity and
2530 financial condition.

2531 (b) Subject to subsection (f), each partner and the
2532 partnership shall furnish to a partner:

2533 (1) without demand, any information concerning the
2534 partnership's business or not for profit activity reasonably
2535 required for the proper exercise of the partner's rights and
2536 duties under the partnership agreement or this chapter; and

2537 (2) on demand, any other information concerning the
2538 partnership's business or not for profit activity, except to
2539 the extent the demand or the information demanded is
2540 unreasonable or otherwise improper under the circumstances.

2541 (c) Subject to subsections (e) and (f), on 10 days'
2542 demand made in a writing received by the partnership, a person
2543 dissociated as a partner may have access to the information
2544 and records described in subsection (a) at the location
2545 specified in subsection (a) if:

2546 (1) the information or writing pertains to the period
2547 during which the person was a partner;

2548 (2) the person seeks the information or record in good



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2549 faith; and

2550 (3) it is determined that:

2551 (i) the person seeks the information for a purpose
2552 reasonably related to the person's interest as a partner;

2553 (ii) the person's demand describes with reasonable
2554 particularity the information sought and the purpose for
2555 seeking the information; and

2556 (iii) the information sought is directly connected to
2557 the person's purpose.

2558 (d) Within 10 days after receiving a demand pursuant to
2559 subsection (c), the partnership in a writing shall inform the
2560 person that made the demand:

2561 (1) what information the partnership will provide in
2562 response to the demand;

2563 (2) when and where the partnership will provide the
2564 information;

2565 (3) if the partnership declines to provide any demanded
2566 information, the partnership's reasons for declining; and

2567 (4) what, if any, restrictions will be imposed pursuant
2568 to the partnership agreement or subsection (f).

2569 (e) If a partner dies, Section 10A-8A-5.04 applies.

2570 (f) In addition to any restriction or condition stated
2571 in its partnership agreement, a partnership, as to a matter
2572 within the ordinary course of its business or not for profit
2573 activity, may:

2574 (1) impose reasonable restrictions and conditions on
2575 access to and use of information to be furnished under this
2576 section, including designating information confidential and



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2577 imposing nondisclosure and safeguarding obligations on the
2578 recipient;~~and~~

2579 (2) keep confidential from the partners and any other
2580 person, for such period of time as the partnership deems
2581 reasonable, any information that the partnership reasonably
2582 believes to be in the nature of trade secrets or other
2583 information the disclosure of which the partnership in good
2584 faith believes is not in the best interest of the partnership
2585 or could damage the partnership or its business or not for
2586 profit activity, or that the partnership is required by law or
2587 by agreement with a third party to keep confidential;and

2588 (3) redact portions of the records to be inspected and
2589 copied to the extent the portions so redacted are not directly
2590 related to the partner's or other person's purpose.

2591 In any dispute concerning the reasonableness of a
2592 restriction under this subsection, the partnership has the
2593 burden of proving reasonableness.

2594 (g) A partnership may charge a person that makes a
2595 demand under this section reasonable costs of copying, limited
2596 to the costs of labor and material.

2597 (h) A partner or person dissociated as a partner may
2598 exercise the rights under this section through an attorney or
2599 other agent. Any restriction imposed under subsection (f) or
2600 by the partnership agreement applies both to the attorney or
2601 other agent and to the partner or person dissociated as a
2602 partner. If the demanding person's agent or attorney is to
2603 inspect and copy the books and records of the partnership, the
2604 demand shall be accompanied by a power of attorney or other



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2605 writing which authorizes the agent or attorney to so act on
2606 behalf of the demanding person.

2607 (i) The rights under this section do not extend to a
2608 person as transferee, but the rights under subsection (c) of a
2609 person dissociated as a partner may be exercised by the legal
2610 representative of an individual who dissociated as a partner
2611 under Section 10A-8A-6.01(6).

2612 ~~(j) Any partner who, without reasonable cause, refuses~~
2613 ~~to allow any partner or person dissociated as a partner, or~~
2614 ~~his or her agent or attorney to inspect or copy any records of~~
2615 ~~the partnership to which such partner or person dissociated as~~
2616 ~~a partner is entitled under this section, shall be personally~~
2617 ~~liable to the partner or person dissociated as a partner for a~~
2618 ~~penalty in an amount not to exceed 10 percent of the fair~~
2619 ~~market value of the transferable interest of the partner or~~
2620 ~~person dissociated as a partner, in addition to any other~~
2621 ~~damages or remedy.~~

2622 (j) The rights under this section may be denied by the
2623 partnership if the partnership determines that the demanding
2624 person has within two years preceding his, her, or its demand
2625 improperly used any information secured through any prior
2626 examination of the records of the partnership.

