

SB112 INTRODUCED



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



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4 SYNOPSIS:

5 Relating to the Alabama Business and Nonprofit
6 Entities Code.

7 This bill would eliminate references to the old
8 Alabama Nonprofit Corporation Law, clarify that the
9 address of registered agents must be in this state,
10 clarify that the certificate of formation must set
11 forth the county of the registered agent in accordance
12 with current practice, and streamline and clarify the
13 ratification process of certain actions in accordance
14 with Delaware law changes.

15 This bill would provide that business and
16 nonprofit corporations may provide for exculpation of
17 certain officers for certain actions in accordance with
18 changes to Delaware law and the Model Business
19 Corporation Act.

20 This bill would clarify the amendment and
21 restatement process and would clarify the provisions
22 regarding the sale of property by business and
23 nonprofit corporations in accordance with changes to
24 Delaware law.

25 This bill would conform the professional
26 corporation law to recent changes in the business and
27 nonprofit corporation laws, and would provide a process
28 for the ratification of certain actions and



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transactions for limited liability companies, limited partnerships, and partnerships.

Section 111.05 of the Constitution of Alabama of 2022, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of specified exceptions; it is approved by the affected entity; or the Legislature appropriates funds, or provides a local source of revenue, to the entity for the purpose.

The purpose or effect of this bill would be to require a new or increased expenditure of local funds within the meaning of the section. However, the bill does not require approval of a local governmental entity or enactment by a 2/3 vote to become effective because it comes within one of the specified exceptions contained in the section.

A BILL

TO BE ENTITLED

AN ACT

Relating to the Alabama Business and Nonprofit Entities Code; to amend Sections 10A-1-1.03, 10A-1-1.08, and 10A-1-3.32, as amended by Act 2023-503; 10A-1-5.31;



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10A-2A-1.40, as amended by Act 2023-503; 10A-2A-1.48;
10A-2A-1.51 and 10A-2A-2.02, as amended by Act 2023-503;
10A-2A-6.21, 10A-2A-6.24, and 10A-2A-6.31; 10A-2A-7.04, as
amended by Act 2023-503; 10A-2A-7.05 and 10A-2A-10.05;
10A-2A-10.07 and 10A-2A-10.08, as amended by Act 2023-503;
10A-2A-12.01, 10A-2A-13.02, and 10A-2A-14.05; 10A-3A-1.02,
10A-3A-1.23, 10A-3A-1.26, 10A-3A-2.02, 10A-3A-7.04,
10A-3A-7.05, 10A-3A-9.05, 10A-3A-9.07, 10A-3A-10.01,
10A-3A-10.03, 10A-3A-10.04, and 10A-3A-11.07, as added by Act
2023-503; 10A-4-1.03, 10A-4-2.01, 10A-4-2.02, 10A-4-2.03,
10A-4-2.04, 10A-4-3.01, 10A-4-3.02, 10A-4-3.03, 10A-4-3.05,
10A-4-3.06, 10A-4-4.01, 10A-4-4.02, 10A-4-5.01, 10A-4-5.02,
10A-4-5.03, 10A-4-5.04, 10A-4-5.05, 10A-4-5.06, 10A-4-5.08,
10A-5A-1.08, 10A-5A-2.01, 10A-5A-2.02, 10A-5A-3.02,
10A-5A-8.01, 10A-8A-1.08, 10A-8A-10.02, 10A-9A-1.08, and
10A-9A-2.01; and 10A-9A-2.02, as amended by Act 2023-503, Code
of Alabama 1975; to eliminate references to the old Alabama
Nonprofit Corporation Law; to clarify that the address of
registered agents must be in this state, that the certificate
of formation must set forth the county of the registered agent
in accordance with current practice, and to streamline and
clarify the ratification process of certain actions in
accordance with Delaware law changes; to provide that business
and nonprofit corporations may provide for exculpation of
certain officers for certain actions in accordance with
changes to Delaware law and the Model Business Corporation
Act; to clarify the amendment and restatement process; to
clarify the provisions regarding the sale of property by



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business and nonprofit corporations in accordance with changes to Delaware law; to conform the professional corporation law to recent changes in the business and nonprofit corporation laws; to add Sections 10A-5A-1.11, 10A-8A-1.14, and 10A-9A-1.15 to the Code of Alabama 1975; to provide a process for ratification of certain actions and transactions for limited liability companies, limited partnerships, and partnerships; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Section 111.05 of the Constitution of Alabama of 2022.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 10A-1-1.03, 10A-1-1.08, and 10A-1-3.32, as amended by Act 2023-503; 10A-1-5.31; 10A-2A-1.40, as amended by Act 2023-503; 10A-2A-1.48; 10A-2A-1.51 and 10A-2A-2.02, as amended by Act 2023-503; 10A-2A-6.21, 10A-2A-6.24, and 10A-2A-6.31; 10A-2A-7.04, as amended by Act 2023-503; 10A-2A-7.05 and 10A-2A-10.05; 10A-2A-10.07 and 10A-2A-10.08, as amended by Act 2023-503; 10A-2A-12.01, 10A-2A-13.02, and 10A-2A-14.05; 10A-3A-1.02, 10A-3A-1.23, 10A-3A-1.26, 10A-3A-2.02, 10A-3A-7.04, 10A-3A-7.05, 10A-3A-9.05, 10A-3A-9.07, 10A-3A-10.01, 10A-3A-10.03, 10A-3A-10.04, and 10A-3A-11.07, as added by Act 2023-503; 10A-4-1.03, 10A-4-2.01, 10A-4-2.02, 10A-4-2.03, 10A-4-2.04, 10A-4-3.01, 10A-4-3.02, 10A-4-3.03, 10A-4-3.05, 10A-4-3.06, 10A-4-4.01, 10A-4-4.02, 10A-4-5.01, 10A-4-5.02, 10A-4-5.03, 10A-4-5.04, 10A-4-5.05, 10A-4-5.06, 10A-4-5.08, 10A-5A-1.08, 10A-5A-2.01, 10A-5A-2.02, 10A-5A-3.02,



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10A-5A-8.01, 10A-8A-1.08, 10A-8A-10.02, 10A-9A-1.08, 10A-9A-2.01, and 10A-9A-2.02 of the Code of Alabama 1975, are amended to read as follows:

"§10A-1-1.03

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

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

(1) AFFILIATE. A person who controls, is controlled by, or is under common control with another person. An affiliate of an individual includes the spouse, or a parent or sibling thereof, of the individual, or a child, grandchild, sibling, parent, or spouse of any thereof, of the individual, or an individual having the same home as the individual, or a trust or estate of which an individual specified in this sentence is a substantial beneficiary; a trust, estate, incompetent, conservatee, protected person, or minor of which the individual is a fiduciary; or an entity of which the individual is director, general partner, agent, employee or the governing authority or member of the governing authority.

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

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

(i) an officer or governing person; or



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

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

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

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

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

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

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

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

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



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169 (8) CERTIFICATE OF FORMATION.

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

172 (B) if appropriate, a restated certificate of formation
173 and all amendments of an original or restated certificate of
174 formation; provided that a restated certificate of formation
175 and an amendment of an original or restated certificate of
176 formation shall not be deemed to be a certificate of formation
177 for purposes of Section 10A-1-4.31.

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

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

182 (11) CERTIFICATION or CERTIFIED. Duly authenticated by
183 the proper officer or filing officer of the jurisdiction the
184 laws of which govern the internal affairs of an entity.

185 (12) CONTRIBUTION. A tangible or intangible benefit
186 that a person transfers to an entity in consideration for an
187 ownership interest in the entity or otherwise in the person's
188 capacity as an owner or a member. A benefit that may
189 constitute a contribution transferred in exchange for an
190 ownership interest or transferred in the transferor's capacity
191 as an owner or member may include cash, property, services
192 rendered, a contract for services to be performed, a
193 promissory note or other obligation of a person to pay cash or
194 transfer property to the entity, or securities or other
195 interests in or obligations of an entity. In either case, the
196 benefit does not include cash or property received by the



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197 entity:

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

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

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

204 (A) the continuance of a domestic entity as a foreign
205 entity of any type;

206 (B) the continuance of a foreign entity as a domestic
207 entity of any type; or

208 (C) the continuance of a domestic entity of one type as
209 a domestic entity of another type.

210 (14) CONVERTED ENTITY. An entity resulting from a
211 conversion.

212 (15) CONVERTING ENTITY. An entity as the entity existed
213 before the entity's conversion.

214 (16) COOPERATIVE. Includes an employee cooperative as
215 defined in Chapter 11.

216 (17) CORPORATION. Includes a domestic or foreign
217 business corporation, including a benefit corporation, as
218 defined in Chapter 2A, a domestic or foreign nonprofit
219 corporation as defined in ~~Chapter 3 or~~ Chapter 3A, a domestic
220 or foreign professional corporation as defined in Chapter 4,
221 and those entities specified in Chapter 20 as corporate.

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



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

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

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

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

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

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



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

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

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

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

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

(28) ELECTRONIC SIGNATURE. An electronic signature as that term is defined in the Uniform Electronic Transactions Act, Chapter 1A of Title 8, or any successor statute.

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

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

(31) ENTITY. A domestic or foreign organization.



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

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

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

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

(36) FOREIGN ENTITY. An entity governed as to its internal affairs by the laws of a jurisdiction other than this state.

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

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

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

(40) GENERAL PARTNER.

(A) Each partner in a general partnership; or

(B) a person who is admitted to a limited partnership



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as a general partner in accordance with the governing documents of the limited partnership.

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

(42) GOVERNING AUTHORITY. A person or group of persons who are entitled to manage and direct the affairs of an entity pursuant to this title and the governing documents of the entity, except that if the governing documents of the entity or this title divide the authority to manage and direct the affairs of the entity among different persons or groups of persons according to different matters, governing authority means the person or group of persons entitled to manage and direct the affairs of the entity with respect to a matter under the governing documents of the entity or this title. The term includes the board of directors of a corporation, by whatever name known, or other persons authorized to perform the functions of the board of directors of a corporation, the general partners of a general partnership or limited partnership, the persons who have direction and oversight of a limited liability company, and the trust managers of a real estate investment trust. The term does not include an officer who is acting in the capacity of an officer.

(43) GOVERNING DOCUMENTS.

(A) In the case of a domestic entity:

(i) the certificate of formation for a filing entity or the document or agreement under which a nonfiling entity is



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336 formed; and

337 (ii) the other documents or agreements, including
338 bylaws, partnership agreements of partnerships, limited
339 liability company agreements of limited liability companies,
340 or similar documents, adopted by the entity pursuant to this
341 title to govern the formation or the internal affairs of the
342 entity; or

343 (B) in the case of a foreign entity, the instruments,
344 documents, or agreements adopted under the law of its
345 jurisdiction of formation to govern the formation or the
346 internal affairs of the entity.

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

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

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

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

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

360 (49) JURISDICTION OF FORMATION.

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

362 (B) in the case of a foreign entity, the jurisdiction
363 in which the entity's certificate of formation or similar



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organizational instrument is filed, or if no certificate of formation or similar organizational instrument is filed, then the laws of the jurisdiction which govern the internal affairs of the foreign entity;

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

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

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

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

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

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

(51) LICENSE. A license, certificate of registration,



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392 or other legal authorization.

393 (52) LICENSING AUTHORITY. The state court, state
394 regulatory licensing board, or other like agency which has the
395 power to issue a license or other legal authorization to
396 render professional services.

