

HB248 INTRODUCED



1 HB248
2 U9I7EGG-1
3 By Representative Faulkner
4 RFD: Judiciary
5 First Read: 15-Jan-26



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4 SYNOPSIS:

5 This bill would revise the Alabama Business and
6 Nonprofit Entities Code.

7 This bill would make technical corrections and
8 codify common law.

9 This bill would clarify the law governing
10 entities and would clarify the internal affairs
11 doctrine, thereby codifying common law.

12 This bill would provide a new procedure to
13 correct or nullify filing instruments.

14 This bill would clarify that a registered agent
15 may not perform its duties virtually.

16 This bill would clarify the process for a
17 foreign entity doing business in the state that is
18 withdrawing its certificate of authority to transact
19 business in this state.

20 This bill would clarify certain proxy matters
21 allowed in bylaws of business corporations and would
22 clarify the forum selection provisions for business
23 corporations and nonprofit corporations.

24 This bill would clarify the procedures,
25 processes, rights, and responsibilities of owners and
26 entities regarding records requests, would provide for
27 expedited court review in the event of noncompliance,
28 and would allow the court in any expedited review to



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29 determine the allocation among the parties to the
30 review.

31 This bill would clarify the duties of
32 stockholders to business corporations and fellow
33 stockholders.

34 This bill would also provide procedures for
35 officers, directors, stockholders, and members of
36 business corporations and nonprofit corporations to
37 follow when the officers, directors, stockholders, and
38 members of business corporations and nonprofit
39 corporations are involved in a conflicting transaction
40 or a corporate opportunity transaction, or both, which
41 if followed would provide the officers, directors,
42 stockholders, and members of business corporations and
43 nonprofit corporations with certain safe harbors.

44

45

46 A BILL

47 TO BE ENTITLED

48 AN ACT

49

50 Relating to the Alabama Business and Nonprofit Entities
51 Code; to amend Sections 10A-1-1.04, 10A-1-1.11, 10A-1-1.13,
52 10A-1-2.17, 10A-1-3.32, 10A-1-4.14, 10A-1-4.21, 10A-1-4.23,
53 10A-1-4.24, 10A-1-4.25, and 10A-1-5.31, Section 10A-1-7.01, as
54 amended by Act 2025-281, 2025 Regular Session, Sections
55 10A-1-7.11, 10A-2A-1.43, 10A-2A-2.02, 10A-2A-2.05,
56 10A-2A-2.07, 10A-2A-6.22, 10A-2A-8.27, 10A-2A-8.60,

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57 10A-2A-14.10, 10A-2A-16.02, 10A-2A-16.03, 10A-2A-16.04,
58 10A-3A-1.60, 10A-3A-2.02, 10A-3A-2.07, 10A-3A-4.02,
59 10A-3A-4.03, and 10A-3A-4.04, Section 8 of Act 2025-281, now
60 appearing as Section 10A-3A-8.26, Sections 10A-3A-8.60,
61 10A-5A-4.09, and 10A-8A-4.10, Section 10A-8A-5.02, as amended
62 by Act 2025-281, 2025 Regular Session, Sections 10A-9A-3.04
63 and 10A-17-1.02, Code of Alabama 1975; to add Division G,
64 consisting of Section 10A-2A-8.70, to Article 8 of Chapter 2A,
65 Title 10A, Code of Alabama 1975; to add Sections 10A-3A-6.14,
66 10A-3A-8.61, and 10A-3A-8.62 to the Code of Alabama 1975; to
67 add Division G, consisting of Section 10A-3A-8.70, to Article
68 8 of Chapter 3A, Title 10A, Code of Alabama 1975; to make
69 technical corrections; to make technical corrections and
70 codify common law; to clarify the law governing entities and
71 clarify the internal affairs doctrine, thereby codifying
72 common law; to provide a new procedure to correct or nullify
73 filing instruments; to clarify that a registered agent may not
74 perform its duties virtually; to clarify the process for a
75 foreign entity doing business in the state that is withdrawing
76 its certificate of authority to transact business in this
77 state; to clarify certain proxy matters allowed in bylaws of
78 business corporations and to clarify the forum selection
79 provisions for business corporations and nonprofit
80 corporations; to clarify the procedures, processes, rights,
81 and responsibilities of owners and entities regarding records
82 requests, to provide for expedited court review in the event
83 of noncompliance, and to allow the court in any expedited
84 review to determine the allocation among the parties to the

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85 review; to clarify the duties of stockholders to business
86 corporations and fellow stockholders; to provide procedures
87 for officers, directors, stockholders, and members of business
88 corporations and nonprofit corporations to follow when the
89 officers, directors, stockholders, and members of business
90 corporations and nonprofit corporations are involved in a
91 conflicting transaction or a corporate opportunity
92 transaction, or both, which if followed would provide the
93 officers, directors, stockholders, and members of business
94 corporations and nonprofit corporations with certain safe
95 harbors; and to repeal Sections 10A-2A-16.10 and 10A-3A-4.20,
96 Code of Alabama 1975, providing for financial statements for
97 stockholders and members, respectively.

98 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

99 Section 1. Sections 10A-1-1.04, 10A-1-1.11, 10A-1-1.13,
100 10A-1-2.17, 10A-1-3.32, 10A-1-4.14, 10A-1-4.21, 10A-1-4.23,
101 10A-1-4.24, 10A-1-4.25, and 10A-1-5.31, Section 10A-1-7.01, as
102 amended by Act 2025-281, 2025 Regular Session, Sections
103 10A-1-7.11, 10A-2A-1.43, 10A-2A-2.02, 10A-2A-2.05,
104 10A-2A-2.07, 10A-2A-6.22, 10A-2A-8.27, 10A-2A-8.60,
105 10A-2A-14.10, 10A-2A-16.02, 10A-2A-16.03, 10A-2A-16.04,
106 10A-3A-1.60, 10A-3A-2.02, 10A-3A-2.07, 10A-3A-4.02,
107 10A-3A-4.03, and 10A-3A-4.04, Section 8 of Act 2025-281, now
108 appearing as Section 10A-3A-8.26, Sections 10A-3A-8.60,
109 10A-5A-4.09, and 10A-8A-4.10, Section 10A-8A-5.02, as amended
110 by Act 2025-281, 2025 Regular Session, and Sections
111 10A-9A-3.04 and 10A-17-1.02, Code of Alabama 1975, are amended
112 to read as follows:



113 "§10A-1-1.04

114 (a) This section shall not apply to Chapters 2A, 3A, 4,
115 and 11. In addition, provisions in a written limited liability
116 company agreement under Chapter 5A, a written partnership
117 agreement under Chapter 8A, and a written limited partnership
118 agreement under Chapter 9A may provide that this section is
119 not applicable.

120 ~~(a)~~ (b) Except as provided in subsection (a), for
121 purposes of this title, a person is disinterested with respect
122 to the approval of a contract, transaction, or other matter or
123 to the consideration of the disposition of a claim or
124 challenge relating to a contract, transaction, or particular
125 conduct, if the person or the person's associate:

126 (1) is not a party to the contract or transaction or
127 materially involved in the conduct that is the subject of the
128 claim or challenge; and

129 (2) does not have a material financial interest in the
130 outcome of the contract or transaction or the disposition of
131 the claim or challenge.

132 ~~(b)~~ (c) For purposes of subsection ~~(a)~~ (b), a person is
133 not materially involved in the conduct that is the subject of
134 a claim or challenge and does not have a material financial
135 interest in the outcome of a contract or transaction or the
136 disposition of a claim or challenge solely because:

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

139 (A) interested in the contract or transaction; or
140 (B) alleged to have engaged in the conduct that is the



141 subject of the claim or challenge;

142 (2) the person receives normal fees or customary
143 compensation, reimbursement for expenses, or benefits as a
144 governing person of the entity;

145 (3) the person has a direct or indirect equity interest
146 in the entity;

147 (4) the entity has, or its subsidiaries have, an
148 interest in the contract or transaction or was affected by the
149 alleged conduct;

150 (5) the person or an associate of the person receives
151 ordinary and reasonable compensation for reviewing, making
152 recommendations regarding, or deciding on the disposition of
153 the claim or challenge; or

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

156 (A) the person is named as a defendant in the
157 derivative proceeding regarding the matter or as a person who
158 engaged in the alleged conduct; or

159 (B) the person, acting as a governing person, approved,
160 voted for, or acquiesced in the act being challenged if the
161 act did not result in a material personal or financial benefit
162 to the person and the challenging party fails to allege
163 particular facts that, if true, raise a significant prospect
164 that the governing person would be held liable to the entity
165 or its owners or members as a result of the conduct."

166 "§10A-1-1.11

167 (a) ~~The law of this state governs the formation and~~
168 ~~internal affairs of an entity if the entity's formation occurs~~



169 ~~when a certificate of formation filed in accordance with~~
170 ~~Article 4 takes effect. It is important to the economy of this~~
171 ~~state, and to domestic entities, their governing authorities,~~
172 ~~governing persons, officers, and their owners, employees,~~
173 ~~creditors, and other constituencies, for the laws governing~~
174 ~~domestic entities to be clear and comprehensible, and to be~~
175 ~~applied using the plain meaning of the statute.~~

176 (b) A domestic entity, whether a filing entity or a
177 nonfiling entity, is governed by the laws of this state
178 regarding (i) the formation and internal affairs of the
179 domestic entity; and (ii) the rights, privileges, powers,
180 duties, and liabilities, if any, of its governing authorities,
181 governing persons, officers, and owners.

182 (b) If the formation of an entity occurs when a
183 certificate of formation or similar instrument filed with a
184 foreign governmental authority takes effect, the laws of the
185 state or other jurisdiction in which that foreign governmental
186 authority is located governs (i) the formation and internal
187 affairs of the entity, (ii) the duties and obligations of the
188 governing authorities, governing persons, officers, and
189 owners, and (iii) the liability of its ~~members~~ owners.

190 (d) The governing authorities, governing persons, and
191 officers of a domestic entity, in exercising their duties
192 under this title, may be informed by the laws and judicial
193 decisions of other jurisdictions and the practices observed by
194 entities in any other jurisdiction, but the failure or refusal
195 of a governing authority, governing person, or officer to
196 consider, or to conform the exercise of its, his, or her



197 powers to, the laws, judicial decisions, or practices of
198 another jurisdiction shall not constitute or indicate a breach
199 of a duty.

200 (e) The causes of action of oppression and squeeze out
201 shall not apply to any entity governed by this title except
202 close corporations governed by Article 2 of Chapter 30."

203 "§10A-1-1.13

204 For purposes of this title, the internal affairs of an
205 entity include, without limitation:

206 (1) the rights, powers, and duties of its governing
207 authority, governing persons, officers, owners, and members;
208 ~~and~~

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

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

215 "§10A-1-2.17

216 Except as otherwise provided in the governing documents
217 or in the specific ~~article~~ chapter that applies to that
218 entity, an owner may lend money to and transact any lawful
219 business with the entity and, subject to other applicable law,
220 have the same rights and obligations with respect thereto as a
221 person who is not an owner."

222 "§10A-1-3.32

223 (a) This section applies to domestic entities other
224 than (i) corporations formed pursuant to or governed by



225 Chapter 2A or Chapter 4, and real estate investment trusts
226 formed pursuant to or governed by Chapter 10, each of which is
227 governed by the separate recordkeeping requirements and record
228 inspections provisions of Chapter 2A and (ii) nonprofit
229 corporations formed pursuant to or governed by Chapter 3A,
230 limited liability companies formed pursuant to or governed by
231 Chapter 5A, general partnerships formed pursuant to or
232 governed by Chapter 8A, ~~and~~ limited partnerships formed
233 pursuant to or governed by Chapter 9A, and a statewide trade
234 association formed pursuant to or governed by Chapter 18, each
235 of which~~are~~ is governed by the separate recordkeeping
236 requirements and record inspection provisions set forth in
237 each entity's respective chapter governing that entity.

238 (b) With respect to a domestic entity covered by this
239 section, the books and records maintained under the chapter of
240 this title applicable to that entity and any other books and
241 records of that entity, wherever situated, are subject to
242 inspection and copying at the reasonable request, and at the
243 expense of, any owner or member or the owner's or member's
244 agent or attorney during regular business hours. ~~The right of~~
245 ~~access extends to the legal representative of a deceased owner~~
246 ~~or member or owner or member under legal disability. The~~
247 ~~entity shall also provide former owners and members with~~
248 ~~access to its books and records pertaining to the period~~
249 ~~during which they were owners or members at a reasonable~~
250 ~~location specified by the entity if the owner or member meets~~
251 ~~the requirements of subsection (c) and gives the entity a~~
252 ~~signed written notice of the owner's or member's demand at~~



253 least 10 business days before the date on which the owner or
254 member wishes to inspect and copy. If an owner or member shall
255 designate an agent or attorney to inspect and copy the
256 records, the demand shall be accompanied by a power of
257 attorney or other writing which authorizes the agent or
258 attorney to so act on behalf of that person.

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

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

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

268 (iii) the owner's or member's demand describes with
269 reasonable particularity the owner's or member's purpose and
270 the records the owner or member desires to inspect; and

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

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

278 (i) an active or pending derivative proceeding in the
279 right of the entity that is or is expected to be instituted or
280 maintained by the owner or member or the owner's or member's



281 affiliate; or

282 (ii) an active or pending civil lawsuit to which the
283 entity, or its affiliate, and the owner or member, or the
284 owner's or member's affiliate, are, or are expected to be,
285 adversarial named parties.

286 (d) The entity may redact portions of the records to be
287 inspected and copied under subsection (b) to the extent the
288 portions so redacted are not directly related to the owner's
289 or member's purpose. The entity may also impose reasonable
290 restrictions and conditions on access to and use of the
291 records to be inspected and copied under subsection (b),
292 including designating information confidential and imposing
293 nondisclosure and safeguarding, and may further keep
294 confidential from its owners or members and other persons, for
295 a period of time as the entity deems reasonable, any
296 information that the entity reasonably believes to be in the
297 nature of a trade secret or other information, the disclosure
298 of which the entity in good faith believes is not in the best
299 interest of the entity or could damage the entity or its
300 business or affairs, or that the entity is required by law or
301 by agreement with a third party to keep confidential. In any
302 dispute concerning the reasonableness of a restriction under
303 this subsection, the entity has the burden of proving
304 reasonableness.

305 (e) The rights of an owner or member to inspect and
306 copy the records described in subsection (b) may be denied by
307 the entity if the entity determines that the demanding owner
308 or member has within two years preceding his, her, or its



309 demand improperly used any information secured through any
310 prior examination of the records of the entity.

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

315 ~~(d) Any agent or governing person of a domestic entity~~
316 ~~who, without reasonable cause, refuses to allow any owner or~~
317 ~~member or the owner's or member's agent or legal counsel to~~
318 ~~inspect any books or records of that entity shall be~~
319 ~~personally liable to the agent or member for a penalty in an~~
320 ~~amount not to exceed 10 percent of the fair market value of~~
321 ~~the ownership interest of the owner or member, in addition to~~
322 ~~any other damages or remedy.~~

323 (g) If an entity does not within a reasonable time
324 allow an owner or member who complies with the requirements of
325 this section to inspect and copy the records demanded by the
326 owner or member, then the demanding owner or member may apply
327 to the designated court, and if none, the circuit court for
328 the county in which the entity's principal office is located
329 in this state, and if none in this state, the circuit court
330 for the county in which the entity's most recent registered
331 office is located, for an order to permit inspection and
332 copying of the records demanded. The court shall dispose of an
333 application under this subsection on an expedited basis. If
334 the court orders inspection and copying of the records
335 demanded under this section, the court may impose reasonable
336 restrictions on their confidentiality, use, or distribution by



337 the demanding owner or member, and the court shall also order
338 the entity to pay the owner's or member's expenses incurred to
339 obtain the order unless the entity establishes that the entity
340 refused inspection in good faith because the entity had:

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

343 (2) required reasonable restrictions on the
344 confidentiality, use, or distribution of the records demanded
345 to which the demanding owner or member had been unwilling to
346 agree. If the entity has declined to deliver or make available
347 the records because the owner or member had been unwilling to
348 agree to restrictions proposed by the entity on the
349 confidentiality, use, or distribution of the records, the
350 entity shall have the burden of demonstrating that the
351 restrictions proposed by the entity were reasonable.

352 (h) The rights and obligations of an owner or member of
353 an entity provided in this section shall apply to (1) the
354 personal representative or other legal representative of the
355 estate of a deceased owner or member, (2) the legal
356 representative of an owner or member under legal disability,
357 and (3) a former owner or member, but only for books and
358 records pertaining to the period during which the former owner
359 or member was an owner or member of the entity."

360 "§10A-1-4.14

361 The effect of the following filing instruments may not
362 be delayed:

363 (1) a reservation of name as provided by Division B of
364 Article 5;



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

367 (3) a certificate of abandonment as provided by Section
368 10A-1-4.13-;

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

373 "§10A-1-4.21

374 (a) ~~A~~ Whenever any filing instrument ~~that has been~~
375 ~~filed with~~ authorized to be delivered to a filing officer ~~that~~
376 ~~is an inaccurate record of the event or transaction evidenced~~
377 ~~in the instrument, that~~ for filing under any provision of this
378 title has been filed by the filing officer, and contains an
379 inaccurate or erroneous statement, or ~~that~~ was defectively or
380 erroneously signed, sealed, acknowledged, or verified, the
381 filings instrument may be corrected or nullified by ~~filings~~
382 delivering a certificate of correction or a certificate of
383 nullification of the instrument, as the case may be, to the
384 appropriate filing officer for filing. If the filing
385 instrument is to be corrected, the certificate of correction
386 shall specify the inaccuracy or defect to be corrected and
387 shall set forth the portion of the filing instrument in
388 corrected form. If the filing instrument is to be nullified,
389 the certificate of nullification shall specify the inaccuracy
390 or defect with respect to the filing instrument and shall
391 provide for the nullification of the filing instrument.

392 (b) A certificate of correction and a certificate of



393 nullification must be signed by the person authorized by this
394 title to act on behalf of the entity."

395 "§10A-1-4.23

396 (a) The certificate of correction must:

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

400 (2) identify the filing instrument to be corrected by
401 (i) description; and (ii) date of filing ~~with~~ by the filing
402 officer;

403 (3) identify the inaccuracy, error, or defect to be
404 corrected; and

405 (4) state in corrected form the portion of the filing
406 instrument to be corrected.

407 (b) The certificate of nullification must:

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

411 (2) identify the filing instrument to be nullified by
412 (i) description; and (ii) date of filing by the filing
413 officer;

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

415 (4) state that the filing instrument is to be
416 nullified."

417 "§10A-1-4.24

418 The certificate of correction and the certificate of
419 nullification shall be ~~filed with and acted on by the filing~~
420 ~~officer~~ delivered to the filing officer for filing as provided



421 in Section 10A-1-4.02."

422 "§10A-1-4.25

423 (a) After the filing officer files the certificate of
424 correction or the certificate of nullification, the filing
425 instrument is considered to have been corrected or nullified,
426 as the case may be, on the date the filing instrument was
427 originally filed, except as otherwise provided by subsection
428 (b).