2627 (k) If a partnership does not within a reasonable time
2628 allow a person who complies with the requirements of this
2629 section to inspect and copy the records required by this
2630 section, the person who complies with this section may apply
2631 to the designated court, and if none, the circuit court for
2632 the county in which the partnership's principal office is



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

2646 (1) a reasonable basis for doubt about the right of the
2647 demanding person to inspect the records demanded; or

2648 (2) required reasonable restrictions on the
2649 confidentiality, use, or distribution of the records demanded
2650 to which the demanding person had been unwilling to agree. If
2651 the partnership has declined to deliver or make available the
2652 records because the demanding person had been unwilling to
2653 agree to restrictions proposed by the partnership on the
2654 confidentiality, use, or distribution of the records, the
2655 partnership shall have the burden of demonstrating that the
2656 restrictions proposed by the partnership were reasonable."

2657 "§10A-8A-5.02

2658 (a) A transfer, in whole or in part, of a partner's
2659 transferable interest:

2660 (1) is permissible;



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2661 (2) does not by itself cause the partner's
2662 dissociation;

2663 (3) does not by itself cause a dissolution and winding
2664 up of the partnership; and

2665 (4) subject to Section ~~10A-8A-5.05~~ 10A-8A-5.04, does
2666 not entitle the transferee to:

2667 (A) participate in the management or conduct of the
2668 partnership's business or not for profit activity; or

2669 (B) except as otherwise provided in subsection (d),
2670 have access to required information, records, or other
2671 information concerning the partnership's business or not for
2672 profit activity.

2673 (b) A transferee has a right:

2674 (1) to receive, in accordance with the transfer,
2675 distributions to which the transferor would otherwise be
2676 entitled;

2677 (2) to receive upon the dissolution and winding up of
2678 the partnership, in accordance with the transfer, the net
2679 amount otherwise distributable to the transferor; and

2680 (3) to seek under Section 10A-8A-8.01(5) a judicial
2681 determination that it is equitable to wind up the partnership
2682 business or not for profit activity.

2683 (c) A transferable interest may be evidenced by a
2684 certificate of transferable interest issued by the
2685 partnership. A partnership agreement may provide for the
2686 transfer of the transferable interest represented by the
2687 certificate and make other provisions with respect to the
2688 certificate. No certificate of transferable interest shall be



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2689 issued in bearer form.

2690 (d) In a dissolution and winding up, a transferee is
2691 entitled to an account of the partnership's transactions only
2692 from the date of dissolution.

2693 (e) Except as otherwise provided in Sections
2694 10A-8A-6.01(4), 10A-8A-6.01(11), and 10A-8A-6.01(12), when a
2695 partner transfers a transferable interest, the transferor
2696 retains the rights of a partner other than the right to
2697 distributions transferred and retains all duties and
2698 obligations of a partner.

2699 (f) A partnership need not give effect to a
2700 transferee's rights under this section until the partnership
2701 has notice of the transfer.

2702 (g) When a partner transfers a transferable interest to
2703 a person that is admitted as a partner with respect to the
2704 transferred interest, the transferee is liable for the
2705 partner's obligations under Sections 10A-8A-4.04 and
2706 10A-8A-4.09 to the extent that the obligations are known to
2707 the transferee when the transferee voluntarily accepts
2708 admission as a partner.

2709 (h) Notwithstanding anything in Title 43 to the
2710 contrary, a partnership agreement may provide that a
2711 transferable interest may or shall be transferred in whole or
2712 in part, with or without consideration, to one or more persons
2713 at the death of the holder of the transferable interest. Any
2714 transferable interest transferred pursuant to this subsection
2715 shall be subject to any outstanding charging order under
2716 Section 10A-8A-5.03. This subsection does not limit the rights



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2717 of creditors of holders of transferable interests against
2718 transferees under this chapter or other laws of this state."