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

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

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

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

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

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

409 (57) LIMITED PARTNERSHIP. A limited partnership as
410 defined in Chapter 9A. The term includes a limited liability
411 limited partnership as defined in Chapter 9A.

412 (58) MANAGERIAL OFFICIAL. An officer or a governing
413 person.

414 (59) MEMBER.

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

416 (B) ~~in the case of a nonprofit corporation formed~~
417 ~~pursuant to or governed by Chapter 3, a person having~~
418 ~~membership rights in the nonprofit corporation in accordance~~
419 ~~with its governing documents as provided in Chapter 3, and in~~



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the case of a nonprofit corporation formed pursuant to or governed by Chapter 3A, a person defined as a member under Chapter 3A;

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

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

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

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

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

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

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

(62) NONPROFIT ASSOCIATION. An unincorporated nonprofit



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association as defined in Chapter 17. The term does not include a general partnership which has filed a statement of not for profit partnership in accordance with Chapter 8A, a limited partnership which is carrying on a not for profit purpose, or a limited liability company which is carrying on a not for profit purpose.

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

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

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

(66) ORGANIZATION. A corporation, limited partnership, general partnership, limited liability company, business trust, real estate investment trust, joint venture, joint stock company, cooperative, association, or other organization, including, regardless of its organizational form, a bank, insurance company, credit union, and savings and loan association, whether for profit, not for profit, nonprofit, domestic, or foreign.

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

(68) OWNER.

(A) With respect to a foreign or domestic business



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corporation or real estate investment trust, a stockholder or a shareholder;

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

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

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

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

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

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

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

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

(72) PARTNERSHIP. Includes a general partnership, a limited liability partnership, a foreign limited liability partnership, a limited partnership, a foreign limited partnership, a limited liability limited partnership, and a foreign limited liability limited partnership.

(73) PARTNERSHIP AGREEMENT. Any agreement (whether referred to as a partnership agreement or otherwise), written,



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oral or implied, of the partners as to the activities and affairs of a general partnership or a limited partnership. The partnership agreement includes any amendments to the partnership agreement. In the case of limited partnerships formed prior to October 1, 1998, partnership agreement includes the certificate of partnership.

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

(75) PERSON. An individual, including the estate of an incompetent or deceased individual, or an entity, whether created by the laws of this state or another state or foreign country, including, without limitation, a general partnership, limited liability partnership, limited partnership, limited liability limited partnership, limited liability company, corporation, professional corporation, nonprofit corporation, professional association, trustee, personal representative, fiduciary, as defined in Section 19-3-150 or person performing in any similar capacity, business trust, estate, trust, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(76) PRESIDENT.

(A) The individual designated as president of an entity



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532 under the entity's governing documents; or

533 (B) the officer or committee of persons authorized to
534 perform the functions of the principal executive officer of an
535 entity without regard to the designated name of the officer or
536 committee.

537 (77) PRINCIPAL OFFICE. The office, in or out of this
538 state, where the principal executive office, whether referred
539 to as the principal executive office, chief executive office,
540 or otherwise, of an entity is located.

541 (78) PROFESSIONAL ASSOCIATION. A professional
542 association as defined in Chapter 30.

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

545 (80) PROFESSIONAL ENTITY. A professional association
546 and a professional corporation.

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

551 (82) PROPERTY. Includes all property, whether real,
552 personal, or mixed, or tangible or intangible, or any right or
553 interest therein.

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

556 (84) SECRETARY.

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

559 (B) the officer or committee of persons authorized to



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perform the functions of secretary of an entity without regard to the designated name of the officer or committee.

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

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

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

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

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

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

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

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

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



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

(91) TREASURER.

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

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

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

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

(94) VICE PRESIDENT.

(A) The individual designated as vice president of an entity under the governing documents of the entity; or

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

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

"§10A-1-1.08

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



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

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

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

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

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

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

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

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

(j) Chapter 17 and the provisions of Chapter 1 to the extent applicable to unincorporated nonprofit associations may be cited as the Alabama Unincorporated Nonprofit Association



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644 Law."

645 "§10A-1-3.32

646 (a) This section applies to domestic entities other
647 than (i) corporations formed pursuant to or governed by
648 Chapter 2A or Chapter 4, and real estate investment trusts
649 formed pursuant to or governed by Chapter 10, each of which is
650 governed by the separate recordkeeping requirements and record
651 inspections provisions of Chapter 2A and (ii) nonprofit
652 corporations formed pursuant to or governed by ~~Chapter 3 or~~
653 Chapter 3A, limited liability companies formed pursuant to or
654 governed by Chapter 5A, general partnerships formed pursuant
655 to or governed by Chapter 8A, and limited partnerships formed
656 pursuant to or governed by Chapter 9A, each of which are
657 governed by the separate recordkeeping requirements and record
658 inspection provisions set forth in each entity's respective
659 chapter governing that entity.

660 (b) With respect to a domestic entity covered by this
661 section, the books and records maintained under the chapter of
662 this title applicable to that entity and any other books and
663 records of that entity, wherever situated, are subject to
664 inspection and copying at the reasonable request, and at the
665 expense of, any owner or member or the owner's or member's
666 agent or attorney during regular business hours. The right of
667 access extends to the legal representative of a deceased owner
668 or member or owner or member under legal disability. The
669 entity shall also provide former owners and members with
670 access to its books and records pertaining to the period
671 during which they were owners or members.



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

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

"§10A-1-5.31

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

(1) a registered agent; and

(2) a registered office.

(b) A registered agent:

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

(2) may be:

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

(B) a domestic entity or a foreign entity that is



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registered to transact business in this state; and

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

(c) The registered office:

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

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

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

"§10A-2A-1.40

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

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

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

(3) CERTIFICATE OF INCORPORATION means the certificate of incorporation described in Section 10A-2A-2.02, all amendments to the certificate of incorporation, and any other documents permitted or required to be delivered for filing by a corporation with the Secretary of State under this chapter or Chapter 1 that modify, amend, supplement, restate, or



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replace the certificate of incorporation. After ~~an amendment~~
~~of the certificate of incorporation or any other document~~
~~filed~~ the filing of a filing instrument under this chapter or
Chapter 1 that restates or amends and restates the certificate
of incorporation in its entirety, the certificate of
incorporation shall not include any prior documents, but the
original date of incorporation shall remain unchanged. When
used with respect to a corporation incorporated and existing
on December 31, 2019, under a predecessor law of this state,
the term "certificate of incorporation" means articles of
incorporation, charter, or similar incorporating document, and
all amendments and restatements to the certificate of
incorporation, charter, or similar incorporating document.
When used with respect to a foreign corporation, a nonprofit
corporation, or a foreign nonprofit corporation, the
"certificate of incorporation" of such an entity means the
document of such entity that is equivalent to the certificate
of incorporation of a corporation. The term "certificate of
incorporation" as used in this chapter is synonymous to the
term "certificate of formation" used in Chapter 1.

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

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



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

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

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

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

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

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

(12) ELIGIBLE INTERESTS means interests or memberships.

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



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

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

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

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

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

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

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

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

(22) INTEREST means either or both of the following



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rights under the governing statute governing an unincorporated entity:

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

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

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

(24) KNOWLEDGE is determined as follows:

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

(1) has actual knowledge of it; or

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

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

(1) knows of it;

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

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

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

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

(d) A person is deemed to have notice of a



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840 corporation's:

841 (1) matters included in the certificate of
842 incorporation upon filing;

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

845 (3) conversion, merger, or interest exchange under
846 Article 9 or Article 11, 90 days after a statement of
847 conversion, or statement of merger or interest exchange
848 becomes effective;

849 (4) conversion or merger under Article 8 of Chapter 1,
850 90 days after a statement of conversion or statement of merger
851 becomes effective; and

852 (5) revocation of dissolution and reinstatement, 90
853 days after certificate of revocation of dissolution and
854 reinstatement under Section 10A-2A-14.04 becomes effective.

855 (e) A stockholder's knowledge, notice, or receipt of a
856 notification of a fact relating to the corporation is not
857 knowledge, notice, or receipt of a notification of a fact by
858 the corporation solely by reason of the stockholder's capacity
859 as a stockholder.

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

863 (25) MEANS denotes an exhaustive definition.

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

866 (27) ORGANIZATIONAL DOCUMENTS means the public organic
867 record and private organizational documents of a corporation,



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868 foreign corporation, or eligible entity.

869 (28) PRINCIPAL OFFICE means the office (in or out of
870 this state) so designated in the annual report where the
871 principal executive offices of a corporation or foreign
872 corporation are located.

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

883 (30) PROCEEDING includes any civil suit and criminal,
884 administrative, and investigatory action.

885 (31) PUBLIC ORGANIC RECORD means (i) the certificate of
886 incorporation of a corporation, foreign corporation, nonprofit
887 corporation, or foreign nonprofit corporation, or (ii) the
888 document, if any, the filing of which is required to create an
889 unincorporated entity or foreign unincorporated entity, or
890 which creates the unincorporated entity or foreign
891 unincorporated entity and is required to be filed. Where a
892 public organic record has been amended or restated, the term
893 means the public organic record as last amended or restated.

894 (32) RECORD DATE means the date fixed for determining
895 the identity of the corporation's stockholders and their



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stockholdings for purposes of this chapter. Unless another time is specified when the record date is fixed, the determination shall be made as of the close of business at the principal office of the corporation on the date so fixed.

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

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

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

(36) STOCKHOLDER means a record stockholder.

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

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

(39) UNINCORPORATED ENTITY means an organization or artificial legal person that either has a separate legal existence or has the power to acquire an estate in real



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property in its own name and that is not any of the following:
a corporation, foreign corporation, nonprofit corporation,
foreign nonprofit corporation, a series of a limited liability
company or of another type of entity, an estate, a trust, a
state, United States, or foreign government. The term includes
a general partnership, limited liability company, limited
partnership, business trust, joint stock association, and
unincorporated nonprofit association.

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

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

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

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

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



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952 "§10A-2A-1.48

953 (a) The quorum and voting requirements applicable to a
954 ratifying action by the board of directors under Section
955 10A-2A-1.47(a) shall be the quorum and voting requirements
956 applicable to the corporate action proposed to be ratified at
957 the time ~~such~~ the ratifying action is taken.

958 (b) If the ratification of the defective corporate
959 action requires approval by the stockholders under Section
960 10A-2A-1.47(c), and if the approval is to be given at a
961 meeting, the corporation shall notify each holder of valid and
962 putative stock, regardless of whether entitled to vote, ~~as of~~
963 ~~(i) the record date for notice of the meeting and as~~ of (i)
964 the date of the action by the board of directors under Section
965 10A-2A-1.47(a), which shall be the record date, and (ii) the
966 date of the occurrence of the defective corporate action,
967 provided that notice shall not be required to be given to
968 holders of valid or putative stock whose identities or
969 addresses for notice cannot be determined from the records of
970 the corporation. The notice must state that the purpose, or
971 one of the purposes, of the meeting, is to consider
972 ratification of a defective corporate action and must be
973 accompanied by (i) either a copy of the action taken by the
974 board of directors in accordance with Section 10A-2A-1.47(a)
975 or the information required by Section 10A-2A-1.47(a) (1)
976 through (a) (4), and (ii) a statement that any claim that the
977 ratification of ~~such~~ the defective corporate action and any
978 putative stock issued as a result of ~~such~~ the defective
979 corporate action should not be effective, or should be



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effective only on certain conditions, shall be brought within 120 days from the applicable validation effective time.