429 ~~(b) As to a person who acted in reliance on the filing
430 instrument prior to its correction and who is adversely
431 affected by that correction, the filing instrument is
432 considered to have been corrected on the date the certificate
433 of correction is filed.~~

434 ~~(c) An acknowledgment of filing or a similar instrument
435 issued by the filing officer before a filing instrument is
436 corrected, with respect to the effect of filing the original
437 filing instrument, applies to the corrected filing instrument
438 as of the date the corrected filing instrument is considered
439 to have been filed under this section.~~

440 (b) A filing instrument corrected or nullified in
441 accordance with this Division C shall be effective as of the
442 effective date of the original filing instrument as determined
443 under Division B of this Article 4, except as to those persons
444 relying on the original filing instrument and who are
445 adversely affected by the correction or nullification after
446 the effective date of the original filing instrument, the
447 filing instrument as corrected or nullified shall be effective
448 on the date the certificate of correction or the certificate



449 of nullification, as the case may be, is filed."

450 "§10A-1-5.31

451 (a) Each filing entity and each foreign filing entity
452 with a registration under Article 7, and each general
453 partnership that has an effective statement of partnership,
454 statement of not for profit partnership, or statement of
455 limited liability partnership on file with the Secretary of
456 State in accordance with Chapter 8A, shall designate and
457 continuously maintain in this state:

458 (1) a registered agent; and

459 (2) a registered office.

460 (b) A registered agent:

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

464 (2) may be:

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

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

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

470 (4) may not perform its duties or functions solely

471 through the use of a virtual office, the retention by the
472 agent of a mail forwarding service, or both. For purposes of
473 this subsection (b) (4), "virtual office" means the performance
474 of duties or functions solely through the internet or solely
475 through other means of remote communication.

476 (c) The registered office:



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

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

482 (3) may not be solely a mailbox service or a telephone
483 answering service."

484 "§10A-1-7.01

485 (a) (1) For purposes of this Article 7, the terms
486 register, registering, and registered include (i) a foreign
487 entity other than a foreign limited liability partnership
488 delivering to the Secretary of State for filing an application
489 for registration and the Secretary of State filing the
490 application for registration~~or~~; and (ii) a foreign limited
491 liability partnership delivering to the Secretary of State for
492 filing a statement of foreign limited liability partnership
493 and the Secretary of State filing the statement of foreign
494 limited liability partnership.

495 (2) For purposes of this Article 7, the term
496 registration includes (i) a filed application for
497 registration; and (ii) a filed statement of foreign limited
498 liability partnership.

499 (b) For purposes of this Article 7, the terms transact
500 business and transacting business shall include conducting a
501 business, activity, not for profit activity, and any other
502 activity, whether or not for profit.

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



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

508 (2) is a foreign limited liability partnership; or
509 (3) affords limited liability under the law of its
510 jurisdiction of formation for any owner or member.

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

514 (e) For purposes of this Article 7, a foreign entity
515 must reserve a name with the Secretary of State in accordance
516 with Article 5 and when a foreign entity delivers its
517 application for registration to the Secretary of State for
518 filing, that foreign entity must attach its name reservation
519 certificate to its application for registration."

520 "§10A-1-7.11

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

524 (b) A certificate of withdrawal for a foreign entity
525 described must state:

526 (1) the name of the foreign entity as set forth on its
527 registration:

528 (2) the type of foreign entity and the foreign entity's
529 jurisdiction of formation and, in the case of a foreign
530 limited liability partnership, the jurisdiction which laws
531 govern the foreign limited liability partnership and its
532 partnership agreement;



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

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

537 (5) that the foreign entity:

538 (A) revokes the authority of the foreign entity's
539 registered agent in this state to accept service of process;
540 and

541 (B) consents that service of process in any action,
542 suit, or proceeding stating a cause of action arising in this
543 state during the time the foreign entity was authorized to
544 transact business in this state may be made on the foreign
545 entity in accordance with the Alabama Rules of Civil Procedure
546 and any other notice or demand required or permitted by law to
547 be served on the foreign entity may be served in a manner
548 similar to the procedure provided for the service of process
549 by the Alabama Rules of Civil Procedure;

550 (6) (A) a mailing address to which process may be mailed
551 pursuant to the applicable service of process procedures of
552 the Alabama Rules of Civil Procedure and to which any notice
553 or demand required or permitted by law to be served on the
554 foreign entity may be mailed; and

555 (B) a commitment by the foreign entity that if the
556 mailing address stated in the certificate of withdrawal under
557 paragraph (A) changes, the foreign entity will promptly amend
558 the certificate of withdrawal to update the address; and



561 payment of that money.

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

565 (d) If the existence or separate existence of a foreign
566 entity registered in this state terminates, a certificate by
567 an authorized governmental official of the entity's
568 jurisdiction of formation that evidences the termination shall
569 be filed with the Secretary of State.

570 (e) The registration of the foreign entity terminates
571 when a certificate of withdrawal under this section or a
572 certificate evidencing termination under subsection (d) is
573 filed.

574 (f) The certificate of withdrawal of a foreign entity
575 described in subsection (b), other than a foreign limited
576 liability partnership, shall be executed by one or more
577 persons authorized to execute a certificate of withdrawal. A
578 certificate of withdrawal of a foreign limited liability
579 partnership shall be executed by one or more partners
580 authorized to execute a certificate of withdrawal. The
581 certificate of termination of a foreign entity described in
582 subsection (d), other than a foreign limited liability
583 partnership, shall be executed by one or more persons
584 authorized to execute a certificate of termination. A
585 certificate of termination of a foreign limited liability
586 partnership shall be executed by one or more partners
587 authorized to execute a certificate of termination."

588 "§10A-2A-1.43



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

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

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

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



617 ~~business opportunity, directly, or indirectly through or on~~
618 ~~behalf of another person. who has a material relationship with~~
619 ~~a stockholder as to whom the act or transaction is a~~
620 ~~controlling stockholder transaction or a going private~~
621 ~~transaction; or~~

622 (4) Section 10A-2A-8.70, is not a director who (i)
623 pursues or takes advantage of a corporate opportunity,
624 directly or indirectly, through or on behalf of another person
625 or (ii) has a material relationship with a director or officer
626 who pursues or takes advantage of a corporate opportunity,
627 directly or indirectly, through or on behalf of another
628 person.

629 (b) ~~For purposes of this section:~~
630 (1) As used in this chapter, unless otherwise specified
631 or unless the context otherwise requires, a "material
632 relationship" means a familial, financial, professional,
633 employment, or other relationship that (i) in the case of a
634 director, would reasonably be expected to impair the
635 objectivity of the director's judgment when participating in
636 ~~the action to be taken; and negotiation, authorization, or~~
637 approval of the act or transaction at issue and (ii) in the
638 case of a stockholder, would be material to that stockholder.

639 ~~(2) "material interest" means an actual or potential~~
640 ~~benefit or detriment (other than one which would devolve on~~
641 ~~the corporation or the stockholders generally) that would~~
642 ~~reasonably be expected to impair the objectivity of the~~
643 ~~director's judgment when participating in the action to be~~
644 ~~taken.~~



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

648 (1) designation, nomination, or vote in the election of
649 the director to the current board of directors by any director
650 who is not a qualified director with respect to the matter (or
651 by any person that has a material ~~relationship with that~~
652 ~~director~~ financial interest in an act or transaction), acting
653 alone or participating with others; or

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

658 "§10A-2A-2.02

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

660 Instead:

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

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

664 (2) the number of shares of stock the corporation is
665 authorized to issue:

666 (3) the street and mailing addresses of the
667 corporation's initial registered office, the county within
668 this state in which the street and mailing address is located,
669 and the name of the corporation's initial registered agent at
670 that office as required by Article 5 of Chapter 1; and

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

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



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

675 (2) provisions not inconsistent with law regarding:

678 (ii) managing the business and regulating the affairs
679 of the corporation;

682 (iv) a par value for authorized stock or classes of
683 stock; or

684 (v) subject to subsection (f), a provision imposing
685 personal liability for the debts of the corporation on its
686 stockholders to a specified extent and upon specified
687 conditions; otherwise, the stockholders of a corporation shall
688 not be personally liable for the payment of the corporation's
689 debts, except as they may be liable by reason of their own
690 conduct or acts;

694 (4) a provision eliminating or limiting the liability
695 of a director or officer to the corporation or its
696 stockholders for money damages for any action taken, or any
697 failure to take any action, as a director or officer, except
698 liability for (i) the amount of a financial benefit received
699 by a director or officer to which the director or officer is
700 not entitled; (ii) an intentional infliction of harm on the



701 corporation or the stockholders; (iii) in the case of a
702 director, a violation of Section 10A-2A-8.32; (iv) an
703 intentional violation of criminal law; or (v) in the case of
704 an officer, any claim by or in the right of the corporation;

705 (5) a provision permitting or making obligatory
706 indemnification of a director for liability as defined in
707 Section 10A-2A-8.50 to any person for any action taken, or any
708 failure to take any action, as a director, except liability
709 for (i) receipt of a financial benefit to which the director
710 is not entitled, (ii) an intentional infliction of harm on the
711 corporation or its stockholders, (iii) a violation of Section
712 10A-2A-8.32, or (iv) an intentional violation of criminal law;
713 and

714 (6) a provision limiting or eliminating any duty of a
715 director or any other person to offer the corporation the
716 right to have or participate in any, or one or more classes or
717 categories of, ~~business corporate~~ opportunities, before the
718 pursuit or taking of the corporate opportunity by the director
719 or other person; provided that any application of that
720 provision to an officer or a related person of that officer
721 (i) also requires approval of that application by the board of
722 directors, subsequent to the effective date of the provision,
723 by action of qualified directors taken in compliance with the
724 same procedures as are set forth in Section 10A-2A-8.60; and
725 (ii) may be limited by the authorizing action of the board of
726 directors.

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



729 10A-1-2.12, and 10A-1-2.13.

730 (d) Provisions of the certificate of incorporation may
731 be made dependent upon facts objectively ascertainable outside
732 the certificate of incorporation in accordance with Section
733 10A-2A-1.20(c).

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

737 (i) the individual's spouse;

738 (ii) a child, stepchild, grandchild, parent,
739 stepparent, grandparent, sibling, stepsibling, half sibling,
740 aunt, uncle, niece, or nephew (or spouse of any such person)
741 of the individual or of the individual's spouse;

742 (iii) a natural person living in the same home as the
743 individual;

744 (iv) an entity (other than the corporation or an entity
745 controlled by the corporation) controlled by the individual or
746 any person specified above in this definition;

747 (v) a domestic or foreign:

748 (A) business or nonprofit corporation (other than the
749 corporation or an entity controlled by the corporation) of
750 which the individual is a director,

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

753 (C) individual, trust, or estate for whom or of which
754 the individual is a trustee, guardian, personal
755 representative, or like fiduciary, or

756 (vi) a person that is, or an entity that is, controlled



757 by an employer of the individual.

758 (f) The certificate of incorporation may not contain
759 any provision that would impose liability on a stockholder for
760 the attorney's fees or expenses of the corporation or any
761 other party in connection with an internal corporate claim, as
762 defined in Section 10A-2A-2.07~~(d)~~(c), or in connection with a
763 claim that a stockholder, acting in its capacity as a
764 stockholder or in the right of the corporation, has brought in
765 an action, suit, or proceeding described in Section
766 10A-2A-2.07(b).

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

770 (h) For purposes of subsection (b) (4) only, unless the
771 certificate of incorporation otherwise provides, "officer"
772 means an individual appointed or elected in accordance with
773 Section 10A-2A-8.40 as (i) president, chief executive officer,
774 chief operating officer, chief financial officer, chief legal
775 officer, secretary, controller, treasurer, or chief accounting
776 officer of the corporation; and (ii) any officer of the
777 corporation designated by resolution of the board of directors
778 as an "officer" for purposes of subsection (b) (4). The board
779 of directors may, from time to time, by resolution determine
780 that one or more of the officers designated in accordance with
781 subsection (h) (ii) shall no longer be an officer for purposes
782 of subsection (b) (4), but no such resolution shall be
783 effective as to any such officer, or any act or omission of
784 any such officer, prior to the adoption of the resolution.



785 (i) No provision in the certificate of incorporation
786 pursuant to subsection (b) (4) shall eliminate or limit the
787 liability of a director or officer for any act or omission
788 occurring prior to the date when the provision in the
789 certificate of incorporation becomes effective. Any amendment,
790 repeal, or elimination of a provision in the certificate of
791 incorporation pursuant to subsection (b) (4) shall not affect
792 its application with respect to an act or omission by a
793 director or officer occurring before the amendment, repeal, or
794 elimination unless the provision in the certificate of
795 incorporation provides otherwise at the time of the act or
796 omission."

797 "§10A-2A-2.05

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

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

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

808 (1) a requirement that if the corporation solicits
809 proxies or consents with respect to an election of directors,
810 the corporation include in its proxy statement and any form of
811 its proxy or consent, to the extent and subject to any
812 procedures or conditions as are provided in the bylaws, one or



813 ~~more individuals nominated by a stockholder in addition to~~
814 ~~individuals nominated by the board of directors; and~~
815 ~~(2) a requirement that the corporation reimburse the~~
816 ~~expenses incurred by a stockholder in soliciting proxies or~~
817 ~~consents in connection with an election of directors, to the~~
818 ~~extent and subject to any procedures and conditions as are~~
819 ~~provided in the bylaws, provided that no provision so adopted~~
820 ~~shall apply to elections for which any record date precedes~~
821 ~~its adoption.~~

822 (1) The bylaws may provide that if the corporation
823 solicits proxies with respect to an election of directors, the
824 corporation may be required, to the extent and subject to such
825 procedures or conditions as may be provided in the bylaws, to
826 include in its proxy solicitation materials (including any
827 form of proxy it distributes), in addition to individuals
828 nominated by the board of directors, one or more individuals
829 nominated by a stockholder. Such procedures or conditions may
830 include any of the following:

831 (i) a provision requiring a minimum record or
832 beneficial ownership, or duration of ownership, of shares of
833 the corporation's capital stock, by the nominating
834 stockholder, and defining beneficial ownership to take into
835 account options or other rights in respect of or related to
836 such stock;

837 (ii) a provision requiring the nominating stockholder
838 to submit specified information concerning the stockholder and
839 the stockholder's nominees, including information concerning
840 ownership by such persons of shares of the corporation's



841 capital stock, or options or other rights in respect of or
842 related to such stock;

843 (iii) a provision conditioning eligibility to require
844 inclusion in the corporation's proxy solicitation materials
845 upon the number or proportion of directors nominated by
846 stockholders or whether the stockholder previously sought to
847 require such inclusion;

848 (iv) a provision precluding nominations by any person
849 if such person, any nominee of such person, or any affiliate
850 or associate of such person or nominee, has acquired or
851 publicly proposed to acquire shares constituting a specified
852 percentage of the voting power of the corporation's
853 outstanding voting stock within a specified period before the
854 election of directors;

855 (v) a provision requiring that the nominating
856 stockholder undertake to indemnify the corporation in respect
857 of any loss arising as a result of any false or misleading
858 information or statement submitted by the nominating
859 stockholder in connection with a nomination; and

860 (vi) any other lawful condition.

861 (2) The bylaws may provide for the reimbursement by the
862 corporation of expenses incurred by a stockholder in
863 soliciting proxies in connection with an election of
864 directors, subject to such procedures or conditions as the
865 bylaws may prescribe, including:

866 (i) conditioning eligibility for reimbursement upon the
867 number or proportion of persons nominated by the stockholder
868 seeking reimbursement or whether such stockholder previously



869 sought reimbursement for similar expenses;

870 (ii) limitations on the amount of reimbursement based
871 upon the proportion of votes cast in favor of one or more of
872 the persons nominated by the stockholder seeking
873 reimbursement, or upon the amount spent by the corporation in
874 soliciting proxies in connection with the election;

875 (iii) limitations concerning elections of directors by
876 cumulative voting pursuant to Section 10A-2A-7.28; or
877 (iv) any other lawful condition.

878 (d) Notwithstanding Section 10A-2A-10.20(b) (2), the
879 stockholders in amending, repealing, or adopting a provision
880 described in subsection (c) may not limit the authority of the
881 board of directors to amend or repeal any condition or
882 procedure set forth in or to add any procedure or condition to
883 a provision to provide for a reasonable, practical, and
884 orderly process.

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

888 "§10A-2A-2.07

889 (a) The certificate of incorporation or the bylaws may
890 require, consistent with applicable jurisdictional
891 requirements, that any or all internal corporate claims shall
892 be brought exclusively in any specified court or courts of
893 this state and, if so specified, in any additional courts in
894 this state or in any other jurisdictions with which the
895 corporation has a reasonable relationship and no provision of
896 the certificate of incorporation or the bylaws may prohibit



897 bringing those claims in the courts of this state or require
898 those claims to be determined by arbitration.

899 ~~(b) A provision of the certificate of incorporation or~~
900 ~~bylaws adopted under subsection (a) shall not have the effect~~
901 ~~of conferring jurisdiction on any court or over any person or~~
902 ~~claim, and shall not apply if none of the courts specified by~~
903 ~~that provision has the requisite personal and subject matter~~
904 ~~jurisdiction. If the court or courts of this state specified~~
905 ~~in a provision adopted under subsection (a) do not have the~~
906 ~~requisite personal and subject matter jurisdiction and another~~
907 ~~court of this state does have jurisdiction, then the internal~~
908 ~~corporate claim may be brought in the other court of this~~
909 ~~state, notwithstanding that the other court of this state is~~
910 ~~not specified in that provision, and in any other court~~
911 ~~specified in that provision that has the requisite~~
912 ~~jurisdiction.~~

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

917 (b) With respect to claims that are not internal
918 corporate claims, the certificate of incorporation or bylaws
919 may require stockholders, when acting in their capacity as
920 stockholders or in the right of the corporation, to bring any
921 or all such claims only in any specified court or courts of
922 this state and, if so specified, in any additional courts in
923 this state or in any other jurisdictions with which the
924 corporation has a reasonable relationship, if those claims



925 relate to the business of the corporation, the conduct of its
926 affairs, or the rights or powers of the corporation or its
927 stockholders, directors, or officers; provided that such
928 requirement is consistent with applicable jurisdictional
929 requirements and allows a stockholder to bring such claims in
930 at least one court in this state that has jurisdiction over
931 those claims.

932 (d) (c) "Internal corporate claim" means, for the
933 purposes of this section, (i) any claim, action, suit, or
934 proceeding (i) that is based upon a violation of a duty under
935 the laws of this state by a current or former director,
936 officer, or stockholder in their capacities as such, (ii) any
937 that is a derivative action or proceeding brought on behalf of
938 the corporation, (iii) any action asserting a claim arising
939 pursuant to any provision of this chapter or the certificate
940 of incorporation or bylaws, that arises from, is pursuant to,
941 or seeks to interpret, apply, enforce, or determine the
942 validity of, any provision of this chapter, the certificate of
943 incorporation, the bylaws, or any agreement entered into
944 pursuant to Sections 10A-2A-7.30, 10A-2A-7.31, or 10A-2A-7.32
945 to which the corporation is a party or a stated beneficiary
946 thereof, or (iv) any action asserting a claim that is governed
947 by the internal affairs doctrine that is not included in (i)
948 through (iii) above.