2719 "§10A-9A-3.04

2720 ~~Notwithstanding the provisions of Sections 10A-1-3.32~~
2721 ~~and 10A-1-3.33:~~

2722 (a) Subject to subsection (g), on 10 days' demand, made
2723 in a writing received by the limited partnership, a limited
2724 partner may, for a proper purpose, inspect and copy ~~required~~
2725 the information required to be maintained under Section
2726 10A-9A-1.11 during regular business hours and at a reasonable
2727 location specified by the limited partnership. ~~The limited~~
2728 ~~partner need not have any particular purpose for seeking the~~
2729 ~~information.~~

2730 (b) Subject to subsection (g), during regular business
2731 hours and at a reasonable location specified by the limited
2732 partnership, a limited partner may, for a proper purpose,
2733 obtain from the limited partnership and inspect and copy true
2734 and full information regarding the state of the activities and
2735 affairs and financial condition of the limited partnership and
2736 other information regarding the activities and affairs of the
2737 limited partnership ~~as is just and reasonable~~ if:

2738 (1) the limited partner seeks the information for a
2739 proper purpose ~~reasonably directly~~ related to the partner's
2740 interest as a limited partner;

2741 (2) the limited partner makes a demand in a writing
2742 received by the limited partnership, describing with
2743 reasonable particularity the information sought and the stated
2744 purpose for seeking the information; and



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2745 (3) the information sought is directly connected to the
2746 limited partner's stated purpose.

2747 (c) Within 10 days after receiving a demand pursuant to
2748 subsection (b), the limited partnership in a writing shall
2749 inform the limited partner that made the demand:

2750 (1) what information the limited partnership will
2751 provide in response to the demand;

2752 (2) when and where the limited partnership will provide
2753 the information;

2754 (3) if the limited partnership declines to provide any
2755 demanded information, the limited partnership's reasons for
2756 declining; and

2757 (4) what, if any, restrictions will be imposed pursuant
2758 to the partnership agreement or subsection (g).

2759 (d) Subject to subsections (f) and (g), a person
2760 dissociated as a limited partner may, for a proper purpose,
2761 inspect and copy~~required~~ the information required to be
2762 maintained under Section 10A-9A-1.11 during regular business
2763 hours and at a reasonable location specified by the limited
2764 partnership if:

2765 (1) the required information pertains to the period
2766 during which the person was a limited partner;

2767 (2) the person seeks the required information in good
2768 faith and for a proper purpose; and

2769 (3) the person meets the requirements of subsection
2770 (b).

2771 (e) The limited partnership shall respond to a demand
2772 made pursuant to subsection (d) in the same manner as provided



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2773 in subsection (c).

2774 (f) If a limited partner dies, Section 10A-9A-7.04
2775 applies.

2776 (g) In addition to any restriction or condition stated
2777 in its limited partnership agreement, a limited partnership,
2778 as a matter within the ordinary course of its activities and
2779 affairs, may:

2780 (1) impose reasonable restrictions and conditions on
2781 access to and use of information to be furnished under this
2782 section, including designating information confidential and
2783 imposing nondisclosure and safeguarding obligations on the
2784 recipient;~~and~~

2785 (2) keep confidential from the partners and any other
2786 person, for such period of time as the limited partnership
2787 deems reasonable, any information that the limited partnership
2788 reasonably believes to be in the nature of trade secrets or
2789 other information that disclosure of which the limited
2790 partnership in good faith believes is not in the best interest
2791 of the limited partnership or could damage the limited
2792 partnership or its activities and affairs, or that the limited
2793 partnership is required by law or by agreement with a third
2794 party to keep confidential~~; and~~

2795 (3) redact portions of the records to be inspected and
2796 copied to the extent the portions so redacted are not directly
2797 related to the limited partner's or other person's purpose.

2798 In a dispute concerning the reasonableness of a
2799 restriction under this subsection, the limited partnership has
2800 the burden of proving reasonableness. ~~Any general partner, or~~



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

2811 (h) A limited partnership may charge a person that
2812 makes a demand under this section the reasonable costs of
2813 copying, limited to the costs of labor and material.

2814 (i) A limited partner or person dissociated as a
2815 limited partner may exercise the rights under this section
2816 through an attorney or other agent. Any restriction imposed
2817 under subsection (g) or by the partnership agreement applies
2818 both to the attorney or other agent and to the limited partner
2819 or person dissociated as a limited partner. If the demanding
2820 person's agent or attorney is to inspect and copy the books
2821 and records of the limited partnership, the demand shall be
2822 accompanied by a power of attorney or other writing which
2823 authorizes the agent or attorney to so act on behalf of the
2824 demanding person.

2825 (j) The rights stated in this section do not extend to
2826 a person as transferee, but may be exercised by the legal
2827 representative of an individual under legal disability who is
2828 a limited partner or person dissociated as a limited partner.



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2829 (k) The rights under this section may be denied by the
2830 limited partnership if the limited partnership determines that
2831 the demanding person has within two years preceding his, her,
2832 or its demand improperly used any information secured through
2833 any prior examination of the records of the limited
2834 partnership.