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

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

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

(f) If the approval under this section of putative stock would result in an overissue, in addition to the approval required by Section 10A-2A-1.47, approval of an amendment to the certificate of incorporation under Article 10 to increase the number of shares of stock of an authorized



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class or series or to authorize the creation of a class or series of stock so there would be no overissue shall also be required."

"§10A-2A-1.51

(a) If the defective corporate action ratified under this Division D of Article 1 would have required under any other section of this chapter a filing ~~in accordance with this chapter, then, regardless of whether a filing was previously made in respect of such defective corporate action and~~ instrument to be delivered to a filing officer for filing and either (i) the filing instrument requires any change to give effect to the defective corporate action in accordance with this Division D of Article 1 (including any change to the date and time of the effectiveness of the filing instrument) or (ii) a filing instrument under any other section of this chapter was not previously delivered to a filing officer for filing in respect of the defective corporate action, then, in lieu of a filing instrument otherwise required by this chapter, the corporation shall ~~file~~ deliver a certificate of validation to the appropriate filing officer for filing in accordance with this section, and that certificate of validation shall serve to amend or substitute for any other filing instrument with respect to ~~such~~ the defective corporate action required by this chapter.

(b) The certificate of validation must set forth:

(1) the name of the corporation;

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



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

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

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

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

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

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

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



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1064 ~~(2)~~ (1) if a filing instrument was previously ~~made~~
1065 delivered to a filing officer for filing in respect of the
1066 defective corporate action and that filing instrument requires
1067 any change to give effect to the ratification of that
1068 defective corporate action in accordance with Section
1069 10A-2A-1.47, the certificate of validation must set forth (i)
1070 the name, title, and filing date of the filing instrument
1071 previously ~~made~~ delivered to a filing officer for filing and
1072 any certificate of correction to that filing instrument, ~~and~~
1073 (ii) a statement that a filing instrument containing all of
1074 the information required to be included under the applicable
1075 section or sections of this chapter to give effect to that
1076 defective corporate action is attached as an exhibit to the
1077 certificate of validation, and (iii) the date and time that
1078 filing instrument is deemed to have become effective; or
1079 ~~(3)~~ (2) if a filing instrument was not previously ~~made~~
1080 delivered to a filing officer for filing in respect of the
1081 defective corporate action and the defective corporate action
1082 ratified under Section 10A-2A-1.47 would have required a
1083 filing instrument under any other section of this chapter, the
1084 certificate of validation must set forth (i) a statement that
1085 a filing instrument containing all of the information required
1086 to be included under the applicable section or sections of
1087 this chapter to give effect to that defective corporate action
1088 is attached as an exhibit to the certificate of validation,
1089 and (ii) the date and time that filing instrument is deemed to
1090 have become effective."

1091 "§10A-2A-2.02



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1092 Section 10A-1-3.05 shall not apply to this chapter.

1093 Instead:

1094 (a) The certificate of incorporation must set forth:

1095 (1) a corporate name for the corporation that satisfies
1096 the requirements of Article 5 of Chapter 1;

1097 (2) the number of shares of stock the corporation is
1098 authorized to issue;

1099 (3) the street and mailing addresses of the
1100 corporation's initial registered office, the county within
1101 this state in which the street and mailing address is located,
1102 and the name of the corporation's initial registered agent at
1103 that office as required by Article 5 of Chapter 1; and

1104 (4) the name and address of each incorporator.

1105 (b) The certificate of incorporation may set forth:

1106 (1) the names and addresses of the individuals who are
1107 to serve as the initial directors;

1108 (2) provisions not inconsistent with law regarding:

1109 (i) the purpose or purposes for which the corporation
1110 is organized;

1111 (ii) managing the business and regulating the affairs
1112 of the corporation;

1113 (iii) defining, limiting, and regulating the powers of
1114 the corporation, its board of directors, and stockholders;

1115 (iv) a par value for authorized stock or classes of
1116 stock; or

1117 (v) subject to subsection (f), a provision imposing
1118 personal liability for the debts of the corporation on its
1119 stockholders to a specified extent and upon specified



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1120 conditions; otherwise, the stockholders of a corporation shall
1121 not be personally liable for the payment of the corporation's
1122 debts, except as they may be liable by reason of their own
1123 conduct or acts;

1124 (3) any provision that under this chapter is permitted
1125 to be set forth in the certificate of incorporation or
1126 required or permitted to be set forth in the bylaws;

1127 (4) a provision eliminating or limiting the liability
1128 of a director or officer to the corporation or its
1129 ~~shareholders~~ stockholders for money damages for any action
1130 taken, or any failure to take any action, as a director or
1131 officer, except liability for (i) the amount of a financial
1132 benefit received by a director or officer to which the
1133 director or officer is not entitled; (ii) an intentional
1134 infliction of harm on the corporation or the stockholders;
1135 (iii) in the case of a director, a violation of Section
1136 10A-2A-8.32; ~~or~~ (iv) an intentional violation of criminal law;
1137 or (v) in the case of an officer, any claim by or in the right
1138 of the corporation;

1139 (5) a provision permitting or making obligatory
1140 indemnification of a director for liability as defined in
1141 Section 10A-2A-8.50 to any person for any action taken, or any
1142 failure to take any action, as a director, except liability
1143 for (i) receipt of a financial benefit to which the director
1144 is not entitled, (ii) an intentional infliction of harm on the
1145 corporation or its stockholders, (iii) a violation of Section
1146 10A-2A-8.32, or (iv) an intentional violation of criminal law;
1147 and



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

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

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

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

(i) the individual's spouse;

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

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

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



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1176 controlled by the corporation) controlled by the individual or
1177 any person specified above in this definition;

1178 (v) a domestic or foreign:

1179 (A) business or nonprofit corporation (other than the
1180 corporation or an entity controlled by the corporation) of
1181 which the individual is a director~~+~~.

1182 (B) unincorporated entity of which the individual is a
1183 general partner or a member of the governing authority~~+~~. or

1184 (C) individual, trust or estate for whom or of which
1185 the individual is a trustee, guardian, personal
1186 representative, or like fiduciary~~+~~. or

1187 (vi) a person that is, or an entity that is, controlled
1188 by an employer of the individual.

1189 (f) The certificate of incorporation may not contain
1190 any provision that would impose liability on a stockholder for
1191 the attorney's fees or expenses of the corporation or any
1192 other party in connection with an internal corporate claim, as
1193 defined in Section 10A-2A-2.07(d).

1194 (g) The certificate of incorporation is part of a
1195 binding contract between the corporation and the stockholders,
1196 subject to the provisions of this chapter.

1197 (h) For purposes of subsection (b)(4) only, unless the
1198 certificate of incorporation otherwise provides, "officer"
1199 means an individual appointed or elected in accordance with
1200 Section 10A-2A-8.40 as (i) president, chief executive officer,
1201 chief operating officer, chief financial officer, chief legal
1202 officer, secretary, controller, treasurer, or chief accounting
1203 officer of the corporation; and (ii) any officer of the



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

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

"§10A-2A-6.21

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

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



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resolution of the board of directors.

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

~~(c)~~ (d) Before the corporation issues stock pursuant to subsection (b) or subsection (c), the board of directors or the person or body authorized pursuant to subsection (c) shall determine that the consideration received or to be received for stock to be issued is adequate. That determination by the board of directors or the person or body authorized pursuant to subsection (c) is conclusive insofar as the adequacy of consideration for the issuance of stock relates to whether the stock is validly issued, fully paid, and nonassessable.

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

~~(d)~~ (f) When the corporation receives the consideration for which the board of directors authorized the issuance of



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1260 stock, the stock issued therefor is fully paid and
1261 nonassessable.

1262 ~~(e)~~ (g) The corporation may place in escrow stock issued
1263 for a contract for future services or benefits or a promissory
1264 note, or make other arrangements to restrict the transfer of
1265 the stock, and may credit distributions in respect of the
1266 stock against its purchase price, until the services are
1267 performed, the benefits are received, or the note is paid. If
1268 the services are not performed, the benefits are not received,
1269 or the note is not paid, the stock escrowed or restricted and
1270 the distributions credited may be cancelled in whole or part."

1271 "§10A-2A-6.24

1272 (a) A corporation may issue rights, options, or
1273 warrants for the purchase of stock or other securities of the
1274 corporation. The board of directors shall determine (i) the
1275 terms and conditions upon which the rights, options, or
1276 warrants are issued; and (ii) the terms, including the
1277 consideration for which the stock or other securities acquired
1278 from the corporation upon the exercise of any rights, options,
1279 or warrants are to be issued. The authorization by the board
1280 of directors for the corporation to issue rights, options, or
1281 warrants constitutes authorization of the issuance of the
1282 stock or other securities for which the rights, options, or
1283 warrants are exercisable.

1284 (b) The board of directors may adopt a resolution to
1285 delegate to a person or body, in addition to the board of
1286 directors, the authority to enter into one or more
1287 transactions to issue rights, options, or warrants, and with



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respect to those transactions, the rights, options, or warrants may be issued in the numbers, at the time and for the consideration as the person or body may determine; provided that the resolution fixes (i) the maximum number of rights, options, or warrants, and the maximum number of shares of stock issuable upon exercise thereof, that may be issued pursuant to the resolution, (ii) a time period during which the rights, options, or warrants, and during which the stock issuable upon exercise thereof, may be issued, and (iii) a minimum amount of consideration (if any) for which the rights, options, or warrants may be issued and a minimum amount of consideration for the stock issuable upon exercise thereof. No resolution shall permit a person or body to issue rights, options, or warrants to that person or body.

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

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

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

(2) invalidate or void rights, options, or warrants held by that person or persons or any of that person's



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1316 transferee or transferees.

1317 ~~(e)~~ (e) The board of directors or the person or body
1318 authorized pursuant to subsection (b) may authorize one or
1319 more officers to (i) designate the recipients of rights,
1320 options, warrants, or other equity compensation awards that
1321 involve the issuance of stock and (ii) determine, within an
1322 amount and subject to any other limitations established by the
1323 board of directors, the person or body authorized pursuant to
1324 subsection (b) and, if applicable, the stockholders, the
1325 number of the rights, options, warrants, or other equity
1326 compensation awards and the terms of the rights, options,
1327 warrants, or awards to be received by the recipients, provided
1328 that an officer may not use that authority to designate
1329 himself or herself or any other persons as the board of
1330 directors may specify as a recipient of rights, options,
1331 warrants, or other equity compensation awards."

1332 "§10A-2A-6.31

1333 (a) A corporation may acquire its own stock, and,
1334 ~~unless otherwise provided in the certificate of incorporation,~~
1335 the stock so acquired ~~constitutes~~ shall constitute authorized
1336 but unissued stock, provided, however, that:

1337 (1) the certificate of incorporation may provide that
1338 the acquired stock shall constitute authorized, issued, but
1339 not outstanding stock;

1340 ~~(b) If the~~ (2) the certificate of incorporation
1341 ~~prohibits~~ may prohibit the reissue of the acquired stock, in
1342 which case, the number of authorized shares of stock is
1343 reduced by the number of shares of stock acquired ~~;~~ or



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

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

"§10A-2A-7.04

(a) Unless otherwise provided in the certificate of incorporation, any action required or permitted by this chapter to be taken at any meeting of the stockholders may be taken without a meeting, and without prior notice, if one or more consents in writing setting forth the action so taken are signed by the holders of outstanding stock having not less than the minimum number of votes that would be required to authorize or take the action at a meeting at which all shares of stock entitled to vote on the action were present and voted; provided, however, that if a corporation's certificate of incorporation authorizes stockholders to cumulate their votes when electing directors pursuant to Section 10A-2A-7.28, directors may not be elected by less than unanimous written



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consent. The action must be evidenced by one or more written consents describing the action taken, signed by the stockholders approving the action and delivered to the corporation for filing by the corporation with the minutes or corporate records.