949 (d) This section does not prohibit any corporation from
950 consenting, or require any corporation to consent, to any
951 alternative forum in any instance."

952 "§10A-2A-6.22



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953 (a) A purchaser from a corporation of the corporation's
954 own stock is not liable to the corporation or its creditors
955 with respect to the stock except to pay the consideration for
956 which the stock was authorized to be issued or specified in
957 the subscription agreement.

958 (b) A stockholder is not personally liable for any
959 liabilities of the corporation (including liabilities arising
960 from acts of the corporation) except to the extent provided in
961 a provision of the certificate of incorporation permitted by
962 Section 10A-2A-2.02.

971 (d) Except as set forth in subsection (e), a
972 stockholder, in that person's capacity as a stockholder and
973 regardless of the stockholder's relative beneficial ownership
974 of shares or relative voting power, shall not have any duty to
975 the corporation or any other stockholder.

976 (e) A controlling stockholder or a stockholder that is
977 a member of a control group of a corporation, in such person's
978 capacity as a stockholder, has the duty to refrain from
979 exerting undue influence over any director or officer of the
980 corporation with the purpose and proximate effect of inducing



981 a breach of fiduciary duty by a director or officer (i) for
982 which breach the director or officer is liable pursuant to
983 Section 10A-2A-8.31 and (ii) which breach directly relates to
984 the negotiation, authorization, or approval by the board of
985 directors, or a committee thereof, of a controlling
986 stockholder transaction. The exercise or withholding of voting
987 power by a controlling stockholder or a control group, or the
988 indication or implication by a controlling stockholder or
989 control group as to whether or to what extent voting power may
990 be exercised or withheld, does not, by itself, constitute or
991 indicate a breach of the duty imposed on the controlling
992 stockholder or control group by this subsection.

993 (f) A controlling stockholder and a control group are
994 presumed to have not breached the duty imposed by subsection
995 (e) with respect to a controlling stockholder transaction if
996 the controlling stockholder transaction has been authorized or
997 approved in accordance with Section 10A-2A-8.60.

998 (g) A stockholder of a corporation is not individually
999 liable to the corporation or its stockholders or creditors for
1000 any damages as a result of any act or failure to act in such
1001 person's capacity as a stockholder under subsection (e) unless
1002 (i) the stockholder is a controlling stockholder or a member
1003 of a control group, (ii) the presumption established by
1004 subsection (f) has been rebutted, and (iii) it is proven that
1005 the stockholder's act or failure to act constituted a breach
1006 of the stockholder's duty imposed by subsection (e)."

1007 "§10A-2A-8.27

1008 (a) Whenever this chapter expressly requires the board



1009 of directors to approve or take other action with respect to
1010 any agreement, instrument, plan, or document, such agreement,
1011 instrument, plan, or document may be approved by the board of
1012 directors in final form or in substantially final form.
1013 Substantially final form means that all of the material terms
1014 are set forth in the agreement, instrument, plan, or document,
1015 or are determinable through other information or materials
1016 presented to or known by the board of directors, or are
1017 determinable by a combination thereof, except as otherwise
1018 described in subsection (c).

1019 (b) If the board of directors shall have acted to
1020 approve or take other action with respect to an agreement,
1021 instrument, plan, or document that is expressly required by
1022 this chapter to be approved by the board of directors, the
1023 board of directors may, but is not required to, at any time
1024 after providing the approval or taking such other action adopt
1025 a resolution ratifying the agreement, instrument, plan, or
1026 document, and the ratification shall be deemed to be effective
1027 as of the time of the original approval or other action by the
1028 board of directors and to satisfy any requirement under this
1029 chapter that the board of directors approve or take other
1030 action with respect to the agreement, instrument, plan, or
1031 document in a specific manner or sequence.

1032 (c) At the time of the approval of any agreement,
1033 instrument, plan, or document by the board of directors, the
1034 agreement, instrument, plan, or document is not required to
1035 contain or have attached thereto any disclosure letter,
1036 disclosure schedules, or similar documents or instruments



1037 contemplated by the agreement, instrument, plan, or document
1038 that modify, supplement, qualify, or make exceptions to
1039 representations, warranties, covenants, or conditions
1040 contained in the agreement, instrument, plan, or document."

1041 "§10A-2A-8.60

1042 ~~(a) No contract or transaction between a corporation~~
1043 ~~and one or more of its directors or officers, or between a~~
1044 ~~corporation and any other corporation, partnership,~~
1045 ~~association, or other entity in which one or more of its~~
1046 ~~directors or officers, are directors or officers, or have a~~
1047 ~~financial interest, shall be void or voidable solely for this~~
1048 ~~reason, or solely because the director or officer is present~~
1049 ~~at or participates in the meeting of the board of directors or~~
1050 ~~committee which authorizes the contract or transaction, or~~
1051 ~~solely because the director's or officer's votes are counted~~
1052 ~~for that purpose, if:~~

1053 ~~(1) The material facts as to the director's or~~
1054 ~~officer's relationship or interest and as to the contract or~~
1055 ~~transaction are disclosed or are known to the board of~~
1056 ~~directors or the committee, and the board or committee in good~~
1057 ~~faith authorizes the contract or transaction by the~~
1058 ~~affirmative votes of a majority of the qualified directors,~~
1059 ~~even though the qualified directors be less than a quorum; or~~

1060 ~~(2) The material facts as to the director's or~~
1061 ~~officer's relationship or interest and as to the contract or~~
1062 ~~transaction are disclosed or are known to the stockholders~~
1063 ~~entitled to vote thereon, and the contract or transaction is~~
1064 ~~specifically approved in good faith by vote of the~~



1065 ~~stockholders; or~~

1066 ~~(3) The contract or transaction is fair as to the~~
1067 ~~corporation as of the time it is authorized, approved or~~
1068 ~~ratified, by the board of directors, a committee, or the~~
1069 ~~stockholders.~~

1070 ~~(b) Common or interested directors may be counted in~~
1071 ~~determining the presence of a quorum at a meeting of the board~~
1072 ~~of directors or of a committee which authorizes the contract~~
1073 ~~or transaction.~~

1074 (a) As used in this chapter, unless otherwise specified
1075 or unless the context otherwise requires, the following terms
1076 shall mean:

1077 (1) CONFLICTING INTEREST TRANSACTION means an act or
1078 transaction effected or proposed to be effected by the
1079 corporation (or by an entity controlled by the corporation):

1080 (i) to which, at the relevant time, a director or
1081 officer is a party;

1082 (ii) respecting which, at the relevant time, the
1083 director or officer had knowledge and a material financial
1084 interest known to the director or officer; or

1085 (iii) respecting which, at the relevant time, the
1086 director or officer knew that a related person was a party or
1087 had a material financial interest.

1088 (2) CONTROL or CONTROLLED BY means (i) having the
1089 power, directly or indirectly, to elect or remove a majority
1090 of the members of the board of directors or other governing
1091 authority of an entity, whether through the ownership of
1092 voting shares or interests, by contract, or otherwise or (ii)



1093 being subject to a majority of the risk of loss from the
1094 entity's activities or entitled to receive a majority of the
1095 entity's residual returns.

1096 (3) CONTROL GROUP means two or more persons that are
1097 not controlling stockholders that, by virtue of an agreement,
1098 arrangement, or understanding between or among those persons,
1099 constitute a controlling stockholder.

1100 (4) CONTROLLING STOCKHOLDER means any person that,
1101 together with (i) any related person and (ii) any person that
1102 controls, is controlled by, or is under common control with
1103 that person:

1104 (A) owns or controls a majority in voting power of the
1105 outstanding stock of the corporation entitled to vote
1106 generally in the election of directors or in the election of
1107 directors who have a majority in voting power of the votes of
1108 all directors on the board of directors;

1109 (B) has the right, by contract or otherwise, to cause
1110 the election of nominees who are selected at the discretion of
1111 that person and who constitute either a majority of the
1112 members of the board of directors or directors entitled to
1113 cast a majority in voting power of the votes of all directors
1114 on the board of directors;

1115 (C) has the power functionally equivalent to that of a
1116 stockholder that owns or controls a majority in voting power
1117 of the outstanding stock of the corporation entitled to vote
1118 generally in the election of directors by virtue of ownership
1119 or control of at least one-third in voting power of the
1120 outstanding stock of the corporation entitled to vote



1121 generally in the election of directors or in the election of
1122 directors who have a majority in voting power of the votes of
1123 all directors on the board of directors and the power to
1124 exercise managerial authority over the business and affairs of
1125 the corporation; or

1126 (D) owns or controls a majority in voting power of the
1127 outstanding stock of the corporation entitled to vote
1128 generally when the board of directors has been eliminated
1129 under Section 10A-2A-7.32.

1130 (5) CONTROLLING STOCKHOLDER TRANSACTION means an act or
1131 transaction between the corporation or one or more of its
1132 subsidiaries, on the one hand, and a controlling stockholder
1133 or a control group, on the other hand, or an act or
1134 transaction from which a controlling stockholder or a control
1135 group receives a material financial or other benefit not
1136 shared with the corporation's stockholders generally; provided
1137 that a merger under Section 10A-2A-11.05 is not a controlling
1138 stockholder transaction.

1139 (6) DISINTERESTED STOCKHOLDER means any stockholder
1140 that does not have a material financial interest in the act or
1141 transaction at issue or, if applicable, a material
1142 relationship with the controlling stockholder or other member
1143 of the control group, or any other person that has a material
1144 financial interest in the act or transaction.

1145 (7) FAIR TO THE CORPORATION means the act or
1146 transaction at issue, as a whole, is beneficial to the
1147 corporation or its stockholders in their capacity as
1148 stockholders, given the consideration paid to or received by



1149 the corporation or its stockholders or other benefit conferred
1150 on the corporation or its stockholders and taking into
1151 appropriate account whether the act or transaction meets both
1152 of the following: (i) it is fair in terms of the director's,
1153 officer's, controlling stockholder's, or control group's
1154 dealings with the corporation, as the case may be; and (ii) it
1155 is comparable to what might have been obtainable in an arm's
1156 length transaction available to the corporation.

1157 (8) GOING PRIVATE TRANSACTION means, other than a
1158 merger under Section 10A-2A-11.05:

1159 (i) for a corporation with a class of equity securities
1160 subject to Section 12(g) or Section 15(d) of the Securities
1161 Exchange Act of 1934 [15 U.S.C. § 781(g) or § 78o(d)] or
1162 listed on a national securities exchange, a "Rule 13e-3
1163 transaction" (as defined in 17 CFR § 240.13e-3(a)(3) or any
1164 successor provision); and

1165 (ii) for any other corporation to which subsection
1166 (a) (8)(i) does not apply, a transaction that (A) is a
1167 controlling stockholder transaction, including a merger,
1168 recapitalization, stock purchase, amendment to the certificate
1169 of incorporation, tender or exchange offer, stock exchange, or
1170 conversion and (B) pursuant to which all or substantially all
1171 of the shares of the corporation's capital stock held by the
1172 disinterested stockholders (but not those of the controlling
1173 stockholder or control group) are cancelled, converted,
1174 purchased, or otherwise acquired or cease to be outstanding in
1175 exchange for cash or property other than the stock or an
1176 eligible interest in the surviving organization.



1177 (9) MATERIAL FINANCIAL INTEREST means a nonspeculative
1178 financial interest in an act or transaction, other than one
1179 that would devolve on the corporation or the stockholders
1180 generally, that (i) in the case of a director or officer,
1181 would reasonably be expected to impair the objectivity of the
1182 director's or officer's judgment when participating in the
1183 negotiation, authorization, or approval of the act or
1184 transaction at issue or (ii) in the case of a stockholder or
1185 any other person (other than a director or officer), would be
1186 material to such stockholder or such other person.

1187 (10) MATERIAL RELATIONSHIP has the meaning set forth in
1188 Section 10A-2A-1.43.

1189 (11) QUALIFIED DIRECTOR has the meaning set forth in
1190 Section 10A-2A-1.43.

1191 (12) RELATED PERSON has the meaning set forth in
1192 Section 10A-2A-2.02.

1193 (13) RELEVANT TIME means (i) the time at which a
1194 directors' action respecting the act or transaction is taken
1195 in compliance with subsection (c) or (ii) if the act or
1196 transaction is not brought before the board of directors (or a
1197 committee thereof) for action under subsection (c), at the
1198 time the corporation (or an entity controlled by the
1199 corporation) becomes legally obligated to consummate the act
1200 or transaction.

1201 (14) REQUIRED DISCLOSURE means disclosure of (i) the
1202 existence and nature of the director's or officer's
1203 conflicting interest and (ii) all facts known to the director
1204 or officer respecting the subject matter of the act or



1205 transaction that a qualified director would reasonably believe
1206 to be material in deciding whether to proceed with the act or
1207 transaction.

1208 (b) (1) An act or transaction effected or proposed to be
1209 effected by a corporation (or by an entity controlled by the
1210 corporation) may not be the subject of equitable relief, or
1211 give rise to an award of damages or other sanctions against a
1212 director or officer of the corporation, on the grounds that
1213 the director or officer has an interest respecting the act or
1214 transaction, if the act or transaction is not a conflicting
1215 interest transaction.

1216 (2) Except for a controlling stockholder transaction
1217 under subsection (e), a conflicting interest transaction may
1218 not be the subject of equitable relief, or give rise to an
1219 award of damages or other sanctions against a director or
1220 officer of the corporation, in a proceeding by a stockholder
1221 or by or in the right of the corporation, on the grounds that
1222 the director or officer has an interest respecting the
1223 conflicting interest transaction, if:

1224 (i) the directors' action respecting the act or
1225 transaction was taken in compliance with subsection (c) at any
1226 time; or

1227 (ii) the stockholders' action respecting the act or
1228 transaction was taken in compliance with subsection (d) at any
1229 time; or

1230 (iii) the act or transaction is at the relevant time
1231 fair to the corporation.

1232 (c) (1) Directors' action respecting a conflicting



1233 interest transaction is effective for purposes of subsection
1234 (b) (2) (i) if the conflicting interest transaction has been
1235 authorized, after required disclosure by the conflicted
1236 director or officer of information not already known by the
1237 qualified directors, or after modified disclosure in
1238 compliance with subsection (c) (2), by (A) the affirmative vote
1239 of a majority (but no fewer than two) of the qualified
1240 directors who voted on the conflicting interest transaction or
1241 (B) the affirmative vote of a majority of the members of a
1242 board committee that is composed of only qualified directors
1243 (but no fewer than two). Directors' action respecting a
1244 conflicting interest transaction is effective even though the
1245 conflicted director or officer is present at or participates
1246 in the meeting of the board or committee which authorizes the
1247 act or transaction or was involved in the initiation,
1248 negotiation, or approval of the act or transaction.

1249 (2) Notwithstanding subsection (c) (1), when a
1250 transaction is a conflicting interest transaction only because
1251 a related person described in clause (v) or (vi) of the
1252 definition of "related person" in Section 10A-2A-2.02 is a
1253 party to or has a material financial interest in the
1254 conflicting interest transaction, the conflicted director or
1255 officer is not obligated to make required disclosure to the
1256 extent that the director or officer reasonably believes that
1257 doing so would violate a duty imposed under law, a legally
1258 enforceable obligation of confidentiality, or a professional
1259 ethics rule, provided that the conflicted director or officer
1260 discloses to the qualified directors voting on the conflicting



1261 interest transaction:

1262 (i) all information required to be disclosed that is
1263 not so violative;

1264 (ii) the existence and nature of the director's or
1265 officer's conflicting interest; and

1266 (iii) the nature of the conflicted director's or
1267 officer's duty not to disclose the confidential information.

1268 (3) A majority (but no fewer than two) of all the
1269 qualified directors on the board of directors, or on the board
1270 committee, constitutes a quorum for purposes of action that
1271 complies with this section.

1272 (4) Where directors' action under this subsection (c)
1273 does not satisfy a quorum or voting requirement applicable to
1274 the authorization of the conflicting interest transaction by
1275 reason of the certificate of incorporation, the bylaws, or
1276 another provision of this chapter, independent action to
1277 satisfy those authorization requirements shall be taken by the
1278 board of directors or a board committee, in which action
1279 directors who are not qualified directors may participate.

1280 (5) Where directors' action under this subsection (c)
1281 is taken without a meeting in accordance with Section
1282 10A-2A-8.21, the action is effective even though a conflicted
1283 director signs a consent to that action.

1284 (d) (1) Stockholders' action respecting a conflicting
1285 interest transaction is effective for purposes of subsection
1286 (b) (2) (ii) if a majority of the votes cast by the holders of
1287 all qualified shares are in favor of the conflicting interest
1288 transaction after (i) notice to stockholders describing the



1289 action to be taken respecting the conflicting interest
1290 transaction, (ii) provision to the corporation of the
1291 information referred to in subsection (d) (2), and (iii)
1292 communication to the stockholders entitled to vote on the
1293 conflicting interest transaction of the information that is
1294 the subject of required disclosure, to the extent the
1295 information is not already known by them. In the case of
1296 stockholders' action at a meeting, the stockholders entitled
1297 to vote shall be determined as of the record date for notice
1298 of the meeting.

1299 (2) A director or officer who has a conflicting
1300 interest respecting the conflicting interest transaction
1301 shall, before the stockholders' vote, inform the secretary or
1302 other officer or agent of the corporation authorized to
1303 tabulate votes, in writing, of the number of shares that the
1304 director or officer knows are not qualified shares under
1305 subsection (c), and the identity of the holders of those
1306 shares.

1307 (3) For purposes of this section: (i) "holder" means
1308 and "held by" refers to shares held by a record stockholder, a
1309 beneficial stockholder, and an unrestricted voting trust
1310 beneficial owner and (ii) "qualified shares" means all shares
1311 entitled to be voted with respect to the conflicting interest
1312 transaction except for shares that the secretary or other
1313 officer or agent of the corporation authorized to tabulate
1314 votes either knows, or under subsection (b) is notified, are
1315 held by (A) a director or officer who has a conflicting
1316 interest respecting the conflicting interest transaction or



1317 (B) a related person of the director or officer (excluding a
1318 person described in clause (vi) of the definition of a related
1319 person in Section 10A-2A-2.02).

1320 (4) A majority of the votes entitled to be cast by the
1321 holders of all qualified shares constitutes a quorum for
1322 purposes of compliance with this section. Subject to the
1323 provisions of subsection (e), stockholders' action that
1324 otherwise complies with this section is not affected by the
1325 presence of holders, or by the voting, of shares that are not
1326 qualified shares.

1327 (5) If a stockholders' vote does not comply with
1328 subsection (d) (1) solely because of a director's or officer's
1329 failure to comply with subsection (d) (2), and if the director
1330 or officer establishes that the failure was not intended to
1331 influence and did not in fact determine the outcome of the
1332 vote, then the action by the stockholders respecting the
1333 conflicting interest transaction shall be given effect.