2835 (1) For purposes of this section, a proper purpose
2836 shall mean a purpose directly related to the limited partner
2837 or dissociated limited partner's interest as a limited partner
2838 or dissociated limited partner, as the case may be; provided,
2839 however, that a demand shall not be for a proper purpose if
2840 the limited partnership reasonably determines that the demand
2841 is in connection with:

2842 (1) an active or pending derivative proceeding in the
2843 right of the limited partnership under Article 9 of this
2844 chapter that is or is expected to be instituted or maintained
2845 by the limited partner or the limited partner's affiliate; or

2846 (2) an active or pending civil lawsuit to which the
2847 limited partnership, or its affiliate, and the limited partner
2848 or dissociated limited partner, or the affiliate thereof, are,
2849 or are expected to be, adversarial named parties.

2850 (m) If a limited partnership does not within a
2851 reasonable time allow a person who complies with the
2852 requirements of this section to inspect and copy the records
2853 required by this section, the person who complies with this
2854 section may apply to the designated court, and if none, the
2855 circuit court for the county in which the limited
2856 partnership's principal office is located in this state, and



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

2870 (1) a reasonable basis for doubt about the right of the
2871 demanding person to inspect the records demanded; or

2872 (2) required reasonable restrictions on the
2873 confidentiality, use, or distribution of the records demanded
2874 to which the demanding person had been unwilling to agree. If
2875 the limited partnership has declined to deliver or make
2876 available the records because the demanding person had been
2877 unwilling to agree to restrictions proposed by the limited
2878 partnership on the confidentiality, use, or distribution of
2879 the records, the limited partnership shall have the burden of
2880 demonstrating that the restrictions proposed by the limited
2881 partnership were reasonable."

2882 "§10A-17-1.02

2883 In this chapter:

2884 (1) ~~"Member"~~ MEMBER means a person who, under the rules



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2885 or practices of a nonprofit association, may participate in
2886 the selection of persons authorized to manage the affairs of
2887 the nonprofit association or in the development of policy of
2888 the nonprofit association.

2889 (2) ~~"Nonprofit association"~~ NONPROFIT ASSOCIATION means
2890 an unincorporated organization consisting of two or more
2891 members joined by mutual consent as an association for a
2892 stated common, nonprofit purpose, but does not include a
2893 limited liability company, general partnership, or limited
2894 partnership. In addition, joint tenancy, tenancy in common, or
2895 tenancy by the entireties does not by itself establish a
2896 nonprofit association, even if the co-owners share use of the
2897 property for a nonprofit purpose.

2898 (3) ~~"Nonprofit purpose"~~ NONPROFIT PURPOSE shall be any
2899 purpose for which a nonprofit corporation could be organized
2900 under the Alabama Nonprofit Corporation ~~Act~~ Law, as amended,
2901 and where no part of income or profit is distributable to its
2902 members, directors, and officers."

2903 Section 2. Division G, consisting of Section
2904 10A-2A-8.70, is added to Article 8 of Chapter 2A of Title 10A
2905 of the Code of Alabama 1975, to read as follows:

2906 Division G Corporate Opportunities.

2907 §10A-2A-8.70 Corporate opportunities.

2908 (a) If a director or officer pursues or takes advantage
2909 of a corporate opportunity directly, or indirectly through or
2910 on behalf of another person, that action may not be the
2911 subject of equitable relief, or give rise to an award of
2912 damages or other sanctions against the director, officer, or



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2913 other person, in a proceeding by or in the right of the
2914 corporation on the ground that the corporate opportunity
2915 should have first been offered to the corporation, if (1)
2916 before the director, officer, or other person becomes legally
2917 obligated respecting the corporate opportunity the director or
2918 officer brings it to the attention of the corporation and
2919 either: (i) action by qualified directors disclaiming the
2920 corporation's interest in the corporate opportunity is taken
2921 in compliance with the same procedures as are set forth in
2922 Section 10A-2A-8.60(c) or (ii) stockholders' action
2923 disclaiming the corporation's interest in the corporate
2924 opportunity is taken in compliance with the procedures set
2925 forth in Section 10A-2A-8.60(d), in either case as if the
2926 decision being made concerned a conflicting interest
2927 transaction, except that, rather than making "required
2928 disclosure" as defined in Section 10A-2A-8.60(a), the director
2929 or officer shall have made prior disclosure to those acting on
2930 behalf of the corporation of all material facts concerning the
2931 corporate opportunity known to the director or officer; or (2)
2932 the duty to offer the corporation the corporate opportunity
2933 has been limited or eliminated pursuant to a provision of the
2934 certificate of incorporation adopted (and where required, made
2935 effective by action of qualified directors) in accordance with
2936 Section 10A-2A-2.02(b)(6).