(b) If not otherwise fixed under Section 10A-2A-7.07 and if prior action by the board of directors is not required respecting the action to be taken without a meeting, the record date for determining the stockholders entitled to take action without a meeting shall be the first date on which a ~~signed~~ written consent signed by a stockholder is delivered to the corporation. If not otherwise fixed under Section 10A-2A-7.07 and if prior action by the board of directors is required respecting the action to be taken without a meeting, the record date shall be the close of business on the day the resolution of the board of directors taking the prior action is adopted. No written consent of the stockholders shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest date on which a consent is delivered to the corporation as required by this section, written consents signed by sufficient stockholders to take the action have been delivered to the corporation. Any person ~~executing~~ signing a consent may provide, whether through instruction to an agent or otherwise, that ~~such~~ the consent will be effective at a future time, including a time determined upon the happening of an event, occurring not later than 60 days after ~~such~~ the instruction is given or such provision is made, if evidence of the instruction or provision



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is provided to the corporation. ~~A~~ If a person signs a consent when that person is not a stockholder, then that person's consent shall not be valid unless that person is a stockholder as of the record date for determining stockholders entitled to consent to the action. Unless a person's written consent states that it is irrevocable, that written consent may be revoked by that person by a writing to that effect delivered to the corporation before unrevoked written consents sufficient in number to take the corporate action have been delivered to the corporation.

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

(d) If this chapter requires that notice of a proposed action be given to nonvoting stockholders and the action is to be taken by written consent of the voting stockholders, the corporation shall give its nonvoting stockholders written notice of the action not more than 10 days after (i) written consents sufficient to take the action have been delivered to the corporation, or (ii) any later date that tabulation of consents is completed pursuant to an authorization under subsection (c). The notice must reasonably describe the action taken and contain or be accompanied by the same material that,



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under any provision of this chapter, would have been required to be sent to nonvoting stockholders in a notice of a meeting at which the proposed action would have been submitted to the stockholders for action.

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

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

"§10A-2A-7.05

(a) A corporation shall notify stockholders of the place, if any, date, and time of each annual and special



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1456 stockholders' meeting no fewer than 10 nor more than 60 days
1457 before the meeting date. If the board of directors has
1458 authorized participation by means of remote communication
1459 pursuant to Section 10A-2A-7.09 for holders of any class or
1460 series of stock, the notice to the holders of that class or
1461 series of stock must describe the means of remote
1462 communication to be used. The notice must include the record
1463 date for determining the stockholders entitled to vote at the
1464 meeting, if that date is different from the record date for
1465 determining stockholders entitled to notice of the meeting.
1466 Unless this chapter or the certificate of incorporation
1467 requires otherwise, the corporation is required to give notice
1468 only to stockholders entitled to vote at the meeting as of the
1469 record date for determining the stockholders entitled to
1470 notice of the meeting.

1471 (b) Unless this chapter or the certificate of
1472 incorporation requires otherwise, the notice of an annual
1473 meeting of stockholders need not include a description of the
1474 purpose or purposes for which the meeting is called.

1475 (c) Notice of a special meeting of stockholders must
1476 include a description of the purpose or purposes for which the
1477 meeting is called.

1478 (d) If not otherwise fixed under Section 10A-2A-7.03 or
1479 Section 10A-2A-7.07, the record date for determining
1480 stockholders entitled to notice of and to vote at an annual or
1481 special stockholders' meeting is the earlier of (i) the date
1482 of the action by the board of directors calling the meeting of
1483 the stockholders or (ii) the day before the first notice is



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1484 delivered to stockholders.

1485 (e) Unless the certificate of incorporation or bylaws
1486 require otherwise, if an annual or special stockholders'
1487 meeting is adjourned to a different place, if any, date, or
1488 time (including an adjournment taken to address a technical
1489 failure to convene or continue a meeting using remote
1490 communication pursuant to Section 10A-2A-7.09), notice need
1491 not be given of the new place, if any, date, or time if the
1492 new place, if any, date, or time is (i) announced at the
1493 meeting before adjournment or (ii) displayed, during the time
1494 scheduled for the meeting, on the same electronic network used
1495 to enable stockholders and proxy holders to participate in the
1496 meeting by means of remote communication. If a new record date
1497 for the adjourned meeting is or must be fixed under Section
1498 10A-2A-7.07, however, notice of the adjourned meeting shall be
1499 given under this section to stockholders entitled to vote at
1500 the adjourned meeting as of the record date fixed for notice
1501 of the adjourned meeting."

1502 "§10A-2A-10.05

1503 Unless the certificate of incorporation provides
1504 otherwise, a corporation's board of directors may adopt
1505 amendments to the corporation's certificate of incorporation
1506 without stockholder approval:

1507 (a) to extend the duration of the corporation if it was
1508 incorporated at a time when limited duration was required by
1509 law;

1510 (b) to delete the names and addresses of the
1511 incorporators or initial directors;



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1512 (c) to delete the name and address of the initial
1513 registered agent or registered office, if a statement of
1514 change is on file with the Secretary of State;

1515 (d) if the corporation has only one class of stock
1516 outstanding:

1517 (1) to change each issued and unissued authorized share
1518 of stock of the class into a greater number of whole shares of
1519 stock of that class; or

1520 (2) to increase the number of authorized shares of
1521 stock of the class to the extent necessary to permit the
1522 issuance of stock as a stock dividend;

1523 (e) to change the corporate name, provided that the
1524 name complies with Article 5 of Chapter 1;

1525 (f) to reflect a reduction in authorized stock, as a
1526 result of the operation of Section ~~10A-2A-6.31(b)~~
1527 10A-2A-6.31(a)(2), when the corporation has acquired its own
1528 stock and the certificate of incorporation prohibits the
1529 reissue of the acquired stock;

1530 (g) to delete a class of stock from the certificate of
1531 incorporation, as a result of the operation of Section
1532 ~~10A-2A-6.31(b)~~ 10A-2A-6.31(a)(2), when there is no remaining
1533 stock of the class because the corporation has acquired all
1534 stock of the class and the certificate of incorporation
1535 prohibits the reissue of the acquired stock; or

1536 (h) to take actions expressly permitted by Section
1537 10A-2A-6.02 to be made without stockholder approval."

1538 "§10A-2A-10.07

1539 (a) A corporation's board of directors may restate its



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certificate of incorporation at any time, without stockholder approval, to consolidate all amendments into a single document. The restated certificate of incorporation may amend the certificate of incorporation with those amendments that the board of directors is permitted to adopt without stockholder approval in accordance with Sections 10A-2A-10.02 and 10A-2A-10.05. The restated certificate of incorporation may also amend the certificate of incorporation with those amendments that the stockholders must approve in accordance with Section 10A-2A-10.03.

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

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

- (1) the name of the corporation;
- (2) the text of the restated certificate of incorporation;
- (3) a statement that the restated certificate of incorporation consolidates all amendments into a single document;
- (4) if a new amendment is included in the restated certificate of incorporation, the statements required under Section 10A-2A-10.06 with respect to the new amendment; and
- (5) the unique identifying number or other designation as assigned by the Secretary of State.



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1568 (d) The duly adopted restated certificate of
1569 incorporation supersedes the original certificate of
1570 incorporation and all amendments to the certificate of
1571 incorporation.

1572 (e) A restated certificate of incorporation may omit
1573 the information that may be deleted pursuant to Section
1574 10A-2A-10.05."

1575 "§10A-2A-10.08

1576 (a) A corporation's certificate of incorporation may be
1577 amended without action by the board of directors or
1578 stockholders to carry out a plan of reorganization ordered or
1579 decreed by a court of competent jurisdiction under the
1580 authority of a law of the United States if the certificate of
1581 incorporation after the amendment only contains provisions
1582 required or permitted by Section 10A-2A-2.02.

1583 (b) The individual or individuals designated by the
1584 court shall deliver to the Secretary of State for filing a
1585 certificate of amendment setting forth:

1586 (1) the name of the corporation;

1587 (2) the text of each amendment approved by the court;

1588 (3) the date of the court's order or decree approving
1589 the certificate of amendment;

1590 (4) the title of the reorganization proceeding in which
1591 the order or decree was entered;

1592 (5) a statement that the court had jurisdiction of the
1593 proceeding under federal statute; and

1594 (6) the unique identifying number or other designation
1595 as assigned by the Secretary of State.



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1596 (c) Stockholders of a corporation undergoing
1597 reorganization do not have ~~dissenters'~~ appraisal rights except
1598 as and to the extent provided in the reorganization plan.

1599 (d) This section does not apply after entry of a final
1600 decree in the reorganization proceeding even though the court
1601 retains jurisdiction of the proceeding for limited purposes
1602 unrelated to consummation of the reorganization plan."

1603 "§10A-2A-12.01

1604 (a) No approval of the stockholders is required, unless
1605 the certificate of incorporation otherwise provides:

1606 ~~(a)~~ (1) to sell, lease, exchange, or otherwise dispose
1607 of any or all of the corporation's assets in the usual and
1608 regular course of business;

1609 ~~(b)~~ (2) to mortgage, pledge, dedicate to the repayment
1610 of indebtedness (whether with or without recourse), or
1611 otherwise encumber any or all of the corporation's assets,
1612 regardless of whether in the usual and regular course of
1613 business;

1614 ~~(c)~~ (3) to transfer any or all of the corporation's
1615 assets to one or more corporations, foreign corporations, or
1616 other entities all of the stock or interests of which are
1617 owned by the corporation; or

1618 ~~(d)~~ (4) to distribute assets pro rata to the holders of
1619 one or more classes or series of the corporation's stock.

1620 (b) Without limiting the rights of a secured party
1621 under applicable law, no approval by stockholders shall be
1622 required by Section 10A-2A-12.02 for a sale, lease, exchange,
1623 or other disposition of any of the corporation's assets if



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those assets are mortgaged, pledged, dedicated to the repayment of indebtedness, or otherwise encumbered for the benefit of a secured party or other creditor and either:

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

(2) In lieu of the secured party or other creditor exercising such rights, the board of directors of the corporation authorizes an alternative sale, lease, exchange, or other disposition of those assets, whether with the secured party or other creditor, that results in the reduction or elimination of the total liabilities or obligations secured by those assets, provided that (i) the value of those assets is less than or equal to the total amount of the liabilities or obligations being eliminated or reduced and (ii) the sale, lease, exchange, or other disposition of those assets is not prohibited by the law governing the mortgage, pledge, dedication, or encumbrance. The provision of consideration to the corporation or to its stockholders shall not create a presumption that the value of the assets is greater than the total amount of the liabilities or obligations being eliminated or reduced.

(c) A failure to satisfy the condition in subsection (b) (2) (i) shall not result in the invalidation of a sale,



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lease, exchange, or other disposition of the corporation's assets if the transferee of those assets (i) provided value therefor (which may include the reduction or elimination of the total liabilities or obligations secured by those assets) and (ii) acted in good faith (as defined in Section 7-1-201(b)). The preceding sentence shall not apply to a proceeding against the corporation and any other necessary parties to enjoin the sale, lease, exchange, or other disposition of the corporation's assets before the consummation thereof and shall not eliminate any liability for monetary damages for any claim, including a claim in the right of the corporation, based upon a violation of a duty by a current or former director or officer, or other person.