1334 (6) Where stockholders' action under this section does
1335 not satisfy a quorum or voting requirement applicable to the
1336 authorization of the conflicting interest transaction by
1337 reason of the certificate of incorporation, the bylaws, or
1338 another provision of this chapter, independent action to
1339 satisfy those authorization requirements shall be taken by the
1340 stockholders, in which action shares that are not qualified
1341 shares may participate.

1342 (7) Where stockholders' action under this subsection
1343 (d) is taken without a meeting in accordance with Section
1344 10A-2A-7.04, the action is effective even though stockholders



1345 holding shares that are not qualified shares sign a consent to
1346 that action.

1347 (e) (1) An act or transaction effected or proposed to be
1348 effected by the corporation (or by an entity controlled by the
1349 corporation) may not be the subject of equitable relief, or
1350 give rise to an award of damages or other sanctions against a
1351 stockholder of the corporation, on the grounds that the
1352 stockholder has an interest respecting the act or transaction,
1353 if the act or transaction is not a controlling stockholder
1354 transaction.

1355 (2) A controlling stockholder transaction (other than a
1356 going private transaction) may not be the subject of equitable
1357 relief, or give rise to an award of damages or other
1358 sanctions, against a director or officer of the corporation or
1359 any controlling stockholder or member of a control group, by
1360 reason of a claim based on a breach of fiduciary duty by a
1361 director or officer, or a duty (as described in Section
1362 10A-2A-6.22) of a controlling stockholder or member of a
1363 control group, if:

1364 (i) the material facts as to the controlling
1365 stockholder transaction (including the controlling
1366 stockholder's or control group's interest therein) are
1367 disclosed or are known to all members of the board of
1368 directors or a committee of the board of directors to which
1369 the board of directors has expressly delegated the authority
1370 to negotiate (or oversee the negotiation of) and to reject the
1371 controlling stockholder transaction, and the controlling
1372 stockholder transaction is approved (or recommended for



1373 approval) by the affirmative vote of a majority (but no fewer
1374 than two) of the qualified directors who voted on the
1375 controlling stockholder transaction; or

1376 (ii) the controlling stockholder transaction is
1377 conditioned, by its terms, as in effect at the time it is
1378 submitted to stockholders for their approval or ratification,
1379 on the approval of or ratification by disinterested
1380 stockholders, and the controlling stockholder transaction is
1381 approved or ratified by an informed, uncoerced, affirmative
1382 vote of a majority of the votes cast by the disinterested
1383 stockholders; or

1384 (iii) the controlling stockholder transaction is at the
1385 relevant time fair to the corporation.

1386 (3) A controlling stockholder transaction constituting
1387 a going private transaction may not be the subject of
1388 equitable relief, or give rise to an award of damages or other
1389 sanctions, against a director or officer of the corporation or
1390 any controlling stockholder or member of a control group by
1391 reason of a claim based on breach of fiduciary duty by a
1392 director or officer or a duty (described in Section
1393 10A-2A-6.22) of a controlling stockholder or member of a
1394 control group, if:

1395 (i) the controlling stockholder transaction is approved
1396 (or recommended for approval) in accordance with subsection
1397 (e) (2) (i) and approved in accordance with subsection
1398 (e) (2) (ii); or

1399 (ii) the controlling stockholder transaction is at the
1400 relevant time fair to the corporation.



1401 (4) No person shall be deemed a controlling stockholder
1402 unless that person satisfies the criteria in subsection
1403 (a) (4). No two or more persons that are not controlling
1404 stockholders shall be a control group unless they satisfy the
1405 criteria in subsection (a) (3).

1406 (f) For purposes of this section, if a corporation has
1407 eliminated its board of directors under Section 10A-2A-7.32,
1408 each stockholder of that corporation shall be deemed to be a
1409 director, in addition to their capacity as a stockholder."

1410 "§10A-2A-14.10

1411 (a) The circuit court for the county in which the
1412 corporation's principal office is located in this state, and
1413 if none in this state, the circuit court for the county in
1414 which the corporation's most recent registered office is
1415 located may dissolve a corporation:

1416 (1) in a proceeding by the Attorney General if it is
1417 established that:

1418 (i) the corporation obtained its certificate of
1419 incorporation through fraud; or

1420 (ii) the corporation has continued to exceed or abuse
1421 the authority conferred upon it by law;

1422 (2) in a proceeding by a stockholder if it is
1423 established that:

1424 (i) the directors are deadlocked in the management of
1425 the corporate affairs, the stockholders are unable to break
1426 the deadlock, and irreparable injury to the corporation is
1427 threatened or being suffered, or the business and affairs of
1428 the corporation can no longer be conducted to the advantage of



1429 the stockholders generally, because of the deadlock;
1430 (ii) the directors or those in control of the
1431 corporation have acted, are acting, or will act in a manner
1432 that is illegal, ~~oppressive~~, or fraudulent;

1433 (iii) the stockholders are deadlocked in voting power
1434 and have failed, for a period that includes at least two
1435 consecutive annual meeting dates, to elect successors to
1436 directors whose terms have expired; or

1437 (iv) the corporate assets are being misapplied or
1438 wasted;

1439 (3) in a proceeding by a creditor if it is established
1440 that:

1441 (i) the creditor's claim has been reduced to judgment,
1442 the execution on the judgment returned unsatisfied, and the
1443 corporation is insolvent; or

1444 (ii) the corporation has admitted in writing that the
1445 creditor's claim is due and owing and the corporation is
1446 insolvent;

1447 (4) in a proceeding by the corporation to have its
1448 voluntary dissolution continued under court supervision; or

1449 (5) in a proceeding by a stockholder if the corporation
1450 has abandoned its business and has failed within a reasonable
1451 time to liquidate and distribute its assets and dissolve.

1452 (b) Subsection (a) (2) shall not apply in the case of a
1453 corporation that, on the date of the filing of the proceeding,
1454 has a class or series of stock which is:

1455 (1) a covered security under Section 18(b) (1) (A) or (B)
1456 of the Securities Act of 1933; or



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1457 (2) not a covered security, but is held by at least
1458 2,000 stockholders.

1459 (c) In subsection (a), "stockholder" means a record
1460 stockholder, a beneficial stockholder, and an unrestricted
1461 voting trust beneficial owner, and in subsection (b),
1462 "stockholder" means a record stockholder, a beneficial
1463 stockholder, and a voting trust beneficial owner."

1464 "§10A-2A-16.02

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

1466 (a) A stockholder of a corporation is entitled to
1467 inspect and copy, during regular business hours at the
1468 corporation's principal office, any of the records of the
1469 corporation described in Section 10A-2A-16.01(a), excluding
1470 minutes of meetings of, and records of actions taken without a
1471 meeting by, the corporation's board of directors and board
1472 committees established under Section 10A-2A-8.25, if the
1473 stockholder gives the corporation a signed written notice of
1474 the stockholder's demand at least five business days before
1475 the date on which the stockholder wishes to inspect and copy
1476 and the demand provides the information required in subsection
1477 (h) if the stockholder is not a record stockholder as defined
1478 in clause (i) of the definition of record stockholder in
1479 Section 10A-2A-1.40.

1480 (b) A stockholder of a corporation is entitled to
1481 inspect and copy, during regular business hours at a
1482 reasonable location specified by the corporation, any of the
1483 following records of the corporation if the stockholder meets
1484 the requirements of subsection (c) and gives the corporation a



1485 signed written notice of the stockholder's demand at least
1486 five business days before the date on which the stockholder
1487 wishes to inspect and copy:

1488 (1) the financial statements of the corporation
1489 maintained in accordance with Section 10A-2A-16.01(b);
1490 provided, however, that the corporation may deliver or make
1491 available the financial statements to the requesting
1492 stockholder by posting them on the corporation's website or by
1493 other generally recognized means. If financial statements have
1494 been prepared for the corporation on the basis of generally
1495 accepted accounting principles for that specified period, the
1496 corporation shall deliver or make available those financial
1497 statements to the requesting stockholder. If the annual
1498 financial statements to be delivered or made available to the
1499 requesting stockholder are audited or otherwise reported upon
1500 by a public accountant, the report shall also be delivered or
1501 made available to the requesting stockholder. The corporation
1502 may also fulfill its responsibilities under this section by
1503 delivering the specified financial statements, or otherwise
1504 making them available, in any manner permitted by the
1505 applicable rules and regulations of the United States
1506 Securities and Exchange Commission;

1507 (2) the accounting records of the corporation
1508 maintained in accordance with Section 10A-2A-16.01(c) that
1509 permitted the preparation of the financial statements
1510 maintained in accordance with Section 10A-2A-16.01(b);

1511 (3) excerpts from minutes of any meeting of, or records
1512 of any actions taken without a meeting by, the corporation's



1513 board of directors and board committees maintained in
1514 accordance with Section 10A-2A-16.01(a); and
1515 (4) the record of stockholders maintained in accordance
1516 with Section 10A-2A-16.01(d); provided however, the
1517 corporation may withhold the record of stockholders maintained
1518 in accordance with Section 10A-2A-16.01(d) if the demanding
1519 stockholder of the corporation has, without the consent of the
1520 corporation, within two years preceding the stockholder's
1521 demand sold or offered for sale any list of the stockholders
1522 of the corporation or has aided or abetted any person in
1523 selling or offering to sell any list of the stockholders of
1524 the corporation.

1525 (c) (1) A stockholder may inspect and copy the records
1526 described in subsection (b) only if:

1527 (1) (i) the stockholder has delivered to the corporation
1528 a signed written notice of the stockholder's demand at least
1529 five business days before the date on which the stockholder
1530 wishes to inspect and copy;

1531 (ii) the stockholder's demand provides the information
1532 required in subsection (h) if the stockholder is not a record
1533 stockholder as defined in clause (i) of the definition of
1534 record stockholder in Section 10A-2A-1.40;

1535 (iii) the stockholder's demand is made in good faith
1536 and for a proper purpose;

1537 (2) (iv) the stockholder's demand describes with
1538 reasonable particularity the stockholder's purpose and the
1539 records the stockholder desires to inspect; and

1540 (3) (v) the records are directly connected with related



1541 to the stockholder's purpose.

1542 (2) For purposes of this subsection (c), a proper
1543 purpose shall mean a purpose directly related to the
1544 stockholder's interest as a stockholder; provided, however,
1545 that a demand shall not be for a proper purpose if the
1546 corporation reasonably determines that the demand is in
1547 connection with:

1548 (i) an active or pending derivative proceeding in the
1549 right of the corporation under Division D of Article 7 of this
1550 chapter that is or is expected to be instituted or maintained
1551 by the stockholder or the stockholder's affiliate; or
1552 (ii) an active or pending civil lawsuit to which the
1553 corporation, or its affiliate, and the stockholder, or the
1554 stockholder's affiliate, are, or are expected to be,
1555 adversarial named parties.

1556 (d) (1) The corporation may redact portions of the
1557 records to be inspected and copied under subsections (a) and
1558 (b) to the extent the portions so redacted are not directly
1559 related to the stockholder's purpose. The corporation may also
1560 impose reasonable restrictions and conditions on access to and
1561 use of the records to be inspected and copied under
1562 subsections (a) and (b), including designating information
1563 confidential and imposing nondisclosure and safeguarding, and
1564 may further keep confidential from its stockholders and other
1565 persons, for a period of time as the corporation deems
1566 reasonable any information that the corporation reasonably
1567 believes to be in the nature of a trade secret or other
1568 information the disclosure of which the corporation in good



1569 faith believes is not in the best interest of the corporation
1570 or could damage the corporation or its business or affairs, or
1571 that the corporation is required by law or by agreement with a
1572 third party to keep confidential. In any dispute concerning
1573 the reasonableness of a restriction under this subsection, the
1574 corporation has the burden of proving reasonableness.

1575 ~~(2) If a stockholder is entitled to inspect and copy
1576 the records described in subsection (a) or having met the
1577 requirements of subsection (c) is entitled to inspect and copy
1578 the records described in subsection (b), and an officer of the
1579 corporation with the authority to bind the corporation who, or
1580 a corporation which, without reasonable cause, refuses to
1581 allow that stockholder to inspect and copy those records shall
1582 be liable to that stockholder for a penalty of an amount not
1583 to exceed 10 percent of the value of the shares of stock owned
1584 by that stockholder, in addition to any other damages or
1585 remedy afforded that stockholder by law. It shall be a defense
1586 to an action brought to collect the penalty specified in this
1587 section that the stockholder suing therefor has previously
1588 sold or offered for sale any list of stockholders of the
1589 corporation, or any other corporation or knowingly has aided
1590 or abetted any person in procuring any list of stockholders,
1591 or improperly has used any information secured through any
1592 prior inspection of those records of the corporation, or was
1593 not acting in good faith or for a proper purpose in making
1594 this demand.~~

1595 (e) For any meeting of stockholders for which the
1596 record date for determining stockholders entitled to vote at



1597 the meeting is different than the record date for notice of
1598 the meeting, any person who becomes a stockholder subsequent
1599 to the record date for notice of the meeting and is entitled
1600 to vote at the meeting is entitled to obtain from the
1601 corporation upon request the notice and any other information
1602 provided by the corporation to stockholders in connection with
1603 the meeting, unless the corporation has made that information
1604 generally available to stockholders by posting it on its
1605 website or by other generally recognized means. Failure of a
1606 corporation to provide that information does not affect the
1607 validity of action taken at the meeting.

1608 (f) The right of inspection granted by this section may
1609 not be abolished or limited by a corporation's certificate of
1610 incorporation or bylaws, but the right of inspection granted
1611 by this section may be limited to the extent permitted under
1612 Section 10A-2A-7.32.

1613 (g) This section does not affect ~~or~~
1614 ~~(1)~~ the right of a stockholder to inspect records under
1615 Section 10A-2A-7.20 or, if the stockholder is in litigation
1616 with the corporation, to the same extent as any other
1617 litigant ~~or~~.

1618 ~~(2) the power of a court, independently of this~~
1619 ~~chapter, to compel the production of corporate records for~~
1620 ~~examination and to impose reasonable restrictions as provided~~
1621 ~~in Section 10A-2A-16.04(c), provided that, in the case of~~
1622 ~~production of records described in subsection (b) of this~~
1623 ~~section at the request of a stockholder, the stockholder has~~
1624 ~~met the requirements of subsection (c).~~



1625 (h) For purposes of this section, "stockholder" means a
1626 record stockholder, a beneficial stockholder, and an
1627 unrestricted voting trust beneficial owner. If a stockholder
1628 is not a record stockholder as defined in clause (i) of the
1629 definition of record stockholder in Section 10A-2A-1.40, the
1630 demand described in subsections (a) and (b) shall state the
1631 person's status as a beneficial stockholder or an unrestricted
1632 voting trust beneficial owner, be accompanied by documentary
1633 evidence thereof, and state that such documentary evidence is
1634 a true and correct copy of what it purports to be.

1635 (i) The right of a stockholder to inspect and copy the
1636 records described in subsections (a) and (b) may be denied by
1637 the corporation if the corporation determines that the
1638 demanding stockholder has within two years preceding his, her,
1639 or its demand improperly used any information secured through
1640 any prior examination of the records of the corporation.

1641 (j) The right to inspect and copy the records described
1642 in subsections (a) and (b) shall not be available for any
1643 stockholder of a corporation that has been subject to the
1644 filing requirements pursuant to Section 13 or Section 15(d) of
1645 the Securities Exchange Act of 1934, as amended, 15 U.S.C. §§
1646 78m or 78o(d) for at least the preceding 12 months and the
1647 corporation has filed with the Securities and Exchange
1648 Commission all reports required to be filed thereunder;
1649 provided, however, the corporation shall provide the
1650 requesting stockholder with the information regarding the
1651 stockholders of the corporation as may be required by the
1652 Securities Exchange Act of 1934, as amended, and the rules and



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1653 regulations thereunder."

1654 "§10A-2A-16.03

1655 If a stockholder is entitled to inspection and copying
1656 rights under Section 10A-2A-16.02:

1657 (a) A stockholder may appoint an agent or attorney to
1658 exercise the stockholder's inspection and copying rights under
1659 Section 10A-2A-16.02. In that case, the demand shall be
1660 accompanied by a power of attorney or other writing which
1661 authorizes the agent or attorney to so act on behalf of the
1662 stockholder.

1663 (b) The corporation may, if reasonable, satisfy the
1664 right of a stockholder to copy records under Section
1665 10A-2A-16.02 by furnishing to the stockholder copies by
1666 photocopy or other means chosen by the corporation, including
1667 furnishing copies through an electronic transmission.

1668 (c) The corporation may comply at its expense with a
1669 stockholder's demand to inspect the record of stockholders
1670 under Section 10A-2A-16.02(b) (4) by providing the stockholder
1671 with a list of stockholders that was compiled no earlier than
1672 the date of the stockholder's demand.

1673 (d) The corporation may impose a reasonable charge to
1674 cover the costs of providing copies of documents to the
1675 stockholder, which may be based on an estimate of those
1676 costs."

1677 "§10A-2A-16.04

1678 If a stockholder is entitled to inspection and copying
1679 rights under Section 10A-2A-16.02:

1680 (a) If a corporation does not allow a stockholder who



1681 complies with Section 10A-2A-16.02(a) to inspect and copy any
1682 records required by that section to be available for
1683 inspection, the designated court, and if none, the circuit
1684 court for the county in which the corporation's principal
1685 office is located in this state, and if none in this state,
1686 the circuit court for the county in which the corporation's
1687 most recent registered office is located may summarily order
1688 inspection and copying of the records demanded at the
1689 corporation's expense upon application of the stockholder.

1690 (b) If a corporation does not within a reasonable time
1691 allow a stockholder who complies with Section 10A-2A-16.02(b)
1692 to inspect and copy the records required by that section, the
1693 stockholder who complies with Section 10A-2A-16.02(c) may
1694 apply to the designated court, and if none, the circuit court
1695 for the county in which the corporation's principal office is
1696 located in this state, and if none in this state, the circuit
1697 court for the county in which the corporation's most recent
1698 registered office is located for an order to permit inspection
1699 and copying of the records demanded. The court shall dispose
1700 of an application under this subsection on an expedited basis.