2937 (b) In any proceeding seeking equitable relief or other
2938 remedies based upon an alleged improper pursuit or taking
2939 advantage of a corporate opportunity by a director or officer
2940 directly, or indirectly through or on behalf of another



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2941 person, the fact that the director or officer did not employ
2942 the procedure described in subsection (a)(1)(i) or (ii) before
2943 pursuing or taking advantage of the corporate opportunity
2944 shall not create an implication that the corporate opportunity
2945 should have been first presented to the corporation or alter
2946 the burden of proof otherwise applicable to establish that the
2947 director or officer breached a duty to the corporation in the
2948 circumstances.

2949 Section 3. Sections 10A-3A-6.14, 10A-3A-8.61, and
2950 10A-3A-8.62 are added to the Code of Alabama 1975, to read as
2951 follows:

2952 §10A-3A-6.14 No derivative actions in nonprofit
2953 corporations.

2954 A person shall not have any right to commence or
2955 maintain a derivative action in the right of a nonprofit
2956 corporation to enforce a right of the nonprofit corporation.

2957 §10A-3A-8.61 Acts or transactions involving a
2958 membership nonprofit corporation.

2959 (a) An act or transaction effected or proposed to be
2960 effected by a membership nonprofit corporation (or by an
2961 entity controlled by the membership nonprofit corporation) may
2962 not be the subject of equitable relief, or give rise to an
2963 award of damages or other sanctions against a director or
2964 officer of the membership nonprofit corporation, on the
2965 grounds that the director or officer has an interest
2966 respecting the act or transaction, if the act or transaction
2967 is not a conflicting interest transaction.

2968 (b) A conflicting interest transaction may not be the



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2969 subject of equitable relief, or give rise to an award of
2970 damages or other sanctions against a director or officer of
2971 the membership nonprofit corporation, in a proceeding by a
2972 member, on the grounds that the director or officer has an
2973 interest respecting the conflicting interest transaction, if:

2974 (1) the directors' action respecting the act or
2975 transaction was taken in compliance with subsection (c) at any
2976 time; or

2977 (2) the members' action respecting the act or
2978 transaction was taken in compliance with subsection (d) at any
2979 time; or

2980 (3) the act or transaction is at the relevant time fair
2981 to the membership nonprofit corporation.

2982 (c) (1) Directors' action respecting a conflicting
2983 interest transaction is effective for purposes of subsection
2984 (b) (1) if the conflicting interest transaction has been
2985 authorized, after required disclosure by the conflicted
2986 director or officer of information not already known by the
2987 qualified directors, or after modified disclosure in
2988 compliance with subsection (c) (2), by (A) the affirmative vote
2989 of a majority (but no fewer than two) of the qualified
2990 directors who voted on the conflicting interest transaction or
2991 (B) the affirmative vote of a majority of the members of a
2992 board committee that is composed of only qualified directors
2993 (but no fewer than two). Directors' action respecting a
2994 conflicting interest transaction is effective even though the
2995 conflicted director or officer is present at or participates
2996 in the meeting of the board or committee which authorizes the



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2997 act or transaction or was involved in the initiation,
2998 negotiation, or approval of the act or transaction.

2999 (2) Notwithstanding subsection (c)(1), when a
3000 transaction is a conflicting interest transaction only because
3001 a related person described in clause (v) or (vi) of the
3002 definition of "related person" in Section 10A-3A-2.02 is a
3003 party to or has a material financial interest in the
3004 conflicting interest transaction, the conflicted director or
3005 officer is not obligated to make required disclosure to the
3006 extent that the director or officer reasonably believes that
3007 doing so would violate a duty imposed under law, a legally
3008 enforceable obligation of confidentiality, or a professional
3009 ethics rule, provided that the conflicted director or officer
3010 discloses to the qualified directors voting on the conflicting
3011 interest transaction:

3012 (i) all information required to be disclosed that is
3013 not so violative;

3014 (ii) the existence and nature of the director's or
3015 officer's conflicting interest; and

3016 (iii) the nature of the conflicted director's or
3017 officer's duty not to disclose the confidential information.

3018 (3) A majority (but no fewer than two) of all the
3019 qualified directors on the board of directors, or on the board
3020 committee, constitutes a quorum for purposes of action that
3021 complies with this section.

3022 (4) Where directors' action under this subsection (c)
3023 does not satisfy a quorum or voting requirement applicable to
3024 the authorization of the conflicting interest transaction by



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3025 reason of the certificate of incorporation, bylaws, or another
3026 provision of this chapter, independent action to satisfy those
3027 authorization requirements shall be taken by the board of
3028 directors or a board committee, in which action directors who
3029 are not qualified directors may participate.