(d) A provision of the certificate of incorporation that requires the authorization or consent of stockholders for a sale, lease, exchange, or other disposition of the corporation's assets shall not apply to a transaction permitted by subsection (b) unless that provision expressly so requires."

"§10A-2A-13.02

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

(1) consummation of a merger to which the corporation is a party (i) if the corporation is a subsidiary and the merger is governed by Section 10A-2A-11.05 or (ii) if stockholder approval is required for the merger by Section 10A-2A-11.04, or would be required but for the provisions of



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1680 Section 10A-2A-11.04(j), except that appraisal rights shall
1681 not be available to any stockholder of the corporation with
1682 respect to stock of any class or series that remain
1683 outstanding after consummation of the merger;

1684 (2) consummation of a stock exchange to which the
1685 corporation is a party the stock of which will be acquired,
1686 except that appraisal rights shall not be available to any
1687 stockholder of the corporation with respect to any class or
1688 series of stock of the corporation that is not acquired in the
1689 stock exchange;

1690 (3) consummation of a disposition of assets pursuant to
1691 Section 10A-2A-12.02 if the stockholder is entitled to vote on
1692 the disposition, except that appraisal rights shall not be
1693 available to any stockholder of the corporation with respect
1694 to stock of any class or series if (i) (A) under the terms of
1695 the corporate action approved by the stockholders there is to
1696 be distributed to stockholders in cash the corporation's net
1697 assets, in excess of a reasonable amount reserved to meet
1698 claims of the type described in Section 10A-2A-14.06 and
1699 Section 10A-2A-14.07, ~~(A)~~ (I) within one year after the
1700 stockholders' approval of the action and ~~(B)~~ (II) in accordance
1701 with their respective interests determined at the time of
1702 distribution, and ~~(ii)~~ (B) the disposition of assets is not an
1703 interested transaction, or (ii) the certificate of
1704 incorporation states that no stockholder shall be entitled to
1705 appraisal rights with respect to the consummation of a
1706 disposition of assets pursuant to Section 10A-2A-12.02;

1707 (4) an amendment of the certificate of incorporation



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with respect to a class or series of stock that reduces the number of stock of a class or series owned by the stockholder to a fraction of a stock if the corporation has the obligation or right to repurchase the fractional stock so created;

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

(6) consummation of a conversion of a corporation to a foreign corporation pursuant to Article 9 of this chapter or Article 8 of Chapter 1 if the stockholder does not receive stock in the foreign corporation resulting from the conversion that has terms as favorable to the stockholder in all material respects, and represents at least the same percentage interest of the total voting rights of the outstanding stock of the foreign corporation, as the stock held by the stockholder before the conversion;

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

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

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



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

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

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

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

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

(i) the record date fixed to determine the stockholders entitled to receive notice of the meeting of stockholders to act upon the corporate action requiring appraisal rights or, in the case of an offer made pursuant to Section 10A-2A-11.04(j), the date of the offer; or

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

(3) Subsection (b)(1) shall not be applicable and appraisal rights shall be available pursuant to subsection (a) for the holders of any class or series of stock (i) who are required by the terms of the corporate action requiring appraisal rights to accept for their stock anything other than cash or stock of any class or any series of stock of any corporation, or any other proprietary interest of any other



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entity, that satisfies the standards set forth in subsection (b) (1) at the time the corporate action becomes effective, ~~or~~ (ii) in the case of the consummation of a disposition of assets pursuant to Section 10A-2A-12.02, unless the cash, stock, or proprietary interests received in the disposition are, under the terms of the corporate action approved by the stockholders, to be distributed to the stockholders, as part of a distribution to stockholders of the net assets of the corporation in excess of a reasonable amount to meet claims of the type described in Sections 10A-2A-14.06 and 10A-2A-14.07, (A) within one year after the stockholders' approval of the action, and (B) in accordance with their respective interests determined at the time of the distribution, or (iii) in the case of the consummation of a disposition of assets pursuant to Section 10A-2A-12.02, unless the certificate of incorporation states that no stockholder shall be entitled to appraisal rights with respect to the consummation of a disposition of assets pursuant to Section 10A-2A-12.02.

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

(c) Notwithstanding any other provision of this Section 10A-2A-13.02, the certificate of incorporation as originally filed or any amendment to the certificate of incorporation may limit or eliminate appraisal rights for any class or series of preferred stock, except that (i) no limitation or elimination shall be effective if the class or series does not have the



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right to vote separately as a voting group (alone or as part of a group) on the action or if the action is a conversion or merger in which the converted organization or the surviving organization is not a corporation or foreign corporation, and (ii) any limitation or elimination contained in an amendment to the certificate of incorporation that limits or eliminates appraisal rights for any stock that is outstanding immediately before the effective date of the amendment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion, exchange, or other right existing immediately before the effective date of the amendment shall not apply to any corporate action that becomes effective within one year after the effective date of the amendment if that action would otherwise afford appraisal rights."

"§10A-2A-14.05

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

- (1) collecting its assets;
- (2) disposing of its properties that will not be distributed in kind to stockholders;
- (3) discharging or making provisions for discharging its liabilities;
- (4) distributing its remaining property among its stockholders according to their interests; and
- (5) doing every other act necessary to wind up and liquidate its business and affairs.



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1820 (b) In winding up its business and affairs, a
1821 corporation may:

1822 (1) preserve the corporation's business and affairs and
1823 property as a going concern for a reasonable time;

1824 (2) prosecute, defend, or settle actions or proceedings
1825 whether civil, criminal, or administrative;

1826 (3) transfer the corporation's assets;

1827 (4) resolve disputes by mediation or arbitration;

1828 (5) merge or convert in accordance with Article 9 or 11
1829 of this chapter or Article 8 of Chapter 1; and

1830 (6) enter into a stock exchange in accordance with
1831 Article 11 of this chapter.

1832 (c) Dissolution of a corporation does not:

1833 (1) transfer title to the corporation's property;

1834 (2) prevent transfer of its stock or securities;

1835 (3) subject its directors or officers to standards of
1836 conduct different from those prescribed in Article 8 of this
1837 chapter;

1838 (4) change (i) quorum or voting requirements for its
1839 board of directors or stockholders;

1840 (ii) provisions for selection, resignation, or removal
1841 of its directors or officers or both; or

1842 (iii) provisions for amending its bylaws;

1843 (5) prevent commencement of a proceeding by or against
1844 the corporation in its corporate name;

1845 (6) abate or suspend a proceeding pending by or against
1846 the corporation on the effective date of dissolution; or

1847 (7) terminate the authority of the registered agent of



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1848 the corporation.

1849 (d) A distribution in liquidation under this section
1850 may only be made by a dissolved corporation. For purposes of
1851 determining the stockholders entitled to receive a
1852 distribution in liquidation, the board of directors may fix a
1853 record date for determining stockholders entitled to a
1854 distribution in liquidation, which date may not be
1855 retroactive. If the board of directors does not fix a record
1856 date for determining stockholders entitled to a distribution
1857 in liquidation, the record date is the date the board of
1858 directors authorizes the distribution in liquidation."

1859 "§10A-3A-1.02

1860 As used in this chapter, unless otherwise specified or
1861 unless the context otherwise requires, the following terms
1862 have the following meanings:

1863 (1) CERTIFICATE OF INCORPORATION means the certificate
1864 of incorporation described in Section 10A-3A-2.02, all
1865 amendments to the certificate of incorporation, and any other
1866 documents permitted or required to be delivered for filing by
1867 a nonprofit corporation with the Secretary of State under this
1868 chapter or Chapter 1 that modify, amend, supplement, restate,
1869 or replace the certificate of incorporation. After ~~an~~
1870 ~~amendment of the certificate of incorporation or any other~~
1871 ~~document filed~~ the filing of a filing instrument under this
1872 chapter or Chapter 1 that restates or amends and restates the
1873 certificate of incorporation in its entirety, the certificate
1874 of incorporation shall not include any prior documents, but
1875 the original date of incorporation shall remain unchanged.



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

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

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

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

(5) DELIVER or DELIVERY means any method of delivery



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1904 used in conventional commercial practice, including delivery
1905 by hand, mail, commercial delivery, and, if authorized in
1906 accordance with Section 10A-3A-1.03, by electronic
1907 transmission.

1908 (6) DIRECTOR means an individual designated, elected,
1909 or appointed, by that or any other name or title, to act as a
1910 member of the board of directors, while the individual is
1911 holding that position.

1912 (7) DISTRIBUTION means a direct or indirect transfer of
1913 cash or other property from a nonprofit corporation to a
1914 member, director, or officer of that nonprofit corporation in
1915 that person's capacity as a member, director, or officer, but
1916 does not mean payments or benefits made in accordance with
1917 Section 10A-3A-6.41.

1918 (8) DOCUMENT means a writing as defined in Chapter 1.

1919 (9) EFFECTIVE DATE when referring to a document
1920 accepted for filing by the Secretary of State, means the time
1921 and date determined in accordance with Article 4 of Chapter 1.

1922 (10) ELECTRONIC MAIL means an electronic transmission
1923 directed to a unique electronic mail address.

1924 (11) ELECTRONIC MAIL ADDRESS means a destination,
1925 commonly expressed as a string of characters, consisting of a
1926 unique user name or mailbox (commonly referred to as the
1927 "local part" of the address) and a reference to an internet
1928 domain (commonly referred to as the "domain part" of the
1929 address), whether or not displayed, to which electronic mail
1930 can be sent or delivered.

1931 (12) EMPLOYEE does not include an individual serving as



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1932 an officer or director who is not otherwise employed by the
1933 nonprofit corporation.

1934 (13) ENTITLED TO VOTE means entitled to vote on the
1935 matter under consideration pursuant to the certificate of
1936 incorporation or bylaws of the nonprofit corporation, or
1937 applicable provisions of this chapter or Chapter 1.

1938 (14) ENTITY includes nonprofit corporation; foreign
1939 nonprofit corporation; business corporation; foreign business
1940 corporation; estate; trust; unincorporated entity; foreign
1941 unincorporated entity; and state, United States, and foreign
1942 government.

1943 (15) EXPENSES means reasonable expenses of any kind
1944 that are incurred in connection with a matter.

1945 (16) FOREIGN BUSINESS CORPORATION means a business
1946 corporation incorporated under a law other than the law of
1947 this state which would be a business corporation if
1948 incorporated under the law of this state.

1949 (17) FOREIGN NONPROFIT CORPORATION means a nonprofit
1950 corporation incorporated under a law other than the law of
1951 this state which would be a nonprofit corporation if
1952 incorporated under the law of this state.

1953 (18) FOREIGN UNINCORPORATED ENTITY means an
1954 unincorporated entity whose internal affairs are governed by
1955 the law of a jurisdiction other than this state.

1956 (19) FUNDAMENTAL TRANSACTION means an amendment of the
1957 certificate of incorporation, an amendment to the bylaws, a
1958 merger, a conversion, a sale of all or substantially all of
1959 the assets, or the dissolution of a nonprofit corporation.



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1960 (20) GOVERNING STATUTE means the statute governing the
1961 internal affairs of a nonprofit corporation, foreign nonprofit
1962 corporation, business corporation, foreign business
1963 corporation, unincorporated entity, or foreign unincorporated
1964 entity.

1965 (21) INCLUDES and INCLUDING denote a partial definition
1966 or a nonexclusive list.