1701 (c) If the court orders inspection and copying of the
1702 records demanded under Section 10A-2A-16.02(b), it may impose
1703 reasonable restrictions on their confidentiality, use, or
1704 distribution by the demanding stockholder and it shall also
1705 order the corporation to pay the stockholder's expenses
1706 incurred to obtain the order unless the corporation
1707 establishes that it refused inspection in good faith because
1708 the corporation had:



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

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

"§10A-3A-1.60

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

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

(2) Section 10A-3A-8.53 or Section 10A-3A-8.55*L* (i) is not a party to the proceeding, (ii) is not a director as to whom a transaction is a~~director's~~ conflicting interest transaction or who sought a disclaimer of the nonprofit corporation's interest in a~~business~~ corporate opportunity under Section~~10A-2A-8.60~~ 10A-3A-8.70, which transaction or



1737 disclaimer is challenged, and (iii) does not have a material
1738 relationship with a director described in either clause (i) or
1739 clause (ii) of this subsection (a) (2); ~~or~~

1740 (3) ~~Section 10A-2A-8.60~~ Sections 10A-3A-8.61 or
1741 10A-3A-8.62, is not a director (i) as to whom the ~~contract act~~
1742 or transaction is a ~~director's~~ conflicting interest
1743 transaction, (ii) who has a material relationship with another
1744 director as to whom the act or transaction is a ~~director's~~
1745 conflicting interest transaction, or (iii) who ~~pursues or~~
1746 ~~takes advantage of the business opportunity, directly, or~~
1747 ~~indirectly through or on behalf of another person, or~~ (iv) has
1748 a material relationship with a controlling person that has a
1749 material financial interest in the act or transaction; or

1750 (4) Section 10A-3A-8.70, is not a director who (i)
1751 pursues or takes advantage of a corporate opportunity,
1752 directly, or indirectly through or on behalf of another person
1753 or (ii) has a material relationship with a director or officer
1754 who pursues or takes advantage of ~~the business a corporate~~
1755 opportunity, directly, or indirectly through or on behalf of
1756 another person.

1757 (b) ~~For purposes of this section:~~

1758 (1) "MATERIAL RELATIONSHIP" As used in this chapter,
1759 unless otherwise specified or unless the context otherwise
1760 requires, a "material relationship" means a familial,
1761 financial, professional, employment, or other relationship
1762 that would reasonably be expected to impair the objectivity of
1763 the director's judgment when participating in the ~~action to be~~
1764 ~~taken; and~~ negotiation, authorization, or approval of the act



1765 or transaction at issue.

1766 (2) "MATERIAL INTEREST" means an actual or potential
1767 benefit or detriment (other than one which would devolve on
1768 the nonprofit corporation or the members generally) that would
1769 reasonably be expected to impair the objectivity of the
1770 director's judgment when participating in the action to be
1771 taken.

1772 (c) The presence of one or more of the following
1773 circumstances shall not automatically prevent a director from
1774 being a qualified director:

1775 (1) designation, nomination, or vote in the election of
1776 the director to the current board of directors by any director
1777 who is not a qualified director with respect to the matter (or
1778 by any person that has a material ~~relationship with that~~
1779 ~~director financial interest in an act or transaction~~), acting
1780 alone or participating with others; or

1781 (2) service as a director of another nonprofit
1782 corporation of which a director who is not a qualified
1783 director with respect to the matter (or any individual who has
1784 a material relationship with that director), is or was also a
1785 director."

1786 "§10A-3A-2.02

1787 Section 10A-1-3.05 shall not apply to this chapter.

1788 Instead:

1789 (a) The certificate of incorporation must set forth:

1790 (1) a name for the nonprofit corporation that satisfies
1791 the requirements of Article 5 of Chapter 1;

1792 (2) the street and mailing address of the nonprofit



1793 corporation's initial registered office, the county within
1794 this state in which the street and mailing address is located,
1795 and the name of the nonprofit corporation's initial registered
1796 agent at that office as required by Article 5 of Chapter 1;

1797 (3) that the nonprofit corporation is incorporated
1798 under this chapter;

1799 (4) the name and address of each incorporator; and

1800 (5)(i) if the nonprofit corporation will have members,
1801 a statement to that effect; or

1802 (ii) if the nonprofit corporation will not have
1803 members, a statement to that effect.

1804 (b) The certificate of incorporation may set forth:

1805 (1) the names and addresses of the individuals who are
1806 to serve as the initial directors;

1807 (2) provisions not inconsistent with law regarding:

1808 (i) the purpose or purposes for which the nonprofit
1809 corporation is organized;

1810 (ii) managing the activities and regulating the affairs
1811 of the nonprofit corporation;

1812 (iii) defining, limiting, and regulating the powers of
1813 the nonprofit corporation, its board of directors, and the
1814 members;

1815 (iv) the characteristics, qualifications, rights,
1816 limitations, and obligations attaching to each or any class of
1817 members;

1818 (v) ~~subject to Section 10A-3A-4.20,~~ limiting a member's
1819 right to inspect and copy the records of the nonprofit
1820 corporation under Section 10A-3A-4.02(b);



(vi) the distribution of assets on dissolution;

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

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

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

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

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

(5) a provision permitting or making obligatory indemnification of a director for liability as defined in Section 10A-3A-8.50 to any person for any action taken, or any failure to take any action, as a director, except liability for (i) receipt of a financial benefit to which the director



1849 is not entitled, (ii) an intentional infliction of harm on the
1850 nonprofit corporation or its members, (iii) a violation of
1851 Section 10A-3A-8.32, or (iv) an intentional violation of
1852 criminal law;

1853 (6) a provision limiting or eliminating any duty of a
1854 director or any other person to offer the nonprofit
1855 corporation the right to have or participate in any, or one or
1856 more classes or categories of, corporate opportunities, before
1857 the pursuit or taking of the corporate opportunity by the
1858 director or other person; provided that the application of
1859 that provision to an officer or a related person of that
1860 officer (i) also requires approval of that application by the
1861 board of directors, subsequent to the effective date of the
1862 provision, by action of the disinterested or qualified
1863 directors taken in compliance with the same procedures as are
1864 set forth in Section ~~10A-3A-8.60~~, 10A-3A-8.70; and (ii) may be
1865 limited by the authorizing action of the board of directors;
1866 and

1867 (7) provisions required if the nonprofit corporation is
1868 to be exempt from taxation under federal, state, or local law.

1869 (c) The certificate of incorporation need not set forth
1870 any of the corporate powers enumerated in Sections 10A-1-2.11,
1871 10A-1-2.12, and 10A-1-2.13.

1872 (d) Provisions of the certificate of incorporation may
1873 be made dependent upon facts objectively ascertainable outside
1874 the certificate of incorporation in accordance with Section
1875 10A-3A-1.04.

1876 (e) As used in this section, the term "control" or



1877 "controlled" has the meaning specified in Section 10A-3A-8.60
1878 and the term "related person" means:—

1879 (i) the individual's spouse;—
1880 (ii) a child, stepchild, grandchild, parent,
1881 stepparent, grandparent, sibling, stepsibling, half sibling,
1882 aunt, uncle, niece, or nephew (or spouse of any such person)
1883 of the individual or of the individual's spouse;—

1884 (iii) a natural person living in the same home as the
1885 individual; (iv) an entity (other than the nonprofit
1886 corporation or an entity controlled by the nonprofit
1887 corporation) controlled by the individual or any person
1888 specified above in this definition;—

1889 (v) a domestic or foreign:—
1890 (A) business or nonprofit corporation (other than the
1891 nonprofit corporation or an entity controlled by the nonprofit
1892 corporation) of which the individual is a director;—

1893 (B) unincorporated entity of which the individual is a
1894 general partner or a member of the governing authority, or

1895 (C) individual, trust, or estate for whom or of which
1896 the individual is a trustee, guardian, personal
1897 representative, or like fiduciary; or

1898 (vi) a person that is, or an entity that is, controlled
1899 by, an employer of the individual.

1900 (f) The certificate of incorporation may not contain
1901 any provision that would impose liability on a member or a
1902 director for the attorney's fees or expenses of the nonprofit
1903 corporation or any other party in connection with an internal
1904 corporate claim, as defined in Section ~~10A-3A-2.07(d)~~



1905 10A-3A-2.07(c), or in connection with a claim that a member,
1906 director, or a person or group of persons specified in the
1907 certificate of incorporation, acting in that person's capacity
1908 as a member, director, or person or group of persons specified
1909 in the certificate of incorporation, has brought in an action,
1910 suit, or proceeding described in Section 10A-3A-2.07(b).

1911 (g) The certificate of incorporation is a part of a
1912 binding contract between the nonprofit corporation and (i) the
1913 members in a membership nonprofit corporation; and (ii) the
1914 directors in a nonmembership nonprofit corporation, subject to
1915 the provisions of this chapter.

1916 (h) For purposes of subsection (b) (4) only, unless the
1917 certificate of incorporation otherwise provides, "officer"
1918 means an individual appointed or elected in accordance with
1919 Section 10A-3A-8.40 as (i) president, chief executive officer,
1920 chief operating officer, chief financial officer, chief legal
1921 officer, secretary, controller, treasurer, or chief accounting
1922 officer of the nonprofit corporation and (ii) any officer of
1923 the nonprofit corporation designated by resolution of the
1924 board of directors as an "officer" for purposes of subsection
1925 (b) (4). The board of directors may from time to time by
1926 resolution determine that one or more of the officers
1927 designated in accordance with subsection (h) (ii) shall no
1928 longer be an "officer" for purposes of subsection (b) (4), but
1929 no such resolution shall be effective as to any such officer,
1930 or any act or omission of any such officer, prior to the
1931 adoption of such resolution.

1932 (i) No provision in the certificate of incorporation



1933 pursuant to subsection (b) (4) shall eliminate or limit the
1934 liability of a director or officer for any act or omission
1935 occurring prior to the date when the provision in the
1936 certificate of incorporation becomes effective. Any amendment,
1937 repeal, or elimination of a provision in the certificate of
1938 incorporation pursuant to subsection (b) (4) shall not affect
1939 its application with respect to an act or omission by a
1940 director or officer occurring before the amendment, repeal, or
1941 elimination unless the provision in the certificate of
1942 incorporation provides otherwise at the time of the act or
1943 omission."

1944 "§10A-3A-2.07

1945 (a) The certificate of incorporation or the bylaws may
1946 require, consistent with applicable jurisdictional
1947 requirements, that any or all internal corporate claims shall
1948 be brought exclusively in any specified court or courts of
1949 this state and, if so specified, in any additional courts in
1950 this state or in any other jurisdictions with which the
1951 nonprofit corporation has a reasonable relationship and no
1952 provision of the certificate of incorporation or the bylaws
1953 may prohibit bringing those claims in the courts of this state
1954 or require those claims to be determined by arbitration.

1955 ~~(b) A provision of the certificate of incorporation or~~
1956 ~~bylaws adopted under subsection (a) shall not have the effect~~
1957 ~~of conferring jurisdiction on any court or over any person or~~
1958 ~~claim, and shall not apply if none of the courts specified by~~
1959 ~~that provision has the requisite personal and subject matter~~
1960 ~~jurisdiction. If the court or courts of this state specified~~



1961 ~~in a provision adopted under subsection (a) do not have the~~
1962 ~~requisite personal and subject matter jurisdiction and another~~
1963 ~~court of this state does have jurisdiction, then the internal~~
1964 ~~corporate claim may be brought in the other court of this~~
1965 ~~state, notwithstanding that the other court of this state is~~
1966 ~~not specified in that provision, and in any other court~~
1967 ~~specified in that provision that has the requisite~~
1968 ~~jurisdiction.~~

1969 ~~(c) No provision of the certificate of incorporation or~~
1970 ~~the bylaws may prohibit bringing an internal corporate claim~~
1971 ~~in the courts of this state or require those claims to be~~
1972 ~~determined by arbitration.~~

1973 (b) With respect to claims that are not internal
1974 corporate claims, the certificate of incorporation or bylaws
1975 may require members, directors, officers, and the person or
1976 group of persons specified in the certificate of
1977 incorporation, when acting in that person's capacity as a
1978 member, director, officer, or person or group of persons
1979 specified in the certificate of incorporation, to bring any or
1980 all such claims only in any specified court or courts of this
1981 state and, if so specified, in any additional courts in this
1982 state or in any other jurisdictions with which the nonprofit
1983 corporation has a reasonable relationship, if those claims
1984 relate to the business and affairs of the nonprofit
1985 corporation, the conduct of its affairs, or the rights or
1986 powers of the nonprofit corporation or its members, directors,
1987 officers, or person or persons specified in the certificate of
1988 incorporation; provided that such requirement is consistent



1989 with applicable jurisdictional requirements and allows a
1990 member, director, officer, and person or group of persons
1991 specified in the certificate of incorporation to bring such
1992 claims in at least one court in this state that has
1993 jurisdiction over those claims.

1994 ~~(d)~~ (c) "Internal corporate claim" means, for the
1995 purposes of this section, ~~(i)~~ any claim, action, suit, or
1996 proceeding (i) that is based upon a violation of a duty under
1997 the laws of this state by a current or former director,
1998 officer, or member in their capacities as such, (ii) ~~any~~
1999 ~~action asserting a claim arising pursuant to any provision of~~
2000 ~~this chapter or the certificate of incorporation or bylaws,~~
2001 ~~that arises from, is pursuant to, or seeks to interpret,~~
2002 ~~apply, enforce, or determine the validity of, any provision of~~
2003 ~~this chapter, the certificate of incorporation, the bylaws, or~~
2004 ~~any agreement entered into pursuant to Section 10A-3A-7.30 to~~
2005 ~~which the nonprofit corporation is a party or a stated~~
2006 ~~beneficiary thereof, or (iii) any action asserting a claim~~
2007 ~~that is governed by the internal affairs doctrine that is not~~
2008 included in (i) through (ii) above.

2009 (d) This section does not prohibit any nonprofit
2010 corporation from consenting, or require any nonprofit
2011 corporation to consent, to any alternative forum in any
2012 instance."

2013 "§10A-3A-4.02

2014 Subject to subsection (h):

2015 (a) A member of a membership nonprofit corporation is
2016 entitled to inspect and copy, during regular business hours at



2017 the membership nonprofit corporation's principal office, any
2018 of the records of the membership nonprofit corporation
2019 described in Section 10A-3A-4.01(a), excluding minutes of
2020 meetings of, and records of actions taken without a meeting
2021 by, the membership nonprofit corporation's board of directors
2022 and board committees established under Section 10A-3A-8.25, if
2023 the member gives the membership nonprofit corporation a signed
2024 written notice of the member's demand at least five business
2025 days before the date on which the member wishes to inspect and
2026 copy.

2027 (b) A member of a membership nonprofit corporation is
2028 entitled to inspect and copy, during regular business hours at
2029 a reasonable location specified by the membership nonprofit
2030 corporation, any of the following records of the membership
2031 nonprofit corporation if the member meets the requirements of
2032 subsection (c) and gives the membership nonprofit corporation
2033 a signed written notice of the member's demand at least five
2034 business days before the date on which the member wishes to
2035 inspect and copy:

2036 (1) the financial statements of the membership
2037 nonprofit corporation maintained in accordance with Section
2038 10A-3A-4.01(b); provided, however, that the membership
2039 nonprofit corporation may deliver or make available the
2040 financial statements to the requesting member by posting them
2041 on the membership nonprofit corporation's website or by other
2042 generally recognized means. If financial statements have been
2043 prepared for the membership nonprofit corporation on the basis
2044 of generally accepted accounting principles for that specified



2045 period, the membership nonprofit corporation shall deliver or
2046 make available those financial statements to the requesting
2047 member. If the annual financial statements to be delivered or
2048 made available to the requesting member are audited or
2049 otherwise reported upon by a public accountant, the report
2050 shall also be delivered or made available to the requesting
2051 member.

2052 (2) the accounting records of the membership nonprofit
2053 corporation maintained in accordance with Section
2054 10A-3A-4.01(c) that permitted the preparation of the financial
2055 statements maintained in accordance with Section
2056 10A-3A-4.01(b); and

2057 (3) excerpts from minutes of any meeting of, or records
2058 of any actions taken without a meeting by, the board of
2059 directors and board committees maintained in accordance with
2060 Section 10A-3A-4.01(a); and

2061 (4) subject to Section 10A-3A-4.06, the record of
2062 members maintained in accordance with Section 10A-3A-4.01(d);
2063 provided however, the membership nonprofit corporation may
2064 withhold the record of members maintained in accordance with
2065 Section 10A-3A-4.01(d) if the demanding member of the
2066 membership nonprofit corporation has used, or has aided or
2067 abetted any person to use, the record of members in violation
2068 of Section 10A-3A-4.06.

2069 (c) (1) A member may inspect and copy the records
2070 described in subsection (b) only if:

2071 (1) the member has delivered to the membership
2072 nonprofit corporation a signed written notice of the member's



2073 demand at least five business days before the date on which
2074 the member wishes to inspect and copy;

2075 (ii) the member's demand is made in good faith and for
2076 a proper purpose;

2077 (2)(iii) the member's demand describes with reasonable
2078 particularity the member's purpose and the records the member
2079 desires to inspect; and

2080 (3)(iv) the records are directly ~~connected with~~ related
2081 to the member's purpose.

2082 (2) For purposes of this subsection (c), a proper
2083 purpose shall mean a purpose directly related to the member's
2084 interest as a member; provided, however, that a demand shall
2085 not be for a proper purpose if the membership nonprofit
2086 corporation reasonably determines that the demand is in
2087 connection with an active or pending civil lawsuit to which
2088 the membership nonprofit corporation, or its affiliate, and
2089 the member, or the member's affiliate, are, or are expected to
2090 be, adversarial named parties.

2091 (d) The membership nonprofit corporation may redact
2092 portions of the records to be inspected and copied under
2093 subsections (a) and (b) to the extent the portions so redacted
2094 are not directly related to the member's purpose. The
2095 membership nonprofit corporation may also impose reasonable
2096 restrictions and conditions on access to and use of the
2097 records to be inspected and copied under subsections (a) and
2098 (b), including designating information confidential and
2099 imposing nondisclosure and safeguarding, and may further keep
2100 confidential from its members and other persons, for a period



2101 of time as the membership nonprofit corporation deems
2102 reasonable any information that the membership nonprofit
2103 corporation reasonably believes to be in the nature of a trade
2104 secret or other information the disclosure of which the
2105 membership nonprofit corporation in good faith believes is not
2106 in the best interest of the membership nonprofit corporation
2107 or could damage the membership nonprofit corporation or its
2108 activities or affairs, or that the membership nonprofit
2109 corporation is required by law or by agreement with a third
2110 party to keep confidential. In any dispute concerning the
2111 reasonableness of a restriction under this subsection, the
2112 membership nonprofit corporation has the burden of proving
2113 reasonableness.

2114 (e) For any meeting of members for which the record
2115 date for determining members entitled to vote at the meeting
2116 is different than the record date for notice of the meeting,
2117 any person who becomes a member subsequent to the record date
2118 for notice of the meeting and is entitled to vote at the
2119 meeting is entitled to obtain from the membership nonprofit
2120 corporation upon request the notice and any other information
2121 provided by the membership nonprofit corporation to members in
2122 connection with the meeting, unless the membership nonprofit
2123 corporation has made that information generally available to
2124 members by posting it ~~on-its~~ the membership nonprofit
2125 corporation's website or by other generally recognized means.
2126 Failure of a membership nonprofit corporation to provide that
2127 information does not affect the validity of action taken at
2128 the meeting.



2129 (f) ~~Subject to Section 10A-3A-4.20, the~~ The right of
2130 inspection granted by subsection (b) may be limited by a
2131 membership nonprofit corporation's certificate of
2132 incorporation.

2133 (g) This section does not affect:

2134 ~~(1)~~ the right of a member to inspect records under
2135 Section 10A-3A-7.20 or, if the member is in litigation with
2136 the membership nonprofit corporation, to the same extent as
2137 any other litigant~~or~~.