3030 (5) Where directors' action under this subsection (c)
3031 is taken without a meeting in accordance with Section
3032 10A-3A-8.21, the action is effective even though a conflicted
3033 director signs a consent to that action.

3034 (d) (1) Members' action respecting a conflicting
3035 interest transaction is effective for purposes of subsection
3036 (b) (2) if a majority of the votes cast by the holders of all
3037 qualified membership interests are in favor of the conflicting
3038 interest transaction after (i) notice to members describing
3039 the action to be taken respecting the conflicting interest
3040 transaction; (ii) provision to the membership nonprofit
3041 corporation of the information referred to in subsection
3042 (d) (2); and (iii) communication to the members entitled to
3043 vote on the conflicting interest transaction of the
3044 information that is the subject of required disclosure, to the
3045 extent the information is not already known by them. In the
3046 case of members' action at a meeting, the members entitled to
3047 vote shall be determined as of the record date for notice of
3048 the meeting.

3049 (2) A director or officer who has a conflicting
3050 interest respecting the conflicting interest transaction
3051 shall, before the members' vote, inform the secretary or other
3052 officer or agent of the membership nonprofit corporation



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3053 authorized to tabulate votes, in writing, of the number of
3054 membership interests that the director or officer knows are
3055 not qualified membership interests under subsection (d)(3),
3056 and the identity of the holders of those membership interests.

3057 (3) For purposes of this section: (i) "holder" means
3058 and "held by" refers to membership interests held by a member;
3059 and (ii) "qualified membership interests" means all membership
3060 interests entitled to be voted with respect to the conflicting
3061 interest transaction except for membership interests that the
3062 secretary or other officer or agent of the membership
3063 nonprofit corporation authorized to tabulate votes either
3064 knows, or under subsection (d)(2) is notified, are held by (A)
3065 a director or officer who has a conflicting interest
3066 respecting the conflicting interest transaction or (B) a
3067 related person of the director or officer (excluding a person
3068 described in clause (vi) of the definition of "related person"
3069 in Section 10A-3A-2.02).

3070 (4) A majority of the votes entitled to be cast by the
3071 holders of all qualified membership interests constitutes a
3072 quorum for purposes of compliance with this section. Members'
3073 action that otherwise complies with this section is not
3074 affected by the presence of holders, or by the voting, of
3075 membership interests that are not qualified membership
3076 interests.

3077 (5) If a members' vote does not comply with subsection
3078 (d)(1) solely because of a director's or officer's failure to
3079 comply with subsection (d)(2), and if the director or officer
3080 establishes that the failure was not intended to influence and



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3081 did not in fact determine the outcome of the vote, then the
3082 action by the members respecting the conflicting interest
3083 transaction shall be given effect.

3084 (6) Where members' action under this section does not
3085 satisfy a quorum or voting requirement applicable to the
3086 authorization of the conflicting interest transaction by
3087 reason of the certificate of incorporation, the bylaws, or
3088 another provision of this chapter, independent action to
3089 satisfy those authorization requirements shall be taken by the
3090 members, in which action membership interests that are not
3091 qualified membership interests may participate.

3092 (7) Where members' action under this subsection (d) is
3093 taken without a meeting in accordance with Section
3094 10A-3A-7.04, the action is effective even though members
3095 holding membership interests that are not qualified membership
3096 interests sign a consent to that action.

3097 (e) Notwithstanding subsections (c) and (d), if a
3098 controlling person has the power and authority to approve the
3099 conflicting interest transaction pursuant to a provision in
3100 the certificate of incorporation permitted by Section
3101 10A-3A-8.01, the conflicting interest transaction shall be
3102 approved by that controlling person.

3103 (f) An act or transaction effected or proposed to be
3104 effected by a membership nonprofit corporation (or by an
3105 entity controlled by the membership nonprofit corporation) may
3106 not be the subject of equitable relief, or give rise to an
3107 award of damages or other sanctions against a controlling
3108 person or a member of a control group of the membership



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3109 nonprofit corporation, on the grounds that the controlling
3110 person or member of a control group has an interest respecting
3111 the act or transaction, if the act or transaction is not a
3112 controlling person transaction.

3113 (g) A controlling person transaction may not be the
3114 subject of equitable relief, or give rise to an award of
3115 damages or other sanctions, against a director or officer of
3116 the membership nonprofit corporation or any controlling person
3117 or member of a control group, by reason of a claim based on a
3118 breach of duty by a director, officer, controlling person, or
3119 member of a control group, if:

3120 (1) the controlling person transaction is approved in
3121 accordance with the provisions of the certificate of
3122 incorporation, bylaws, rules, regulations, policies, or
3123 agreements among the members and the membership nonprofit
3124 corporation; or

3125 (2) the controlling person transaction is at the
3126 relevant time fair to the membership nonprofit corporation.