1967 (22) INTEREST means:

1968 (a) a share;

1969 (b) a membership or membership interests; or

1970 (c) either or both of the following rights under the
1971 governing statute governing an organization other than a
1972 nonprofit corporation, foreign nonprofit corporation, business
1973 corporation, or foreign business corporation:

1974 (i) the right to receive distributions from that
1975 organization either in the ordinary course or upon
1976 liquidation; or

1977 (ii) the right to receive notice or vote on issues
1978 involving that organization's internal affairs, other than as
1979 an agent, assignee, proxy, or person responsible for managing
1980 that organization's business and affairs.

1981 (23) INTEREST HOLDER means a person who holds of record
1982 an interest.

1983 (24) KNOWLEDGE is determined as follows:

1984 (a) A person knows a fact when the person:

1985 (1) has actual knowledge of it; or

1986 (2) is deemed to know it under law other than this
1987 chapter.



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1988 (b) A person has notice of a fact when the person:

1989 (1) knows of it;

1990 (2) receives notification of it in accordance with

1991 Section 10A-3A-1.03;

1992 (3) has reason to know the fact from all of the facts

1993 known to the person at the time in question; or

1994 (4) is deemed to have notice of the fact under

1995 subsection (d).

1996 (c) A person notifies another of a fact by taking steps

1997 reasonably required to inform the other person in ordinary

1998 course in accordance with Section 10A-3A-1.03, whether or not

1999 the other person knows the fact.

2000 (d) A person is deemed to have notice of a nonprofit

2001 corporation's:

2002 (1) matters included in the certificate of

2003 incorporation upon filing;

2004 (2) dissolution, 90 days after a certificate of

2005 dissolution under Section 10A-3A-11.05 becomes effective;

2006 (3) conversion or merger under Article 13 or Article

2007 12, 90 days after a statement of conversion or statement of

2008 merger becomes effective;

2009 (4) conversion or merger under Article 8 of Chapter 1,

2010 90 days after a statement of conversion or statement of merger

2011 becomes effective; and

2012 (5) revocation of dissolution and reinstatement, 90

2013 days after certificate of revocation of dissolution and

2014 reinstatement under Section 10A-3A-11.06 becomes effective.

2015 (e) A member's knowledge, notice, or receipt of a



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2016 notification of a fact relating to the nonprofit corporation
2017 is not knowledge, notice, or receipt of a notification of a
2018 fact by that nonprofit corporation solely by reason of the
2019 member's capacity as a member.

2020 (f) The date and time of the effectiveness of a notice
2021 delivered in accordance with Section 10A-3A-1.03, is
2022 determined by Section 10A-3A-1.03.

2023 (25) MEANS denotes an exhaustive definition.

2024 (26) MEMBER means a person in whose name a membership
2025 is registered on the records of the membership nonprofit
2026 corporation and who has the right to (i) select or vote for
2027 the election of directors or (ii) vote on any type of
2028 fundamental transaction.

2029 (27) MEMBERSHIP or MEMBERSHIP INTERESTS means the
2030 rights and any obligations of a member in a membership
2031 nonprofit corporation or a foreign membership nonprofit
2032 corporation.

2033 (28) MEMBERSHIP NONPROFIT CORPORATION means, except as
2034 provided in Section 10A-3A-14.01(c)(1), a nonprofit
2035 corporation whose certificate of incorporation provides that
2036 it will have members.

2037 (29) NONMEMBERSHIP NONPROFIT CORPORATION means a
2038 nonprofit corporation whose certificate of incorporation
2039 provides that it will not have members.

2040 (30) NONPROFIT CORPORATION, except in the phrase
2041 foreign nonprofit corporation, means a nonprofit corporation
2042 incorporated under or existing under this chapter.

2043 (31) ORGANIZATIONAL DOCUMENTS means the public organic



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2044 record and private organizational documents of a nonprofit
2045 corporation, foreign nonprofit corporation, business
2046 corporation, foreign business corporation, or other
2047 organization.

2048 (32) PRINCIPAL OFFICE means the office (in or out of
2049 this state) where the principal executive offices of a
2050 nonprofit corporation or foreign nonprofit corporation are
2051 located.

2052 (33) PRIVATE ORGANIZATIONAL DOCUMENTS means (i) the
2053 bylaws of a nonprofit corporation, foreign nonprofit
2054 corporation, business corporation, or foreign business
2055 corporation or (ii) the rules, regardless of whether in
2056 writing, that govern the internal affairs of an unincorporated
2057 entity or foreign unincorporated entity, are binding on all
2058 its interest holders, and are not part of its public organic
2059 record, if any. Where private organizational documents have
2060 been amended or restated, the term means the private
2061 organizational documents as last amended or restated.

2062 (34) PROCEEDING includes any civil suit and criminal,
2063 administrative, and investigatory action.

2064 (35) PUBLIC ORGANIC RECORD means (i) the certificate of
2065 incorporation of a nonprofit corporation, foreign nonprofit
2066 corporation, business corporation, or foreign business
2067 corporation, or (ii) the document, if any, the filing of which
2068 is required to create an unincorporated entity or foreign
2069 unincorporated entity, or which creates the unincorporated
2070 entity or foreign unincorporated entity and is required to be
2071 filed. Where a public organic record has been amended or



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2072 restated, the term means the public organic record as last
2073 amended or restated.

2074 (36) RECORD DATE means the date fixed for determining
2075 the identity of the nonprofit corporation's members and their
2076 interests for purposes of this chapter. Unless another time is
2077 specified when the record date is fixed, the determination
2078 shall be made as of the close of business at the principal
2079 office of the nonprofit corporation on the date so fixed.

2080 (37) SECRETARY means the corporate officer to whom the
2081 certificate of incorporation, bylaws, or board of directors
2082 has delegated responsibility under Section 10A-3A-8.40(c) to
2083 maintain the minutes of the meetings of the board of
2084 directors, committees, and the members, and for authenticating
2085 records of the nonprofit corporation.

2086 (38) SHARES means the units into which the proprietary
2087 interests in a domestic or foreign business corporation are
2088 divided.

2089 (39) TYPE OF ENTITY means a generic form of entity: (i)
2090 recognized at common law; or (ii) formed under a governing
2091 statute, regardless of whether some entities formed under that
2092 law are subject to provisions of that law that create
2093 different categories of the form of entity.

2094 (40) UNINCORPORATED ENTITY means an organization or
2095 artificial legal person that either has a separate legal
2096 existence or has the power to acquire an estate in real
2097 property in its own name and that is not any of the following:
2098 a corporation, foreign corporation, nonprofit corporation,
2099 foreign nonprofit corporation, a series of a limited liability



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2100 company or of another type of entity, an estate, a trust, a
2101 state, United States, or foreign government. The term includes
2102 a general partnership, limited liability company, limited
2103 partnership, business trust, joint stock association, and
2104 unincorporated nonprofit association.

2105 (41) UNITED STATES includes a district, authority,
2106 bureau, commission, department, and any other agency of the
2107 United States.

2108 (42) VOTE, VOTING, or CASTING A VOTE includes the
2109 giving of consent in writing without a meeting. The term does
2110 not include either recording the fact of abstention or failing
2111 to vote for a candidate or for approval or disapproval of a
2112 matter, whether or not the person entitled to vote
2113 characterizes that conduct as voting or casting a vote.

2114 (43) VOTING GROUP means one or more classes of members
2115 that under the certificate of incorporation, bylaws, or this
2116 chapter are entitled to vote and be counted together
2117 collectively on a matter at a meeting of members. All members
2118 entitled by the certificate of incorporation, bylaws, or this
2119 chapter to vote generally on the matter are for that purpose a
2120 single voting group.

2121 (44) VOTING POWER means the current power to vote in
2122 the election of directors, or to vote on approval of any type
2123 of fundamental transaction.

2124 "§10A-3A-1.23

2125 (a) The quorum and voting requirements applicable to a
2126 ratifying action by the board of directors under Section
2127 10A-3A-1.22(a) shall be the quorum and voting requirements



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2128 applicable to the corporate action proposed to be ratified at
2129 the time the ratifying action is taken.

2130 (b) If the ratification of the defective corporate
2131 action requires approval by the members under Section
2132 10A-3A-1.22(c), and if the approval is to be given at a
2133 meeting, the membership nonprofit corporation shall notify
2134 each holder of valid and putative membership interests,
2135 regardless of whether entitled to vote, ~~as of the record date~~
2136 ~~for notice of the meeting and as~~ of (i) the date of the action
2137 by the board of directors under Section 10A-3A-1.22(a) which
2138 shall be the record date and (ii) the date of the occurrence
2139 of the defective corporate action, provided that notice shall
2140 not be required to be given to holders of valid or putative
2141 membership interests whose identities or addresses for notice
2142 cannot be determined from the records of the membership
2143 nonprofit corporation. The notice must state that the purpose,
2144 or one of the purposes, of the meeting, is to consider
2145 ratification of a defective corporate action and must be
2146 accompanied by (i) either a copy of the action taken by the
2147 board of directors in accordance with Section 10A-3A-1.22(a)
2148 or the information required by Section 10A-3A-1.22(a) (1)
2149 through (a) (4), and (ii) a statement that any claim that the
2150 ratification of the defective corporate action and any
2151 putative membership interest issued as a result of the
2152 defective corporate action should not be effective, or should
2153 be effective only on certain conditions, shall be brought
2154 within 120 days from the applicable validation effective time.

2155 (c) Except as provided in subsection (d) with respect



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to the voting requirements to ratify the election of a director, the quorum and voting requirements applicable to the approval by the members, if any, and if none, by the directors shall be the quorum and voting requirements applicable to the corporate action proposed to be ratified at the time of the member or director approval.

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

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

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



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2184 (g) If the ratification of the defective corporate
2185 action requires approval by a person or group of persons
2186 specified in the certificate of incorporation, the directors
2187 shall provide that person or group of persons with (i) either
2188 a copy of the action taken by the board of directors in
2189 accordance with Section 10A-3A-1.22(a) or the information
2190 required by Section 10A-3A-1.22(a)(1) through (a)(4), and (ii)
2191 a statement that any claim that the ratification of the
2192 defective corporate action and any putative membership
2193 interest issued as a result of the defective corporate action
2194 should not be effective, or should be effective only on
2195 certain conditions, shall be brought within 120 days from the
2196 applicable validation effective time.

2197 "§10A-3A-1.26

2198 (a) If the defective corporate action ratified under
2199 this Division B of Article 1 would have required under any
2200 other section of this chapter a filing ~~in accordance with this~~
2201 ~~chapter, then, regardless of whether a filing was previously~~
2202 ~~made in respect of the defective corporate action and~~
2203 instrument to be delivered to a filing officer for filing and
2204 either (i) the filing instrument requires any change to give
2205 effect to the defective corporate action in accordance with
2206 Division B of Article 1 (including any change to the date and
2207 time of the effectiveness of the filing instrument) or (ii) a
2208 filing instrument under any other section of this chapter was
2209 not previously delivered to a filing officer for filing in
2210 respect of the defective corporate action, then, in lieu of a
2211 filing instrument otherwise required by this chapter, the



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2212 nonprofit corporation shall ~~file~~ deliver a certificate of
2213 validation to the appropriate filing officer for filing in
2214 accordance with this section, and that certificate of
2215 validation shall serve to amend or substitute for any other
2216 filing instrument with respect to the defective corporate
2217 action required by this chapter.