2138 ~~(2) the power of a court, independently of this
2139 chapter, to compel the production of corporate records for
2140 examination and to impose reasonable restrictions as provided
2141 in Section 10A-3A-4.04(c), provided that, in the case of
2142 production of records described in subsection (b) of this
2143 section at the request of the member, the member has met the
2144 requirements of subsection (c) of this section.~~

2145 (h) The right of a member to inspect and copy the
2146 records described in subsections (a) and (b) may be denied by
2147 the membership nonprofit corporation if the membership
2148 nonprofit corporation determines that the demanding member has
2149 within two years preceding his, her, or its demand improperly
2150 used any information secured through any prior examination of
2151 the records of the membership nonprofit corporation."

2152 "§10A-3A-4.03

2153 If a member is entitled to inspection and copying
2154 rights under Section 10A-3A-4.02:

2155 (a) A member may appoint an agent or attorney to
2156 exercise the member's inspection and copying rights under



2157 Section 10A-3A-4.02. In that case, the demand shall be
2158 accompanied by a power of attorney or other writing which
2159 authorizes the agent or attorney to so act on behalf of the
2160 member.

2161 (b) The membership nonprofit corporation may, if
2162 reasonable, satisfy the right of a member to copy records
2163 under Section 10A-3A-4.02 by furnishing to the member copies
2164 by photocopy or other means as are chosen by the membership
2165 nonprofit corporation, including furnishing copies through
2166 electronic transmission.

2167 (c) The membership nonprofit corporation may comply at
2168 its expense with a member's demand to inspect the record of
2169 members under Section 10A-3A-4.02(b)(4) by providing the
2170 member with a list of members that was compiled no earlier
2171 than the date of the member's demand.

2172 (d) The membership nonprofit corporation may impose a
2173 reasonable charge to cover the costs of providing copies of
2174 documents to the member, which may be based on an estimate of
2175 those ~~cost~~ costs."

2176 "§10A-3A-4.04

2177 If a member is entitled to inspection and copying
2178 rights under Section 10A-3A-4.02:

2179 (a) If a membership nonprofit corporation does not
2180 allow a member who complies with Section 10A-3A-4.02(a) to
2181 inspect and copy any records required by that section to be
2182 available for inspection, the designated court, and if none,
2183 the circuit court for the county in which the membership
2184 nonprofit corporation's principal office is located in this



2185 state, and if none in this state, the circuit court for the
2186 county in which the membership nonprofit corporation's most
2187 recent registered office is located may summarily order
2188 inspection and copying of the records demanded at the
2189 membership nonprofit corporation's expense upon application of
2190 the member.

2191 (b) If a membership nonprofit corporation does not
2192 within a reasonable time allow a member who complies with
2193 Section 10A-3A-4.02(b) to inspect and copy the records as
2194 required by that section, the member who complies with Section
2195 10A-3A-4.02(c) may apply to the designated court, and if none,
2196 the circuit court for the county in which the membership
2197 nonprofit corporation's principal office is located in this
2198 state, and if none in this state, the circuit court for the
2199 county in which the membership nonprofit corporation's most
2200 recent registered office is located for an order to permit
2201 inspection and copying of the records demanded. The court
2202 shall dispose of an application under this subsection on an
2203 expedited basis.

2204 (c) If the court orders inspection and copying of the
2205 records demanded under Section 10A-3A-4.02(b), it may impose
2206 reasonable restrictions on their confidentiality, use, or
2207 distribution by the demanding member and ~~the court~~ shall
2208 also order the membership nonprofit corporation to pay the
2209 member's expenses incurred to obtain the order unless the
2210 membership nonprofit corporation establishes that it refused
2211 inspection in good faith because the membership nonprofit
2212 corporation had:



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

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

"§10A-3A-8.26

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

(b) If the board of directors shall have acted to approve or take other action with respect to an agreement, instrument, plan, or document that is expressly required by



2241 this chapter to be approved by the board of directors, the
2242 board of directors may, but is not required to, at any time
2243 after providing the approval or taking such other action adopt
2244 a resolution ratifying the agreement, instrument, plan, or
2245 document, and the ratification shall be deemed to be effective
2246 as of the time of the original approval or other action by the
2247 board of directors and to satisfy any requirement under this
2248 chapter that the board of directors approve or take other
2249 action with respect to the agreement, instrument, plan, or
2250 document in a specific manner or sequence.

2251 (c) At the time of the approval of any agreement,
2252 instrument, plan, or document by the board of directors, the
2253 agreement, instrument, plan, or document is not required to
2254 contain or have attached thereto any disclosure letter,
2255 disclosure schedules, or similar documents or instruments
2256 contemplated by the agreement, instrument, plan, or document
2257 that modify, supplement, qualify, or make exceptions to
2258 representations, warranties, covenants, or conditions
2259 contained in the agreement, instrument, plan, or document."

2260 "§10A-3A-8.60

2261 ~~(a) No contract or transaction between a nonprofit~~
~~corporation and one or more of its directors or officers, or~~
~~between a nonprofit corporation and any other corporation,~~
~~partnership, association, or other entity in which one or more~~
~~of its directors or officers, are directors or officers, or~~
~~have a financial interest, shall be void or voidable solely~~
~~for this reason, or solely because the director or officer is~~
~~present at or participates in the meeting of the board of~~



2269 ~~directors or committee which authorizes the contract or~~
2270 ~~transaction, or solely because the director's or officer's~~
2271 ~~votes are counted for that purpose, if:~~

2272 ~~(1) The material facts as to the director's or~~
2273 ~~officer's relationship or interest and as to the contract or~~
2274 ~~transaction are disclosed or are known to the board of~~
2275 ~~directors or the committee of a nonmembership nonprofit~~
2276 ~~corporation, and the board or committee in good faith~~
2277 ~~authorizes the contract or transaction by the affirmative~~
2278 ~~votes of a majority of the qualified directors, even though~~
2279 ~~the qualified directors be less than a quorum; or~~

2280 ~~(2) The material facts as to the director's or~~
2281 ~~officer's relationship or interest and as to the contract or~~
2282 ~~transaction are disclosed or are known to (i) the members in a~~
2283 ~~membership nonprofit corporation entitled to vote thereon or~~
2284 ~~(ii) the qualified directors of the board of directors in a~~
2285 ~~membership nonprofit corporation, and the contract or~~
2286 ~~transaction is specifically approved in good faith by vote of~~
2287 ~~the members in a membership nonprofit corporation or the~~
2288 ~~qualified directors of the board of directors in a membership~~
2289 ~~nonprofit corporation; or~~

2290 ~~(3) The contract or transaction is fair as to the~~
2291 ~~nonprofit corporation as of the time it is authorized,~~
2292 ~~approved or ratified, by the board of directors, a committee,~~
2293 ~~or the members.~~

2294 ~~(b) Common or interested directors may be counted in~~
2295 ~~determining the presence of a quorum at a meeting of the board~~
2296 ~~of directors or of a committee which authorizes the contract~~



2297 ~~er transaction.~~

2298 As used in this chapter, unless otherwise specified or
2299 unless the context otherwise requires, the following terms
2300 shall mean:

2301 (a) CONFLICTING INTEREST TRANSACTION means an act or
2302 transaction effected or proposed to be effected by the
2303 nonprofit corporation (or by an entity controlled by the
2304 nonprofit corporation):

2305 (1) to which, at the relevant time, a director or
2306 officer is a party;

2307 (2) respecting which, at the relevant time, the
2308 director or officer had knowledge and a material financial
2309 interest known to the director or officer; or

2310 (3) respecting which, at the relevant time, the
2311 director or officer knew that a related person was a party or
2312 had a material financial interest.

2313 (b) CONTROL or CONTROLLED BY means (i) having the
2314 power, directly or indirectly, to elect or remove a majority
2315 of the members of the board of directors or other governing
2316 authority of an entity, whether through the ownership of
2317 voting shares or interests, by contract, or otherwise or (ii)
2318 being subject to a majority of the risk of loss from the
2319 entity's activities or entitled to receive a majority of the
2320 entity's residual returns.

2321 (c) CONTROL GROUP means two or more persons that, by
2322 virtue of an agreement, arrangement, or understanding between
2323 or among those persons, constitute a controlling person.

2324 (d) CONTROLLING PERSON means any person that, together



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2325 with (i) any related person; and (ii) any person that
2326 controls, is controlled by, or is under common control with
2327 that person:

2328 (1) With respect to a membership nonprofit corporation:
2329 (i) owns or controls a majority in voting power of the
2330 outstanding membership interests entitled to vote generally in
2331 the election of directors or in the election of directors who
2332 have a majority in voting power of the votes of all directors
2333 on the board of directors;

2334 (ii) has the right, by contract or otherwise, to cause
2335 the election of nominees who are selected at the discretion of
2336 that person and who constitute either a majority of the
2337 members of the board of directors of a membership nonprofit
2338 corporation or directors entitled to cast a majority in voting
2339 power of the votes of all directors on the board of directors
2340 of a membership nonprofit corporation;

2341 (iii) has the power functionally equivalent to that of
2342 a member that owns or controls a majority in voting power of
2343 the outstanding membership interests entitled to vote
2344 generally in the election of directors by virtue of ownership
2345 or control of at least one-third in voting power of the
2346 outstanding membership interests entitled to vote generally in
2347 the election of directors or in the election of directors who
2348 have a majority in voting power of the votes of all directors
2349 on the board of directors and the power to exercise managerial
2350 authority over the business and affairs of the membership
2351 nonprofit corporation; or

2352 (iv) either (A) has the power and authority to exercise



2353 and perform certain corporate powers, activities and affairs
2354 pursuant to a provision in the certificate of incorporation
2355 permitted by Section 10A-3A-8.01 or (B) has the right to
2356 approve certain matters as permitted by Section
2357 10A-3A-2.02(b) (2) (ix).

2358 (2) With respect to a nonmembership nonprofit
2359 corporation:

2360 (i) has the right, by contract or otherwise, to cause
2361 the election of nominees who are selected at the discretion of
2362 that person and who constitute either a majority of the
2363 members of the board of directors of a nonmembership nonprofit
2364 corporation or directors entitled to cast a majority in voting
2365 power of the votes of all directors on the board of directors
2366 of a nonmembership nonprofit corporation; or

2367 (ii) either (A) has the power and authority to exercise
2368 and perform certain corporate powers, activities, and affairs
2369 pursuant to a provision in the certificate of incorporation
2370 permitted by Section 10A-3A-8.01 or (B) has the right to
2371 approve certain matters as permitted by Section
2372 10A-3A-2.02(b) (2) (ix).

2373 (e) CONTROLLING PERSON TRANSACTION means an act or
2374 transaction between the nonprofit corporation or one or more
2375 of its subsidiaries, on the one hand, and a controlling person
2376 or a control group, on the other hand, or an act or
2377 transaction from which a controlling person or a control group
2378 receives a material financial interest.

2379 (f) DISINTERESTED PERSON means any member or other
2380 person that does not have a material financial interest in the



2381 act or transaction at issue or, if applicable, a material
2382 relationship with the controlling person or other member of
2383 the control group, or any other person that has a material
2384 financial interest in the act or transaction.

2385 (g) FAIR TO THE NONPROFIT CORPORATION means the act or
2386 transaction at issue, as a whole, is beneficial to the
2387 nonprofit corporation or its members, if any, in their
2388 capacity as members, given the consideration paid to or
2389 received by the nonprofit corporation or its members or other
2390 benefit conferred on the nonprofit corporation or its members,
2391 if any, and taking into appropriate account whether the act or
2392 transaction meets both of the following: (i) it is fair in
2393 terms of the director's, officer's, controlling person's, or
2394 control group's dealings with the nonprofit corporation, as
2395 the case may be; and (ii) it is comparable to what might have
2396 been obtainable in an arm's length transaction available to
2397 the nonprofit corporation.

2398 (h) MATERIAL FINANCIAL INTEREST means a nonspeculative
2399 financial interest in an act or transaction, other than one
2400 that would devolve on the nonprofit corporation or the members
2401 generally, that would reasonably be expected to impair the
2402 objectivity of the director's or officer's judgment when
2403 participating in the negotiation, authorization, or approval
2404 of the act or transaction at issue.

2405 (i) MATERIAL RELATIONSHIP has the meaning set forth in
2406 Section 10A-3A-1.60.

2407 (j) QUALIFIED DIRECTOR has the meaning set forth in
2408 Section 10A-3A-1.60.



2409 (k) RELATED PERSON has the meaning set forth in Section
2410 10A-3A-2.02.

2411 (l) RELEVANT TIME means (i) the time at which
2412 directors' action respecting the act or transaction is taken
2413 in compliance with Sections 10A-3A-8.61(c) or 10A-3A-8.62(c)
2414 or (ii) if the act or transaction is not brought before the
2415 board of directors (or a committee) for action under Section
2416 10A-3A-8.61(d), at the time the nonprofit corporation (or an
2417 entity controlled by the nonprofit corporation) becomes
2418 legally obligated to consummate the act or transaction.

2419 (m) REQUIRED DISCLOSURE means disclosure of (i) the
2420 existence and nature of the director's or officer's
2421 conflicting interest and (ii) all facts known to the director
2422 or officer respecting the subject matter of the act or
2423 transaction that a qualified director would reasonably believe
2424 to be material in deciding whether to proceed with the act or
2425 transaction."

2426 "§10A-5A-4.09

2427 ~~Notwithstanding Sections 10A-1-3.32 and 10A-1-3.33:~~

2428 (a) Each limited liability company shall maintain the
2429 following records:

2430 (1) A current list of the full name and last known
2431 business or residence street address of each member.

2432 (2) A copy of the filed certificate of formation and
2433 all amendments thereto, together with executed copies of any
2434 powers of attorney pursuant to which any documents have been
2435 executed.

2436 (3) Copies of the limited liability company's federal,



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2437 state, and local income tax returns and reports, if any, for
2438 the three most recent years.

2439 (4) Copies of the then effective limited liability
2440 company agreement including any amendments thereto.

2441 (5) Copies of any financial statements of the limited
2442 liability company for the three most recent years.

2443 (b) Subject to subsection (g), a member may demand (i)
2444 on 10 days' notice made in a writing received by the limited
2445 liability company, the records set forth in subsection (a)
2446 above, and (ii) on 30 days' notice made in writing received by
2447 the limited liability company, any other books and records of
2448 the limited liability company, wherever situated, ~~are subject~~
2449 ~~to inspection and copying~~ to inspect and copy for any proper
2450 purpose by ~~any~~ the demanding member ~~or the member's agent or~~
2451 ~~attorney~~ during regular business hours. ~~Subject to subsection~~
2452 ~~(g), any person with the authority to bind the limited~~
2453 ~~liability company under Section 10A-5A-3.02 and any person~~
2454 ~~with the authority to direct and oversee the activities and~~
2455 ~~affairs of a limited liability company who, without reasonable~~
2456 ~~cause, refuses to allow any member or the member's agent or~~
2457 ~~attorney to inspect or copy any books or records of the~~
2458 ~~limited liability company for any proper purpose shall be~~
2459 ~~personally liable to the member for a penalty in an amount not~~
2460 ~~to exceed 10 percent of the fair market value of the~~
2461 ~~transferable interest of the member, in addition to any other~~
2462 ~~damages or remedy.~~

2463 (c) Subject to subsection (g), on 30 days' notice made
2464 in a writing received by a limited liability company, a



2465 dissociated member may inspect and copy, during regular
2466 business hours, at a reasonable location specified by the
2467 limited liability company, any record maintained by the
2468 limited liability company, to the extent the information
2469 pertains to the period during which the person was a member,
2470 was material to the person's rights and duties under the
2471 limited liability company agreement or this chapter when the
2472 person was a member, and the person seeks the information in
2473 good faith and for a proper purpose.

2474 (d) A limited liability company may charge a person
2475 that makes a demand under this section the reasonable costs of
2476 labor and material for copying.

2477 (e) A member or dissociated member may exercise rights
2478 under this section through an agent or attorney, or in the
2479 case of an individual under legal disability, a legal
2480 representative. Any restriction or condition imposed by the
2481 limited liability company agreement or under subsection (g)
2482 applies both to the agent, attorney, or legal representative
2483 and to the member or dissociated member. If the demanding
2484 person's agent or attorney is to inspect and copy the books
2485 and records of the limited liability company, the demand shall
2486 be accompanied by a power of attorney or other writing which
2487 authorizes the attorney or other agent to so act on behalf of
2488 the demanding person.

2489 (f) The rights under this section do not extend to a
2490 transferee.

2491 (g) (1) In addition to any restriction or condition
2492 stated in its limited liability company agreement, a limited



2493 liability company, as a matter within the ordinary course of
2494 its activities and affairs, may:

2495 ~~a.~~ (A) impose reasonable restrictions and conditions on
2496 access to and use of information to be furnished under this
2497 section, including designating information confidential and
2498 imposing nondisclosure and safeguarding obligations on the
2499 recipient; ~~and~~

2500 ~~b.~~ (B) keep confidential from the members and any other
2501 persons, for such period of time as the limited liability
2502 company deems reasonable, any information that the limited
2503 liability company reasonably believes to be in the nature of
2504 trade secrets or other information the disclosure of which the
2505 limited liability company in good faith believes is not in the
2506 best interest of the limited liability company or could damage
2507 the limited liability company or its activities and affairs,
2508 or that the limited liability company is required by law or by
2509 agreement with a third party to keep confidential ~~;~~ and

2510 (C) redact portions of the records to be inspected and
2511 copied to the extent the portions so redacted are not directly
2512 related to the member's or other person's purpose.

2513 (2) In any dispute concerning the reasonableness of a
2514 restriction under this subsection, the limited liability
2515 company has the burden of proving reasonableness.

2516 (h) The rights under this section may be denied by the
2517 limited liability company if the limited liability company
2518 determines that the demanding person has within two years
2519 preceding his, her, or its demand improperly used any
2520 information secured through any prior examination of the



2521 records of the limited liability company.

2522 (i) For purposes of this section, a proper purpose
2523 shall mean a purpose directly related to the member or
2524 dissociated member's interest as a member or dissociated
2525 member, as the case may be; provided, however, that a demand
2526 shall not be for a proper purpose if the limited liability
2527 company reasonably determines that the demand is in connection
2528 with:

2529 (1) an active or pending derivative proceeding in the
2530 right of the limited liability company under Article 9 of this
2531 chapter that is or is expected to be instituted or maintained
2532 by the member or the member's affiliate; or

2533 (2) an active or pending civil lawsuit to which the
2534 limited liability company, or its affiliate, and the member or
2535 dissociated member, or the affiliate thereof, are, or are
2536 expected to be, adversarial named parties.