3127 §10A-3A-8.62 Acts or transactions involving a
3128 nonmembership nonprofit corporation.

3129 (a) An act or transaction effected or proposed to be
3130 effected by a nonmembership nonprofit corporation (or by an
3131 entity controlled by the nonmembership nonprofit corporation)
3132 may not be the subject of equitable relief, or give rise to an
3133 award of damages or other sanctions against a director or
3134 officer of the nonmembership nonprofit corporation, on the
3135 grounds that the director or officer has an interest
3136 respecting the act or transaction, if the act or transaction



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3137 is not a conflicting interest transaction.

3138 (b) A conflicting interest transaction may not be the
3139 subject of equitable relief, or give rise to an award of
3140 damages or other sanctions against a director or officer of
3141 the nonmembership nonprofit corporation, on the grounds that
3142 the director or officer has an interest respecting the
3143 conflicting interest transaction, if:

3144 (1) the directors' action respecting the act or
3145 transaction was taken in compliance with subsection (c) at any
3146 time; or

3147 (2) the act or transaction is at the relevant time fair
3148 to the nonmembership nonprofit corporation.

3149 (c) (1) Directors' action respecting a conflicting
3150 interest transaction is effective for purposes of subsection
3151 (b) (1) if the conflicting interest transaction has been
3152 authorized, after required disclosure by the conflicted
3153 director or officer of information not already known by the
3154 qualified directors, or after modified disclosure in
3155 compliance with subsection (c) (2), by (A) the affirmative vote
3156 of a majority (but no fewer than two) of the qualified
3157 directors who voted on the conflicting interest transaction or
3158 (B) the affirmative vote of a majority of the members of a
3159 board committee that is composed of only qualified directors
3160 (but no fewer than two). Directors' action respecting a
3161 conflicting interest transaction is effective even though the
3162 conflicted director or officer is present at or participates
3163 in the meeting of the board or committee which authorizes the
3164 act or transaction or was involved in the initiation,



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3165 negotiation, or approval of the act or transaction.

3166 (2) Notwithstanding subsection (c)(1), when a
3167 transaction is a conflicting interest transaction only because
3168 a related person described in clause (v) or (vi) of the
3169 definition of "related person" in Section 10A-3A-2.02 is a
3170 party to or has a material financial interest in the
3171 conflicting interest transaction, the conflicted director or
3172 officer is not obligated to make required disclosure to the
3173 extent that the director or officer reasonably believes that
3174 doing so would violate a duty imposed under law, a legally
3175 enforceable obligation of confidentiality, or a professional
3176 ethics rule, provided that the conflicted director or officer
3177 discloses to the qualified directors voting on the conflicting
3178 interest transaction:

3179 (i) all information required to be disclosed that is
3180 not so violative;

3181 (ii) the existence and nature of the director's or
3182 officer's conflicting interest; and

3183 (iii) the nature of the conflicted director's or
3184 officer's duty not to disclose the confidential information.

3185 (3) A majority (but no fewer than two) of all the
3186 qualified directors on the board of directors, or on the board
3187 committee, constitutes a quorum for purposes of action that
3188 complies with this section.

3189 (4) Where directors' action under this subsection (c)
3190 does not satisfy a quorum or voting requirement applicable to
3191 the authorization of the conflicting interest transaction by
3192 reason of the certificate of incorporation, the bylaws, or



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3193 another provision of this chapter, independent action to
3194 satisfy those authorization requirements shall be taken by the
3195 board of directors or a board committee, in which action
3196 directors who are not qualified directors may participate.

3197 (5) Where directors' action under this subsection (c)
3198 is taken without a meeting in accordance with Section
3199 10A-3A-8.21, the action is effective even though a conflicted
3200 director signs a consent to that action.

3201 (d) Notwithstanding subsection (c), if a controlling
3202 person has the power and authority to approve the conflicting
3203 interest transaction pursuant to a provision in the
3204 certificate of incorporation permitted by Section 10A-3A-8.01,
3205 the conflicting interest transaction shall be approved by that
3206 controlling person.

3207 (e) An act or transaction effected or proposed to be
3208 effected by a nonmembership nonprofit corporation (or by an
3209 entity controlled by the nonmembership nonprofit corporation)
3210 may not be the subject of equitable relief, or give rise to an
3211 award of damages or other sanctions against a controlling
3212 person or a member of a control group of the nonmembership
3213 nonprofit corporation, on the grounds that the controlling
3214 person or member of a control group has an interest respecting
3215 the act or transaction, if the act or transaction is not a
3216 controlling person transaction.