2218 (b) The certificate of validation must set forth:

2219 (1) the name of the nonprofit corporation;

2220 (2) the unique identifying number or other designation
2221 as assigned by the Secretary of State;

2222 ~~(3) the defective corporate action that is the subject~~
2223 ~~of the certificate of validation (including, in the case of~~
2224 ~~any defective corporate action involving the issuance of~~
2225 ~~putative membership interests, the number and type of shares~~
2226 ~~of putative membership interests issued and the date or dates~~
2227 ~~upon which that putative membership interest was purported to~~
2228 ~~have been issued);~~

2229 ~~(4) the date of the defective corporate action;~~

2230 ~~(5) the nature of the failure of authorization in~~
2231 ~~respect of the defective corporate action;~~

2232 ~~(6)~~ (3) a statement that the defective corporate action
2233 was ratified in accordance with Section 10A-3A-1.22, including
2234 the date on which the board of directors ratified that
2235 defective corporate action, and if applicable, the date on
2236 which the members approved the ratification of that defective
2237 corporate action, and the date on which the person or group of
2238 persons specified in the certificate of incorporation approved
2239 the ratification of that defective corporate action; and



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2240 ~~(7)~~ (4) the information required by subsection (c).

2241 (c) The certificate of validation must also contain the
2242 following information:

2243 ~~(1) if a filing was previously made in respect of the~~
2244 ~~defective corporate action and no changes to that filing are~~
2245 ~~required to give effect to the ratification of that defective~~
2246 ~~corporate action in accordance with Section 10A-3A-1.22, the~~
2247 ~~certificate of validation must set forth (i) the name, title,~~
2248 ~~and filing date of the filing previously made and any~~
2249 ~~certificate of correction to that filing, and (ii) a statement~~
2250 ~~that a copy of the filing previously made, together with any~~
2251 ~~certificate of correction to that filing, is attached as an~~
2252 ~~exhibit to the certificate of validation;~~

2253 ~~(2)~~ (1) if a filing instrument was previously ~~made~~
2254 delivered to a filing officer for filing in respect of the
2255 defective corporate action and that filing instrument requires
2256 any change to give effect to the ratification of that
2257 defective corporate action in accordance with Section
2258 10A-3A-1.22, the certificate of validation must set forth (i)
2259 the name, title, and filing date of the filing instrument
2260 previously ~~made~~ delivered to a filing officer for filing and
2261 any certificate of correction to that filing instrument, ~~and~~
2262 (ii) a statement that a filing instrument containing all of
2263 the information required to be included under the applicable
2264 section or sections of this chapter to give effect to that
2265 defective corporate action is attached as an exhibit to the
2266 certificate of validation, and (iii) the date and time that
2267 filing instrument is deemed to have become effective; or



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2268 ~~(3)~~ (2) if a filing instrument was not previously ~~made~~
2269 delivered to a filing officer for filing in respect of the
2270 defective corporate action and the defective corporate action
2271 ratified under Section 10A-3A-1.22 would have required a
2272 filing instrument under any other section of this chapter, the
2273 certificate of validation must set forth (i) a statement that
2274 a filing instrument containing all of the information required
2275 to be included under the applicable section or sections of
2276 this chapter to give effect to that defective corporate action
2277 is attached as an exhibit to the certificate of validation,
2278 and (ii) the date and time that filing instrument is deemed to
2279 have become effective."

2280 "§10A-3A-2.02

2281 Section 10A-1-3.05 shall not apply to this chapter.

2282 Instead:

2283 (a) The certificate of incorporation must set forth:

2284 (1) a name for the nonprofit corporation that satisfies
2285 the requirements of Article 5 of Chapter 1;

2286 (2) the street and mailing address of the nonprofit
2287 corporation's initial registered office, the county within
2288 this state in which the street and mailing address is located,
2289 and the name of the nonprofit corporation's initial registered
2290 agent at that office as required by Article 5 of Chapter 1;

2291 (3) that the nonprofit corporation is incorporated
2292 under this chapter;

2293 (4) the name and address of each incorporator; and

2294 (5) (i) if the nonprofit corporation will have members,
2295 a statement to that effect; or



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2296 (ii) if the nonprofit corporation will not have
2297 members, a statement to that effect.

2298 (b) The certificate of incorporation may set forth:

2299 (1) the names and addresses of the individuals who are
2300 to serve as the initial directors;

2301 (2) provisions not inconsistent with law regarding:

2302 (i) the purpose or purposes for which the nonprofit
2303 corporation is organized;

2304 (ii) managing the activities and regulating the affairs
2305 of the nonprofit corporation;

2306 (iii) defining, limiting, and regulating the powers of
2307 the nonprofit corporation, its board of directors, and the
2308 members;

2309 (iv) the characteristics, qualifications, rights,
2310 limitations, and obligations attaching to each or any class of
2311 members;

2312 (v) subject to Section 10A-3A-4.20, limiting a member's
2313 right to inspect and copy the records of the nonprofit
2314 corporation under Section 10A-3A-4.02 (b);

2315 (vi) the distribution of assets on dissolution;

2316 (vii) provisions for the election, appointment, or
2317 designation of directors;

2318 (viii) provisions granting inspection rights to a
2319 person or group of persons under Section 10A-3A-4.07; and

2320 (ix) provisions specifying a person or group of persons
2321 whose approval is required under Sections 10A-3A-9.30,
2322 10A-3A-10.04, 10A-3A-11.04, 10A-3A-12.08, or 10A-3A-13.08;

2323 (3) any provision that under this chapter is permitted



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

(6) a provision limiting or eliminating any duty of a director or any other person to offer the nonprofit corporation the right to have or participate in any, or one or more classes or categories of, corporate opportunities, before the pursuit or taking of the opportunity by the director or



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2352 other person; provided that the application of that provision
2353 to an officer or a related person of that officer (i) also
2354 requires approval of that application by the board of
2355 directors, subsequent to the effective date of the provision,
2356 by action of the disinterested or qualified directors taken in
2357 compliance with the same procedures as are set forth in
2358 Section 10A-3A-8.60, and (ii) may be limited by the
2359 authorizing action of the board of directors; and

2360 (7) provisions required if the nonprofit corporation is
2361 to be exempt from taxation under federal, state, or local law.

2362 (c) The certificate of incorporation need not set forth
2363 any of the corporate powers enumerated in Sections 10A-1-2.11,
2364 10A-1-2.12, and 10A-1-2.13.

2365 (d) Provisions of the certificate of incorporation may
2366 be made dependent upon facts objectively ascertainable outside
2367 the certificate of incorporation in accordance with Section
2368 10A-3A-1.04.

2369 (e) As used in this section, "related person" means:

2370 (i) the individual's spouse; (ii) a child, stepchild,
2371 grandchild, parent, stepparent, grandparent, sibling,
2372 stepsibling, half sibling, aunt, uncle, niece, or nephew (or
2373 spouse of any such person) of the individual or of the
2374 individual's spouse; (iii) a natural person living in the same
2375 home as the individual; (iv) an entity (other than the
2376 nonprofit corporation or an entity controlled by the nonprofit
2377 corporation) controlled by the individual or any person
2378 specified above in this definition; (v) a domestic or foreign
2379 (A) business or nonprofit corporation (other than the



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2380 nonprofit corporation or an entity controlled by the nonprofit
2381 corporation) of which the individual is a director, (B)
2382 unincorporated entity of which the individual is a general
2383 partner or a member of the governing authority, or (C)
2384 individual, trust or estate for whom or of which the
2385 individual is a trustee, guardian, personal representative, or
2386 like fiduciary; or (vi) a person that is, or an entity that
2387 is, controlled by, an employer of the individual.

2388 (f) The certificate of incorporation may not contain
2389 any provision that would impose liability on a member or a
2390 director for the attorney's fees or expenses of the nonprofit
2391 corporation or any other party in connection with an internal
2392 corporate claim, as defined in Section 10A-3A-2.07(d).

2393 (g) The certificate of incorporation is a part of a
2394 binding contract between the nonprofit corporation and (i) the
2395 members in a membership nonprofit corporation and (ii) the
2396 directors in a nonmembership nonprofit corporation, subject to
2397 the provisions of this chapter.

2398 (h) For purposes of subsection (b)(4) only, unless the
2399 certificate of incorporation otherwise provides, "officer"
2400 means an individual appointed or elected in accordance with
2401 Section 10A-3A-8.40 as (i) president, chief executive officer,
2402 chief operating officer, chief financial officer, chief legal
2403 officer, secretary, controller, treasurer, or chief accounting
2404 officer of the nonprofit corporation and (ii) any officer of
2405 the nonprofit corporation designated by resolution of the
2406 board of directors as an "officer" for purposes of subsection
2407 (b)(4). The board of directors may from time to time by



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2408 resolution determine that one or more of the officers
2409 designated in accordance with subsection (h) (ii) shall no
2410 longer be an "officer" for purposes of subsection (b) (4), but
2411 no such resolution shall be effective as to any such officer,
2412 or any act or omission of any such officer, prior to the
2413 adoption of such resolution.

2414 (i) No provision in the certificate of incorporation
2415 pursuant to subsection (b) (4) shall eliminate or limit the
2416 liability of a director or officer for any act or omission
2417 occurring prior to the date when the provision in the
2418 certificate of incorporation becomes effective. Any amendment,
2419 repeal, or elimination of a provision in the certificate of
2420 incorporation pursuant to subsection (b) (4) shall not affect
2421 its application with respect to an act or omission by a
2422 director or officer occurring before the amendment, repeal, or
2423 elimination unless the provision in the certificate of
2424 incorporation provides otherwise at the time of the act or
2425 omission."

2426 "§10A-3A-7.04

2427 (a) Unless otherwise provided in the certificate of
2428 incorporation~~+~~, any action required or permitted by this
2429 chapter to be taken at any meeting of the members may be taken
2430 without a meeting, and without prior notice, if one or more
2431 consents in writing setting forth the action so taken are
2432 signed by the members having not less than the minimum number
2433 of votes that would be required to authorize or take the
2434 action at a meeting at which all members entitled to vote on
2435 the action were present and voted. The action must be



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2436 evidenced by one or more written consents describing the
2437 action taken, signed by the members approving the action and
2438 delivered to the membership nonprofit corporation for filing
2439 by the membership nonprofit corporation with the minutes or
2440 corporate records.

2441 (b) If not otherwise fixed under Section 10A-3A-7.07
2442 and if prior action by the board of directors is not required
2443 respecting the action to be taken without a meeting, the
2444 record date for determining the members entitled to take
2445 action without a meeting shall be the first date on which a
2446 ~~signed~~ written consent signed by a member is delivered to the
2447 membership nonprofit corporation. If not otherwise fixed under
2448 Section 10A-3A-7.07 and if prior action by the board of
2449 directors is required respecting the action to be taken
2450 without a meeting, the record date shall be the close of
2451 business on the day the resolution of the board of directors
2452 taking the prior action is adopted. No written consent of a
2453 member shall be effective to take the corporate action
2454 referred to therein unless, within 60 days of the earliest
2455 date on which a consent is delivered to the membership
2456 nonprofit corporation as required by this section, written
2457 consents signed by sufficient members to take the action have
2458 been delivered to the membership nonprofit corporation. Any
2459 person ~~executing~~ signing a consent may provide, whether
2460 through instruction to an agent or otherwise, that the consent
2461 will be effective at a future time, including a time
2462 determined upon the happening of an event, occurring not later
2463 than 60 days after the instruction is given or the provision



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is made, if evidence of the instruction or provision is provided to the membership nonprofit corporation. ~~A~~ If a person signs a consent when that person is not a member, then that person's consent shall not be valid unless that person is a member as of the record date for determining members entitled to consent to the action. Unless a person's written consent states that it is irrevocable, that written consent may be revoked by that person by a writing to that effect delivered to the membership nonprofit corporation before unrevoked written consents sufficient in number to take the corporate action have been delivered to the membership nonprofit corporation.