2537 (j) If a limited liability company does not within a
2538 reasonable time allow a person who complies with the
2539 requirements of this section to inspect and copy the records
2540 required by this section, the person who complies with this
2541 section may apply to the designated court, and if none, the
2542 circuit court for the county in which the limited liability
2543 company's principal office is located in this state, and if
2544 none in this state, the circuit court for the county in which
2545 the limited liability company's most recent registered office
2546 is located for an order to permit inspection and copying of
2547 the records demanded. The court shall dispose of an
2548 application under this subsection on an expedited basis. If



2549 the court orders inspection and copying of the records
2550 demanded under this section, it may impose reasonable
2551 restrictions on their confidentiality, use, or distribution by
2552 the demanding person and the court shall also order the
2553 limited liability company to pay the demanding person's
2554 expenses incurred to obtain the order unless the limited
2555 liability company establishes that the limited liability
2556 company refused inspection in good faith because the limited
2557 liability company had:

2558 (1) a reasonable basis for doubt about the right of the
2559 demanding person to inspect the records demanded; or
2560 (2) required reasonable restrictions on the
2561 confidentiality, use, or distribution of the records demanded
2562 to which the demanding person had been unwilling to agree. If
2563 the limited liability company has declined to deliver or make
2564 available the records because the demanding person had been
2565 unwilling to agree to restrictions proposed by the limited
2566 liability company on the confidentiality, use, or distribution
2567 of the records, the limited liability company shall have the
2568 burden of demonstrating that the restrictions proposed by the
2569 limited liability company were reasonable."

2570 "§10A-8A-4.10

2571 (a) Subject to subsection (f), a partner, without
2572 having any particular purpose for seeking the information, may
2573 inspect and copy during regular hours at a reasonable location
2574 specified by the partnership, required information and any
2575 other records maintained by the partnership regarding the
2576 partnership's business or not for profit activity and



2577 financial condition.

2578 (b) Subject to subsection (f), each partner and the
2579 partnership shall furnish to a partner:

2580 (1) without demand, any information concerning the
2581 partnership's business or not for profit activity reasonably
2582 required for the proper exercise of the partner's rights and
2583 duties under the partnership agreement or this chapter; and

2584 (2) on demand, any other information concerning the
2585 partnership's business or not for profit activity, except to
2586 the extent the demand or the information demanded is
2587 unreasonable or otherwise improper under the circumstances.

2588 (c) Subject to subsections (e) and (f), on 10 days'
2589 demand made in a writing received by the partnership, a person
2590 dissociated as a partner may have access to the information
2591 and records described in subsection (a) at the location
2592 specified in subsection (a) if:

2593 (1) the information or writing pertains to the period
2594 during which the person was a partner;

2595 (2) the person seeks the information or record in good
2596 faith; and

2597 (3) it is determined that:

2598 (i) the person seeks the information for a purpose
2599 reasonably related to the person's interest as a partner;

2600 (ii) the person's demand describes with reasonable
2601 particularity the information sought and the purpose for
2602 seeking the information; and

2603 (iii) the information sought is directly connected to
2604 the person's purpose.



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2605 (d) Within 10 days after receiving a demand pursuant to
2606 subsection (c), the partnership in a writing shall inform the
2607 person that made the demand:

2608 (1) what information the partnership will provide in
2609 response to the demand;

2610 (2) when and where the partnership will provide the
2611 information;

2612 (3) if the partnership declines to provide any demanded
2613 information, the partnership's reasons for declining; and

2614 (4) what, if any, restrictions will be imposed pursuant
2615 to the partnership agreement or subsection (f).

2616 (e) If a partner dies, Section 10A-8A-5.04 applies.

2617 (f) In addition to any restriction or condition stated
2618 in its partnership agreement, a partnership, as to a matter
2619 within the ordinary course of its business or not for profit
2620 activity, may:

2621 (1) impose reasonable restrictions and conditions on
2622 access to and use of information to be furnished under this
2623 section, including designating information confidential and
2624 imposing nondisclosure and safeguarding obligations on the
2625 recipient; ~~and~~

2626 (2) keep confidential from the partners and any other
2627 person, for such period of time as the partnership deems
2628 reasonable, any information that the partnership reasonably
2629 believes to be in the nature of trade secrets or other
2630 information the disclosure of which the partnership in good
2631 faith believes is not in the best interest of the partnership
2632 or could damage the partnership or its business or not for



2633 profit activity, or that the partnership is required by law or
2634 by agreement with a third party to keep confidential;and

2635 (3) redact portions of the records to be inspected and
2636 copied to the extent the portions so redacted are not directly
2637 related to the partner's or other person's purpose.

2638 In any dispute concerning the reasonableness of a
2639 restriction under this subsection, the partnership has the
2640 burden of proving reasonableness.

2641 (g) A partnership may charge a person that makes a
2642 demand under this section reasonable costs of copying, limited
2643 to the costs of labor and material.

2644 (h) A partner or person dissociated as a partner may
2645 exercise the rights under this section through an attorney or
2646 other agent. Any restriction imposed under subsection (f) or
2647 by the partnership agreement applies both to the attorney or
2648 other agent and to the partner or person dissociated as a
2649 partner. If the demanding person's agent or attorney is to
2650 inspect and copy the books and records of the partnership, the
2651 demand shall be accompanied by a power of attorney or other
2652 writing which authorizes the agent or attorney to so act on
2653 behalf of the demanding person.

2654 (i) The rights under this section do not extend to a
2655 person as transferee, but the rights under subsection (c) of a
2656 person dissociated as a partner may be exercised by the legal
2657 representative of an individual who dissociated as a partner
2658 under Section 10A-8A-6.01(6).

2659 ~~(j) Any partner who, without reasonable cause, refuses~~
2660 ~~to allow any partner or person dissociated as a partner, or~~



2661 ~~his or her agent or attorney to inspect or copy any records of~~
2662 ~~the partnership to which such partner or person dissociated as~~
2663 ~~a partner is entitled under this section, shall be personally~~
2664 ~~liable to the partner or person dissociated as a partner for a~~
2665 ~~penalty in an amount not to exceed 10 percent of the fair~~
2666 ~~market value of the transferable interest of the partner or~~
2667 ~~person dissociated as a partner, in addition to any other~~
2668 ~~damages or remedy.~~

2669 (j) The rights under this section may be denied by the
2670 partnership if the partnership determines that the demanding
2671 person has within two years preceding his, her, or its demand
2672 improperly used any information secured through any prior
2673 examination of the records of the partnership.

2674 (k) If a partnership does not within a reasonable time
2675 allow a person who complies with the requirements of this
2676 section to inspect and copy the records required by this
2677 section, the person who complies with this section may apply
2678 to the designated court, and if none, the circuit court for
2679 the county in which the partnership's principal office is
2680 located in this state, and if none in this state, the circuit
2681 court for the county in which the partnership's most recent
2682 registered office is located for an order to permit inspection
2683 and copying of the records demanded. The court shall dispose
2684 of an application under this subsection on an expedited basis.
2685 If the court orders inspection and copying of the records
2686 demanded under this section, it may impose reasonable
2687 restrictions on their confidentiality, use, or distribution by
2688 the demanding person and the court shall also order the



2689 partnership to pay the demanding person's expenses incurred to
2690 obtain the order unless the partnership establishes that the
2691 partnership refused inspection in good faith because the
2692 partnership had:

2693 (1) a reasonable basis for doubt about the right of the
2694 demanding person to inspect the records demanded; or
2695 (2) required reasonable restrictions on the
2696 confidentiality, use, or distribution of the records demanded
2697 to which the demanding person had been unwilling to agree. If
2698 the partnership has declined to deliver or make available the
2699 records because the demanding person had been unwilling to
2700 agree to restrictions proposed by the partnership on the
2701 confidentiality, use, or distribution of the records, the
2702 partnership shall have the burden of demonstrating that the
2703 restrictions proposed by the partnership were reasonable."

2704 "§10A-8A-5.02

2705 (a) A transfer, in whole or in part, of a partner's
2706 transferable interest:

2707 (1) is permissible;

2708 (2) does not by itself cause the partner's
2709 dissociation;

2710 (3) does not by itself cause a dissolution and winding
2711 up of the partnership; and

2712 (4) subject to Section ~~10A-8A-5.05~~ 10A-8A-5.04, does
2713 not entitle the transferee to:

2714 (A) participate in the management or conduct of the
2715 partnership's business or not for profit activity; or

2716 (B) except as otherwise provided in subsection (d),



2717 have access to required information, records, or other
2718 information concerning the partnership's business or not for
2719 profit activity.

2720 (b) A transferee has a right:

2721 (1) to receive, in accordance with the transfer,
2722 distributions to which the transferor would otherwise be
2723 entitled;

2724 (2) to receive upon the dissolution and winding up of
2725 the partnership, in accordance with the transfer, the net
2726 amount otherwise distributable to the transferor; and

2727 (3) to seek under Section 10A-8A-8.01(5) a judicial
2728 determination that it is equitable to wind up the partnership
2729 business or not for profit activity.

2730 (c) A transferable interest may be evidenced by a
2731 certificate of transferable interest issued by the
2732 partnership. A partnership agreement may provide for the
2733 transfer of the transferable interest represented by the
2734 certificate and make other provisions with respect to the
2735 certificate. No certificate of transferable interest shall be
2736 issued in bearer form.

2737 (d) In a dissolution and winding up, a transferee is
2738 entitled to an account of the partnership's transactions only
2739 from the date of dissolution.

2740 (e) Except as otherwise provided in Sections
2741 10A-8A-6.01(4), 10A-8A-6.01(11), and 10A-8A-6.01(12), when a
2742 partner transfers a transferable interest, the transferor
2743 retains the rights of a partner other than the right to
2744 distributions transferred and retains all duties and



2745 obligations of a partner.

2746 (f) A partnership need not give effect to a
2747 transferee's rights under this section until the partnership
2748 has notice of the transfer.

2749 (g) When a partner transfers a transferable interest to
2750 a person that is admitted as a partner with respect to the
2751 transferred interest, the transferee is liable for the
2752 partner's obligations under Sections 10A-8A-4.04 and
2753 10A-8A-4.09 to the extent that the obligations are known to
2754 the transferee when the transferee voluntarily accepts
2755 admission as a partner.

2756 (h) Notwithstanding anything in Title 43 to the
2757 contrary, a partnership agreement may provide that a
2758 transferable interest may or shall be transferred in whole or
2759 in part, with or without consideration, to one or more persons
2760 at the death of the holder of the transferable interest. Any
2761 transferable interest transferred pursuant to this subsection
2762 shall be subject to any outstanding charging order under
2763 Section 10A-8A-5.03. This subsection does not limit the rights
2764 of creditors of holders of transferable interests against
2765 transferees under this chapter or other laws of this state."

2766 "§10A-9A-3.04

2767 ~~Notwithstanding the provisions of Sections 10A-1-3.32~~
2768 ~~and 10A-1-3.33:~~

2769 (a) Subject to subsection (g), on 10 days' demand, made
2770 in a writing received by the limited partnership, a limited
2771 partner may, for a proper purpose, inspect and copy ~~required~~
2772 the information required to be maintained under Section



2773 10A-9A-1.11 during regular business hours and at a reasonable
2774 location specified by the limited partnership. ~~The limited~~
2775 ~~partner need not have any particular purpose for seeking the~~
2776 ~~information.~~

2777 (b) Subject to subsection (g), during regular business
2778 hours and at a reasonable location specified by the limited
2779 partnership, a limited partner may, for a proper purpose,
2780 obtain from the limited partnership and inspect and copy true
2781 and full information regarding the state of the activities and
2782 affairs and financial condition of the limited partnership and
2783 other information regarding the activities and affairs of the
2784 limited partnership ~~as is just and reasonable~~ if:

2785 (1) the limited partner seeks the information for a
2786 proper purpose ~~reasonably directly~~ related to the partner's
2787 interest as a limited partner;

2788 (2) the limited partner makes a demand in a writing
2789 received by the limited partnership, describing with
2790 reasonable particularity the information sought and the stated
2791 purpose for seeking the information; and

2792 (3) the information sought is directly connected to the
2793 limited partner's stated purpose.

2794 (c) Within 10 days after receiving a demand pursuant to
2795 subsection (b), the limited partnership in a writing shall
2796 inform the limited partner that made the demand:

2797 (1) what information the limited partnership will
2798 provide in response to the demand;

2799 (2) when and where the limited partnership will provide
2800 the information;



2801 (3) if the limited partnership declines to provide any
2802 demanded information, the limited partnership's reasons for
2803 declining; and

2804 (4) what, if any, restrictions will be imposed pursuant
2805 to the partnership agreement or subsection (g).

2806 (d) Subject to subsections (f) and (g), a person
2807 dissociated as a limited partner may, for a proper purpose,
2808 inspect and copy ~~required~~ the information required to be
2809 maintained under Section 10A-9A-1.11 during regular business
2810 hours and at a reasonable location specified by the limited
2811 partnership if:

2812 (1) the required information pertains to the period
2813 during which the person was a limited partner;

2814 (2) the person seeks the required information in good
2815 faith and for a proper purpose; and

2816 (3) the person meets the requirements of subsection
2817 (b) .

2818 (e) The limited partnership shall respond to a demand
2819 made pursuant to subsection (d) in the same manner as provided
2820 in subsection (c).

2821 (f) If a limited partner dies, Section 10A-9A-7.04
2822 applies.

2823 (g) In addition to any restriction or condition stated
2824 in its limited partnership agreement, a limited partnership,
2825 as a matter within the ordinary course of its activities and
2826 affairs, may:

2827 (1) impose reasonable restrictions and conditions on
2828 access to and use of information to be furnished under this



2829 section, including designating information confidential and
2830 imposing nondisclosure and safeguarding obligations on the
2831 recipient; ~~and~~

2832 (2) keep confidential from the partners and any other
2833 person, for such period of time as the limited partnership
2834 deems reasonable, any information that the limited partnership
2835 reasonably believes to be in the nature of trade secrets or
2836 other information that disclosure of which the limited
2837 partnership in good faith believes is not in the best interest
2838 of the limited partnership or could damage the limited
2839 partnership or its activities and affairs, or that the limited
2840 partnership is required by law or by agreement with a third
2841 party to keep confidential ~~;~~ and

2842 (3) redact portions of the records to be inspected and
2843 copied to the extent the portions so redacted are not directly
2844 related to the limited partner's or other person's purpose.

2845 In a dispute concerning the reasonableness of a
2846 restriction under this subsection, the limited partnership has
2847 the burden of proving reasonableness. ~~Any general partner, or~~
~~any agent, officer or employee of a general partner or any~~
~~agent of a limited partnership, who, without reasonable cause,~~
~~refuses to allow any limited partner or the limited partner's~~
~~agent or attorney to inspect or copy any information of the~~
~~limited partnership to which such limited partner is entitled~~
~~under subsection (a) or (b) shall be personally liable to the~~
~~limited partner for a penalty in an amount not to exceed ten~~
~~percent of the fair market value of the limited partnership~~
~~interest of the limited partner in addition to any other~~



2857 ~~damages or remedy.~~

2858 (h) A limited partnership may charge a person that
2859 makes a demand under this section the reasonable costs of
2860 copying, limited to the costs of labor and material.

2861 (i) A limited partner or person dissociated as a
2862 limited partner may exercise the rights under this section
2863 through an attorney or other agent. Any restriction imposed
2864 under subsection (g) or by the partnership agreement applies
2865 both to the attorney or other agent and to the limited partner
2866 or person dissociated as a limited partner. If the demanding
2867 person's agent or attorney is to inspect and copy the books
2868 and records of the limited partnership, the demand shall be
2869 accompanied by a power of attorney or other writing which
2870 authorizes the agent or attorney to so act on behalf of the
2871 demanding person.

2872 (j) The rights stated in this section do not extend to
2873 a person as transferee, but may be exercised by the legal
2874 representative of an individual under legal disability who is
2875 a limited partner or person dissociated as a limited partner.

2876 (k) The rights under this section may be denied by the
2877 limited partnership if the limited partnership determines that
2878 the demanding person has within two years preceding his, her,
2879 or its demand improperly used any information secured through
2880 any prior examination of the records of the limited
2881 partnership.

2882 (l) For purposes of this section, a proper purpose
2883 shall mean a purpose directly related to the limited partner
2884 or dissociated limited partner's interest as a limited partner



2885 or dissociated limited partner, as the case may be; provided,
2886 however, that a demand shall not be for a proper purpose if
2887 the limited partnership reasonably determines that the demand
2888 is in connection with:

2889 (1) an active or pending derivative proceeding in the
2890 right of the limited partnership under Article 9 of this
2891 chapter that is or is expected to be instituted or maintained
2892 by the limited partner or the limited partner's affiliate; or
2893 (2) an active or pending civil lawsuit to which the
2894 limited partnership, or its affiliate, and the limited partner
2895 or dissociated limited partner, or the affiliate thereof, are,
2896 or are expected to be, adversarial named parties.

2897 (m) If a limited partnership does not within a
2898 reasonable time allow a person who complies with the
2899 requirements of this section to inspect and copy the records
2900 required by this section, the person who complies with this
2901 section may apply to the designated court, and if none, the
2902 circuit court for the county in which the limited
2903 partnership's principal office is located in this state, and
2904 if none in this state, the circuit court for the county in
2905 which the limited partnership's most recent registered office
2906 is located for an order to permit inspection and copying of
2907 the records demanded. The court shall dispose of an
2908 application under this subsection on an expedited basis. If
2909 the court orders inspection and copying of the records
2910 demanded under this section, it may impose reasonable
2911 restrictions on their confidentiality, use, or distribution by
2912 the demanding person and the court shall also order the



2913 limited partnership to pay the demanding person's expenses
2914 incurred to obtain the order unless the limited partnership
2915 establishes that the limited partnership refused inspection in
2916 good faith because the limited partnership had:
2917 (1) a reasonable basis for doubt about the right of the
2918 demanding person to inspect the records demanded; or
2919 (2) required reasonable restrictions on the
2920 confidentiality, use, or distribution of the records demanded
2921 to which the demanding person had been unwilling to agree. If
2922 the limited partnership has declined to deliver or make
2923 available the records because the demanding person had been
2924 unwilling to agree to restrictions proposed by the limited
2925 partnership on the confidentiality, use, or distribution of
2926 the records, the limited partnership shall have the burden of
2927 demonstrating that the restrictions proposed by the limited
2928 partnership were reasonable."

2929 "§10A-17-1.02

2930 In this chapter:

2931 (1) **~~"Member"~~ MEMBER** means a person who, under the rules
2932 or practices of a nonprofit association, may participate in
2933 the selection of persons authorized to manage the affairs of
2934 the nonprofit association or in the development of policy of
2935 the nonprofit association.

2936 (2) **~~"Nonprofit association"~~ NONPROFIT ASSOCIATION** means
2937 an unincorporated organization consisting of two or more
2938 members joined by mutual consent as an association for a
2939 stated common, nonprofit purpose, but does not include a
2940 limited liability company, general partnership, or limited



2941 partnership. In addition, joint tenancy, tenancy in common, or
2942 tenancy by the entireties does not by itself establish a
2943 nonprofit association, even if the co-owners share use of the
2944 property for a nonprofit purpose.

2945 (3) "Nonprofit purpose" NONPROFIT PURPOSE shall be any
2946 purpose for which a nonprofit corporation could be organized
2947 under the Alabama Nonprofit Corporation-Act Law, as amended,
2948 and where no part of income or profit is distributable to its
2949 members, directors, L and officers."