3217 (f) A controlling person transaction may not be the
3218 subject of equitable relief, or give rise to an award of
3219 damages or other sanctions, against a director or officer of
3220 the nonmembership nonprofit corporation or any controlling



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3221 person or member of a control group, by reason of a claim
3222 based on a breach of duty by a director, officer, controlling
3223 person, or member of a control group, if:

3224 (1) the controlling person transaction is approved in
3225 accordance with the provisions of the certificate of
3226 incorporation, bylaws, rules, regulations, or policies of the
3227 nonmembership nonprofit corporation; or

3228 (2) the controlling person transaction is at the
3229 relevant time fair to the nonmembership nonprofit corporation.

3230 Section 4. Division G, consisting of Section
3231 10A-3A-8.70, is added to Article 8 of Chapter 3A of Title 10A
3232 of the Code of Alabama 1975, to read as follows:

3233 Division G Corporate Opportunities.

3234 §10A-3A-8.70 Corporate opportunities.

3235 (a) If a director or officer pursues or takes advantage
3236 of a corporate opportunity directly, or indirectly through or
3237 on behalf of another person, that action may not be the
3238 subject of equitable relief, or give rise to an award of
3239 damages or other sanctions against the director, officer, or
3240 other person on the grounds that the corporate opportunity
3241 should have first been offered to the nonprofit corporation,
3242 if (1) before the director, officer, or other person becomes
3243 legally obligated respecting the corporate opportunity the
3244 director or officer brings it to the attention of the
3245 nonprofit corporation and either: (i) action by qualified
3246 directors disclaiming the nonprofit corporation's interest in
3247 the corporate opportunity is taken in compliance with the same
3248 procedures as are set forth in Section 10A-3A-8.61(c) or



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

3271 (b) In any proceeding seeking equitable relief or other
3272 remedies based upon an alleged improper pursuit or taking
3273 advantage of a corporate opportunity by a director or officer
3274 directly, or indirectly through or on behalf of another
3275 person, the fact that the director or officer did not employ
3276 the procedure described in subsection (a)(1) before pursuing



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3277 or taking advantage of the corporate opportunity shall not
3278 create an implication that the corporate opportunity should
3279 have been first presented to the nonprofit corporation or
3280 alter the burden of proof otherwise applicable to establish
3281 that the director or officer breached a duty to the nonprofit
3282 corporation in the circumstances.

3283 Section 5. Sections 10A-2A-16.10 and 10A-3A-4.20, Code
3284 of Alabama 1975, providing for financial statements for
3285 stockholders and members respectively, are repealed. The
3286 provisions of Section 10A-2A-16.10 are incorporated into
3287 Sections 10A-2A-16.02, 10A-2A-16.03, and 10A-2A-16.04, Code of
3288 Alabama 1975, and the provisions of Section 10A-3A-4.20 are
3289 incorporated into Sections 10A-3A-4.02, 10A-3A-4.03, and
3290 10A-3A-4.04, Code of Alabama 1975.

3291 Section 6. No amendment made by this act shall apply to
3292 or affect any civil action or proceeding completed or pending
3293 on or before August 1, 2026.

3294 Section 7. A nonprofit corporation governed by Chapter
3295 3A of Title 10A, Code of Alabama 1975, and in existence before
3296 August 1, 2026, may elect, on or before December 31, 2026, to
3297 amend its certificate of incorporation to state the following:
3298 "This nonprofit corporation shall be governed by Chapter 3A of
3299 Title 10A, Code of Alabama 1975, as in effect immediately
3300 prior to August 1, 2026, and not by any amendments or
3301 additions to Chapter 3A of Title 10A, Code of Alabama 1975,
3302 made by Act 2026-___." The election may be revoked by the
3303 nonprofit corporation at any time thereafter by an amendment
3304 to the certificate of incorporation which removes that



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3305 provision from its certificate of incorporation, at which time
3306 the nonprofit corporation will be governed by all provisions
3307 of Chapter 3A of Title 10A, Code of Alabama 1975, or any
3308 successor law, as in effect as of the date of that amendment,
3309 and as amended or replaced thereafter.

3310 Section 8. This act shall become effective on August 1,
3311 2026.



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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in and was passed by the House 31-Mar-26.

John Treadwell
Clerk

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Senate	<hr/> 08-Apr-26 <hr/>	Amended and Passed
House	<hr/> 09-Apr-26 <hr/>	Concurred in Senate Amendment