2950 Section 2. Division G, consisting of Section
2951 10A-2A-8.70, is added to Article 8 of Chapter 2A of Title 10A
2952 of the Code of Alabama 1975, to read as follows:

2953 Division G Corporate Opportunities.

2954 §10A-2A-8.70 Corporate opportunities.

2955 (a) If a director or officer pursues or takes advantage
2956 of a corporate opportunity directly, or indirectly through or
2957 on behalf of another person, that action may not be the
2958 subject of equitable relief, or give rise to an award of
2959 damages or other sanctions against the director, officer, or
2960 other person, in a proceeding by or in the right of the
2961 corporation on the ground that the corporate opportunity
2962 should have first been offered to the corporation, if (1)
2963 before the director, officer, or other person becomes legally
2964 obligated respecting the corporate opportunity the director or
2965 officer brings it to the attention of the corporation and
2966 either: (i) action by qualified directors disclaiming the
2967 corporation's interest in the corporate opportunity is taken
2968 in compliance with the same procedures as are set forth in



2969 Section 10A-2A-8.60(c) or (ii) stockholders' action
2970 disclaiming the corporation's interest in the corporate
2971 opportunity is taken in compliance with the procedures set
2972 forth in Section 10A-2A-8.60(d), in either case as if the
2973 decision being made concerned a conflicting interest
2974 transaction, except that, rather than making "required
2975 disclosure" as defined in Section 10A-2A-8.60(a), the director
2976 or officer shall have made prior disclosure to those acting on
2977 behalf of the corporation of all material facts concerning the
2978 corporate opportunity known to the director or officer; or (2)
2979 the duty to offer the corporation the corporate opportunity
2980 has been limited or eliminated pursuant to a provision of the
2981 certificate of incorporation adopted (and where required, made
2982 effective by action of qualified directors) in accordance with
2983 Section 10A-2A-2.02(b) (6).

2984 (b) In any proceeding seeking equitable relief or other
2985 remedies based upon an alleged improper pursuit or taking
2986 advantage of a corporate opportunity by a director or officer
2987 directly, or indirectly through or on behalf of another
2988 person, the fact that the director or officer did not employ
2989 the procedure described in subsection (a)(1)(i) or (ii) before
2990 pursuing or taking advantage of the corporate opportunity
2991 shall not create an implication that the corporate opportunity
2992 should have been first presented to the corporation or alter
2993 the burden of proof otherwise applicable to establish that the
2994 director or officer breached a duty to the corporation in the
2995 circumstances.

2996 Section 3. Sections 10A-3A-6.14, 10A-3A-8.61, and

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2997 10A-3A-8.62 are added to the Code of Alabama 1975, to read as
2998 follows:

2999 §10A-3A-6.14 No derivative actions in nonprofit
3000 corporations.

3001 A person shall not have any right to commence or
3002 maintain a derivative action in the right of a nonprofit
3003 corporation to enforce a right of the nonprofit corporation.

3004 §10A-3A-8.61 Acts or transactions involving a
3005 membership nonprofit corporation.

3006 (a) An act or transaction effected or proposed to be
3007 effected by a membership nonprofit corporation (or by an
3008 entity controlled by the membership nonprofit corporation) may
3009 not be the subject of equitable relief, or give rise to an
3010 award of damages or other sanctions against a director or
3011 officer of the membership nonprofit corporation, on the
3012 grounds that the director or officer has an interest
3013 respecting the act or transaction, if the act or transaction
3014 is not a conflicting interest transaction.

3015 (b) A conflicting interest transaction may not be the
3016 subject of equitable relief, or give rise to an award of
3017 damages or other sanctions against a director or officer of
3018 the membership nonprofit corporation, in a proceeding by a
3019 member, on the grounds that the director or officer has an
3020 interest respecting the conflicting interest transaction, if:

3021 (1) the directors' action respecting the act or
3022 transaction was taken in compliance with subsection (c) at any
3023 time; or

3024 (2) the members' action respecting the act or



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3025 transaction was taken in compliance with subsection (d) at any
3026 time; or

3027 (3) the act or transaction is at the relevant time fair
3028 to the membership nonprofit corporation.

3029 (c) (1) Directors' action respecting a conflicting
3030 interest transaction is effective for purposes of subsection
3031 (b) (1) if the conflicting interest transaction has been
3032 authorized, after required disclosure by the conflicted
3033 director or officer of information not already known by the
3034 qualified directors, or after modified disclosure in
3035 compliance with subsection (c) (2), by (A) the affirmative vote
3036 of a majority (but no fewer than two) of the qualified
3037 directors who voted on the conflicting interest transaction or
3038 (B) the affirmative vote of a majority of the members of a
3039 board committee that is composed of only qualified directors
3040 (but no fewer than two). Directors' action respecting a
3041 conflicting interest transaction is effective even though the
3042 conflicted director or officer is present at or participates
3043 in the meeting of the board or committee which authorizes the
3044 act or transaction or was involved in the initiation,
3045 negotiation, or approval of the act or transaction.

3046 (2) Notwithstanding subsection (c) (1), when a
3047 transaction is a conflicting interest transaction only because
3048 a related person described in clause (v) or (vi) of the
3049 definition of "related person" in Section 10A-3A-2.02 is a
3050 party to or has a material financial interest in the
3051 conflicting interest transaction, the conflicted director or
3052 officer is not obligated to make required disclosure to the



3053 extent that the director or officer reasonably believes that
3054 doing so would violate a duty imposed under law, a legally
3055 enforceable obligation of confidentiality, or a professional
3056 ethics rule, provided that the conflicted director or officer
3057 discloses to the qualified directors voting on the conflicting
3058 interest transaction:

3059 (i) all information required to be disclosed that is
3060 not so violative;

3061 (ii) the existence and nature of the director's or
3062 officer's conflicting interest; and

3063 (iii) the nature of the conflicted director's or
3064 officer's duty not to disclose the confidential information.

3065 (3) A majority (but no fewer than two) of all the
3066 qualified directors on the board of directors, or on the board
3067 committee, constitutes a quorum for purposes of action that
3068 complies with this section.

3069 (4) Where directors' action under this subsection (c)
3070 does not satisfy a quorum or voting requirement applicable to
3071 the authorization of the conflicting interest transaction by
3072 reason of the certificate of incorporation, bylaws, or another
3073 provision of this chapter, independent action to satisfy those
3074 authorization requirements shall be taken by the board of
3075 directors or a board committee, in which action directors who
3076 are not qualified directors may participate.

3077 (5) Where directors' action under this subsection (c)
3078 is taken without a meeting in accordance with Section
3079 10A-3A-8.21, the action is effective even though a conflicted
3080 director signs a consent to that action.



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

3096 (2) A director or officer who has a conflicting
3097 interest respecting the conflicting interest transaction
3098 shall, before the members' vote, inform the secretary or other
3099 officer or agent of the membership nonprofit corporation
3100 authorized to tabulate votes, in writing, of the number of
3101 membership interests that the director or officer knows are
3102 not qualified membership interests under subsection (d) (3),
3103 and the identity of the holders of those membership interests.

3104 (3) For purposes of this section: (i) "holder" means
3105 and "held by" refers to membership interests held by a member;
3106 and (ii) "qualified membership interests" means all membership
3107 interests entitled to be voted with respect to the conflicting
3108 interest transaction except for membership interests that the



3109 secretary or other officer or agent of the membership
3110 nonprofit corporation authorized to tabulate votes either
3111 knows, or under subsection (d)(2) is notified, are held by (A)
3112 a director or officer who has a conflicting interest
3113 respecting the conflicting interest transaction or (B) a
3114 related person of the director or officer (excluding a person
3115 described in clause (vi) of the definition of "related person"
3116 in Section 10A-3A-2.02).

3117 (4) A majority of the votes entitled to be cast by the
3118 holders of all qualified membership interests constitutes a
3119 quorum for purposes of compliance with this section. Members'
3120 action that otherwise complies with this section is not
3121 affected by the presence of holders, or by the voting, of
3122 membership interests that are not qualified membership
3123 interests.

3124 (5) If a members' vote does not comply with subsection
3125 (d)(1) solely because of a director's or officer's failure to
3126 comply with subsection (d)(2), and if the director or officer
3127 establishes that the failure was not intended to influence and
3128 did not in fact determine the outcome of the vote, then the
3129 action by the members respecting the conflicting interest
3130 transaction shall be given effect.

3131 (6) Where members' action under this section does not
3132 satisfy a quorum or voting requirement applicable to the
3133 authorization of the conflicting interest transaction by
3134 reason of the certificate of incorporation, the bylaws, or
3135 another provision of this chapter, independent action to
3136 satisfy those authorization requirements shall be taken by the



3137 members, in which action membership interests that are not
3138 qualified membership interests may participate.

3139 (7) Where members' action under this subsection (d) is
3140 taken without a meeting in accordance with Section
3141 10A-3A-7.04, the action is effective even though members
3142 holding membership interests that are not qualified membership
3143 interests sign a consent to that action.

3144 (e) Notwithstanding subsections (c) and (d), if a
3145 controlling person has the power and authority to approve the
3146 conflicting interest transaction pursuant to a provision in
3147 the certificate of incorporation permitted by Section
3148 10A-3A-8.01, the conflicting interest transaction shall be
3149 approved by that controlling person.

3150 (f) An act or transaction effected or proposed to be
3151 effected by a membership nonprofit corporation (or by an
3152 entity controlled by the membership nonprofit corporation) may
3153 not be the subject of equitable relief, or give rise to an
3154 award of damages or other sanctions against a controlling
3155 person or a member of a control group of the membership
3156 nonprofit corporation, on the grounds that the controlling
3157 person or member of a control group has an interest respecting
3158 the act or transaction, if the act or transaction is not a
3159 controlling person transaction.

3160 (g) A controlling person transaction may not be the
3161 subject of equitable relief, or give rise to an award of
3162 damages or other sanctions, against a director or officer of
3163 the membership nonprofit corporation or any controlling person
3164 or member of a control group, by reason of a claim based on a



3165 breach of duty by a director, officer, controlling person, or
3166 member of a control group, if:

3167 (1) the controlling person transaction is approved in
3168 accordance with the provisions of the certificate of
3169 incorporation, bylaws, rules, regulations, policies, or
3170 agreements among the members and the membership nonprofit
3171 corporation; or

3172 (2) the controlling person transaction is at the
3173 relevant time fair to the membership nonprofit corporation.

3174 \$10A-3A-8.62 Acts or transactions involving a
3175 nonmembership nonprofit corporation.

3176 (a) An act or transaction effected or proposed to be
3177 effected by a nonmembership nonprofit corporation (or by an
3178 entity controlled by the nonmembership nonprofit corporation)
3179 may not be the subject of equitable relief, or give rise to an
3180 award of damages or other sanctions against a director or
3181 officer of the nonmembership nonprofit corporation, on the
3182 grounds that the director or officer has an interest
3183 respecting the act or transaction, if the act or transaction
3184 is not a conflicting interest transaction.

3185 (b) A conflicting interest transaction may not be the
3186 subject of equitable relief, or give rise to an award of
3187 damages or other sanctions against a director or officer of
3188 the nonmembership nonprofit corporation, on the grounds that
3189 the director or officer has an interest respecting the
3190 conflicting interest transaction, if:

3191 (1) the directors' action respecting the act or
3192 transaction was taken in compliance with subsection (c) at any



3193 time; or

3194 (2) the act or transaction is at the relevant time fair
3195 to the nonmembership nonprofit corporation.

3196 (c) (1) Directors' action respecting a conflicting
3197 interest transaction is effective for purposes of subsection
3198 (b) (1) if the conflicting interest transaction has been
3199 authorized, after required disclosure by the conflicted
3200 director or officer of information not already known by the
3201 qualified directors, or after modified disclosure in
3202 compliance with subsection (c) (2), by (A) the affirmative vote
3203 of a majority (but no fewer than two) of the qualified
3204 directors who voted on the conflicting interest transaction or
3205 (B) the affirmative vote of a majority of the members of a
3206 board committee that is composed of only qualified directors
3207 (but no fewer than two). Directors' action respecting a
3208 conflicting interest transaction is effective even though the
3209 conflicted director or officer is present at or participates
3210 in the meeting of the board or committee which authorizes the
3211 act or transaction or was involved in the initiation,
3212 negotiation, or approval of the act or transaction.

3213 (2) Notwithstanding subsection (c) (1), when a
3214 transaction is a conflicting interest transaction only because
3215 a related person described in clause (v) or (vi) of the
3216 definition of "related person" in Section 10A-3A-2.02 is a
3217 party to or has a material financial interest in the
3218 conflicting interest transaction, the conflicted director or
3219 officer is not obligated to make required disclosure to the
3220 extent that the director or officer reasonably believes that



3221 doing so would violate a duty imposed under law, a legally
3222 enforceable obligation of confidentiality, or a professional
3223 ethics rule, provided that the conflicted director or officer
3224 discloses to the qualified directors voting on the conflicting
3225 interest transaction:

3226 (i) all information required to be disclosed that is
3227 not so violative;

3228 (ii) the existence and nature of the director's or
3229 officer's conflicting interest; and

3230 (iii) the nature of the conflicted director's or
3231 officer's duty not to disclose the confidential information.

3232 (3) A majority (but no fewer than two) of all the
3233 qualified directors on the board of directors, or on the board
3234 committee, constitutes a quorum for purposes of action that
3235 complies with this section.

3236 (4) Where directors' action under this subsection (c)
3237 does not satisfy a quorum or voting requirement applicable to
3238 the authorization of the conflicting interest transaction by
3239 reason of the certificate of incorporation, the bylaws, or
3240 another provision of this chapter, independent action to
3241 satisfy those authorization requirements shall be taken by the
3242 board of directors or a board committee, in which action
3243 directors who are not qualified directors may participate.

3244 (5) Where directors' action under this subsection (c)
3245 is taken without a meeting in accordance with Section
3246 10A-3A-8.21, the action is effective even though a conflicted
3247 director signs a consent to that action.

3248 (d) Notwithstanding subsection (c), if a controlling



3249 person has the power and authority to approve the conflicting
3250 interest transaction pursuant to a provision in the
3251 certificate of incorporation permitted by Section 10A-3A-8.01,
3252 the conflicting interest transaction shall be approved by that
3253 controlling person.

3254 (e) An act or transaction effected or proposed to be
3255 effected by a nonmembership nonprofit corporation (or by an
3256 entity controlled by the nonmembership nonprofit corporation)
3257 may not be the subject of equitable relief, or give rise to an
3258 award of damages or other sanctions against a controlling
3259 person or a member of a control group of the nonmembership
3260 nonprofit corporation, on the grounds that the controlling
3261 person or member of a control group has an interest respecting
3262 the act or transaction, if the act or transaction is not a
3263 controlling person transaction.

3264 (f) A controlling person transaction may not be the
3265 subject of equitable relief, or give rise to an award of
3266 damages or other sanctions, against a director or officer of
3267 the nonmembership nonprofit corporation or any controlling
3268 person or member of a control group, by reason of a claim
3269 based on a breach of duty by a director, officer, controlling
3270 person, or member of a control group, if:

3271 (1) the controlling person transaction is approved in
3272 accordance with the provisions of the certificate of
3273 incorporation, bylaws, rules, regulations, or policies of the
3274 nonmembership nonprofit corporation; or

3275 (2) the controlling person transaction is at the
3276 relevant time fair to the nonmembership nonprofit corporation.



3277 Section 4. Division G, consisting of Section
3278 10A-3A-8.70, is added to Article 8 of Chapter 3A of Title 10A
3279 of the Code of Alabama 1975, to read as follows:

3280 Division G Corporate Opportunities.

3281 §10A-3A-8.70 Corporate opportunities.

3282 (a) If a director or officer pursues or takes advantage
3283 of a corporate opportunity directly, or indirectly through or
3284 on behalf of another person, that action may not be the
3285 subject of equitable relief, or give rise to an award of
3286 damages or other sanctions against the director, officer, or
3287 other person on the grounds that the corporate opportunity
3288 should have first been offered to the nonprofit corporation,
3289 if (1) before the director, officer, or other person becomes
3290 legally obligated respecting the corporate opportunity the
3291 director or officer brings it to the attention of the
3292 nonprofit corporation and either: (i) action by qualified
3293 directors disclaiming the nonprofit corporation's interest in
3294 the corporate opportunity is taken in compliance with the same
3295 procedures as are set forth in Section 10A-3A-8.61(c) or
3296 Section 10A-3A-8.62(c); (ii) with respect to a membership
3297 nonprofit corporation, members' action disclaiming the
3298 membership nonprofit corporation's interest in the corporate
3299 opportunity is taken in compliance with the procedures set
3300 forth in Section 10A-3A-8.61(d); or (iii) if a controlling
3301 person has the power and authority to disclaim the nonprofit
3302 corporation's interest in the corporate opportunity pursuant
3303 to a provision in the certificate of incorporation permitted
3304 by Section 10A-3A-8.01, action disclaiming the nonprofit



3305 corporation's interest in the corporate opportunity is taken
3306 by that controlling person, in each case as if the decision
3307 being made concerned a conflicting interest transaction,
3308 except that, rather than making "required disclosure" as
3309 defined in Section 10A-3A-8.60, the director or officer shall
3310 have made prior disclosure to those acting on behalf of the
3311 nonprofit corporation of all material facts concerning the
3312 corporate opportunity known to the director or officer; or (2)
3313 the duty to offer the nonprofit corporation the corporate
3314 opportunity has been limited or eliminated pursuant to a
3315 provision of the certificate of incorporation adopted (and
3316 where required, made effective by action of qualified
3317 directors) in accordance with Section 10A-3A-2.02(b)(6).

3318 (b) In any proceeding seeking equitable relief or other
3319 remedies based upon an alleged improper pursuit or taking
3320 advantage of a corporate opportunity by a director or officer
3321 directly, or indirectly through or on behalf of another
3322 person, the fact that the director or officer did not employ
3323 the procedure described in subsection (a)(1) before pursuing
3324 or taking advantage of the corporate opportunity shall not
3325 create an implication that the corporate opportunity should
3326 have been first presented to the nonprofit corporation or
3327 alter the burden of proof otherwise applicable to establish
3328 that the director or officer breached a duty to the nonprofit
3329 corporation in the circumstances.

3330 Section 5. Sections 10A-2A-16.10 and 10A-3A-4.20, Code
3331 of Alabama 1975, providing for financial statements for
3332 stockholders and members respectively, are repealed. The

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3333 provisions of Section 10A-2A-16.10 are incorporated into
3334 Sections 10A-2A-16.02, 10A-2A-16.03, and 10A-2A-16.04, Code of
3335 Alabama 1975, and the provisions of Section 10A-3A-4.20 are
3336 incorporated into Sections 10A-3A-4.02, 10A-3A-4.03, and
3337 10A-3A-4.04, Code of Alabama 1975.

3338 Section 6. No amendment made by this act shall apply to
3339 or affect any civil action or proceeding completed or pending
3340 on or before August 1, 2026.

3341 Section 7. This act shall become effective on August 1,
3342 2026.