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

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



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2492 to an authorization under subsection (c). The notice must
2493 reasonably describe the action taken.

2494 (e) The notice requirements in subsection (d) shall not
2495 delay the effectiveness of actions taken by written consent,
2496 and a failure to comply with those notice requirements shall
2497 not invalidate actions taken by written consent, provided that
2498 this subsection shall not be deemed to limit judicial power to
2499 fashion any appropriate remedy in favor of a member adversely
2500 affected by a failure to give the notice within the required
2501 time period.

2502 "§10A-3A-7.05

2503 (a) A membership nonprofit corporation shall notify
2504 members of the place, if any, date, and time of each annual,
2505 regular, or special meeting of the members no fewer than 10
2506 nor more than 60 days before the meeting date. If the board of
2507 directors has authorized participation by means of remote
2508 communication pursuant to Section 10A-3A-7.09 for any class of
2509 members or voting group, the notice to that class of members
2510 or voting group must describe the means of remote
2511 communication to be used. The notice must include the record
2512 date for determining the members entitled to vote at the
2513 meeting, if that date is different from the record date for
2514 determining members entitled to notice of the meeting. Unless
2515 the certificate of incorporation requires otherwise, the
2516 membership nonprofit corporation is required to give notice
2517 only to members entitled to vote at the meeting as of the
2518 record date for determining the members entitled to notice of
2519 the meeting.



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2520 (b) Unless this chapter, the certificate of
2521 incorporation, or the bylaws require otherwise, notice of an
2522 annual or regular meeting of the members need not include a
2523 description of the purpose or purposes for which the meeting
2524 is called.

2525 (c) Notice of a special meeting of members must include
2526 a description of the purpose or purposes for which the meeting
2527 is called.

2528 (d) If not otherwise fixed under Section 10A-3A-7.03 or
2529 Section 10A-3A-7.07, the record date for determining members
2530 entitled to notice of and to vote at an annual, regular, or
2531 special meeting of the members is the earlier of (i) the date
2532 of the action by the board of directors calling the meeting of
2533 the members or (ii) the day before the first notice is
2534 delivered to members.

2535 (e) Unless the certificate of incorporation or bylaws
2536 require otherwise, if an annual, regular, or special meeting
2537 of the members is adjourned to a different place, if any,
2538 date, or time (including an adjournment taken to address a
2539 technical failure to convene or continue a meeting using
2540 remote communication pursuant to Section 10A-3A-7.09), notice
2541 need not be given of the new place, if any, date, or time if
2542 the new place, if any, date, or time is (i) announced at the
2543 meeting before adjournment or (ii) displayed, during the time
2544 scheduled for the meeting, on the same electronic network used
2545 to enable members and proxy holders to participate in the
2546 meeting by means of remote communication. If a new record date
2547 for the adjourned meeting is or must be fixed under Section



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2548 10A-3A-7.07, however, notice of the adjourned meeting shall be
2549 given under this section to members entitled to vote at the
2550 adjourned meeting as of the record date fixed for notice of
2551 the adjourned meeting.

2552 "§10A-3A-9.05

2553 Except as otherwise provided in the certificate of
2554 incorporation:

2555 (1) the board of directors of a nonmembership nonprofit
2556 corporation, or if the initial board of directors of a
2557 nonmembership nonprofit corporation is not named in the
2558 certificate of incorporation and has not yet been elected,
2559 appointed, or designated, its incorporators, may adopt
2560 amendments to the nonmembership nonprofit corporation's
2561 certificate of incorporation; and

2562 (2) an amendment adopted ~~by the board of directors~~
2563 under this section must also be approved by that person or
2564 group of persons, if any, whose approval is required by the
2565 certificate of incorporation in accordance with Section
2566 10A-3A-9.30.

2567 "§10A-3A-9.07

2568 (a) (1) A membership nonprofit corporation's board of
2569 directors may restate its certificate of incorporation at any
2570 time, without ~~member~~ the approval of the members or any person
2571 or group of persons specified in the certificate of
2572 incorporation, to consolidate all amendments into a single
2573 document. Unless the certificate of incorporation of a
2574 membership nonprofit corporation provides otherwise, the
2575 restated certificate of incorporation may amend the



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2576 certificate of incorporation with those amendments that the
2577 board of directors is permitted to adopt in accordance with
2578 Sections 10A-3A-9.02 and 10A-3A-9.03(g) without the approval
2579 of the members or any person or group of persons specified in
2580 the certificate of incorporation. Unless the certificate of
2581 incorporation of a membership nonprofit corporation provides
2582 otherwise, the restated certificate of incorporation of a
2583 membership nonprofit corporation may also amend the
2584 certificate of incorporation with those amendments that the
2585 member or any person or group of persons specified in the
2586 certificate of incorporation must approve in accordance with
2587 Sections 10A-3A-9.02, 10A-3A-9.03, 10A-3A-9.04, and
2588 10A-3A-9.30.

2589 (2) A nonmembership nonprofit corporation's board of
2590 directors may restate its certificate of incorporation at any
2591 time without the approval of any person or group of persons
2592 specified in the certificate of incorporation to consolidate
2593 all amendments into a single document. Unless the certificate
2594 of incorporation of a nonmembership nonprofit corporation
2595 provides otherwise, the restated certificate of incorporation
2596 may amend the certificate of incorporation with those
2597 amendments that the board of directors is permitted to adopt
2598 in accordance with Section 10A-3A-9.05 without the approval of
2599 any person or group of persons specified in the certificate of
2600 incorporation. Unless the certificate of incorporation of a
2601 nonmembership nonprofit corporation provides otherwise, the
2602 restated certificate of incorporation of a nonmembership
2603 nonprofit corporation may also amend the certificate of



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2604 incorporation with those amendments that any person or group
2605 of persons specified in the certificate of incorporation must
2606 approve in accordance with Sections 10A-3A-9.02, 10A-3A-9.05,
2607 and 10A-3A-9.30.

2608 (b) If the restated certificate of incorporation
2609 includes one or more new amendments, the amendments must be
2610 adopted and approved as provided in (i) Section 10A-3A-9.02,
2611 (ii) Sections 10A-3A-9.03 and 10A-3A-9.04, or ~~(ii)~~ (iii)
2612 Section 10A-3A-9.05.

2613 (c) A nonprofit corporation that restates its
2614 certificate of incorporation shall deliver to the Secretary of
2615 State for filing a certificate of restatement setting forth:

2616 (1) the name of the nonprofit corporation;

2617 (2) the text of the restated certificate of
2618 incorporation;

2619 (3) a statement that the restated certificate of
2620 incorporation consolidates all amendments into a single
2621 document;

2622 (4) if a new amendment is included in the restated
2623 certificate of incorporation, the statements required under
2624 Section 10A-3A-9.06 with respect to the new amendment; and

2625 (5) the unique identifying number or other designation
2626 as assigned by the Secretary of State.

2627 (d) The duly adopted restated certificate of
2628 incorporation supersedes the original certificate of
2629 incorporation and all amendments to the certificate of
2630 incorporation.

2631 (e) Unless the certificate of incorporation provides



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2632 otherwise, a restated certificate of incorporation may omit
2633 the information that may be deleted pursuant to Section
2634 10A-3A-9.03(g)."

2635 "§10A-3A-10.01

2636 In a membership nonprofit corporation, ~~no~~:

2637 (a) No approval of the members or any person or group
2638 of persons specified in the certificate of incorporation is
2639 required, unless the certificate of incorporation otherwise
2640 provides:

2641 ~~(a)~~ (1) to sell, lease, exchange, or otherwise dispose
2642 of any or all of the membership nonprofit corporation's assets
2643 in the usual and regular course of the membership nonprofit
2644 corporation's activities;

2645 ~~(b)~~ (2) to mortgage, pledge, dedicate to the repayment
2646 of indebtedness (whether with or without recourse), or
2647 otherwise encumber any or all of the membership nonprofit
2648 corporation's assets, regardless of whether in the usual and
2649 regular course of its activities; or

2650 ~~(c)~~ (3) to transfer any or all of the membership
2651 nonprofit corporation's assets to one or more corporations or
2652 other entities all of the memberships or interests of which
2653 are owned by the membership nonprofit corporation.

2654 (b) Unless the certificate of incorporation otherwise
2655 provides, without limiting the rights of a secured party under
2656 applicable law, no approval by members or any person or group
2657 of persons specified in the certificate of incorporation shall
2658 be required by Section 10A-3A-10.02 for a sale, lease,
2659 exchange, or other disposition of any of the membership



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2660 nonprofit corporation's assets if those assets are mortgaged,
2661 pledged, dedicated to the repayment of indebtedness, or
2662 otherwise encumbered for the benefit of a secured party or
2663 other creditor and either:

2664 (1) The secured party or other creditor exercises its
2665 rights under the law governing the mortgage, pledge,
2666 dedication, or encumbrance, or other applicable law, whether
2667 under the Uniform Commercial Code, a real property law, or
2668 other law, to effect the sale, lease, exchange, or other
2669 disposition of those assets without the consent of the
2670 corporation; or

2671 (2) In lieu of the secured party or other creditor
2672 exercising such rights, the board of directors of the
2673 membership nonprofit corporation authorizes an alternative
2674 sale, lease, exchange, or other disposition of those assets,
2675 whether with the secured party or other creditor, that results
2676 in the reduction or elimination of the total liabilities or
2677 obligations secured by those assets, provided that (i) the
2678 value of those assets is less than or equal to the total
2679 amount of the liabilities or obligations being eliminated or
2680 reduced and (ii) the sale, lease, exchange, or other
2681 disposition of those assets is not prohibited by the law
2682 governing the mortgage, pledge, dedication, or encumbrance.
2683 The provision of consideration to the membership nonprofit
2684 corporation shall not create a presumption that the value of
2685 the assets is greater than the total amount of the liabilities
2686 or obligations being eliminated or reduced.

2687 (c) A failure to satisfy the condition in subsection



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2688 (b)(2)(i) shall not result in the invalidation of a sale,
2689 lease, exchange, or other disposition of the membership
2690 nonprofit corporation's assets if the transferee of those
2691 assets (i) provided value therefor (which may include the
2692 reduction or elimination of the total liabilities or
2693 obligations secured by those assets) and (ii) acted in good
2694 faith (as defined in Section 7-1-201(b)). The preceding
2695 sentence shall not apply to a proceeding against the
2696 membership nonprofit corporation and any other necessary
2697 parties to enjoin the sale, lease, exchange, or other
2698 disposition of the membership nonprofit corporation's assets
2699 before the consummation thereof and shall not eliminate any
2700 liability for monetary damages for any claim, including a
2701 claim in the right of the membership nonprofit corporation,
2702 based upon a violation of a duty by a current or former
2703 director or officer, or other person.

2704 (d) A provision of the certificate of incorporation
2705 that requires the authorization or consent of members or any
2706 person or group of persons specified in the certificate of
2707 incorporation for a sale, lease, exchange, or other
2708 disposition of the membership nonprofit corporation's assets
2709 shall not apply to a transaction permitted by subsection (b)
2710 unless that provision expressly so requires.

2711 "§10A-3A-10.03

2712 ~~Except as otherwise provided in~~ In a nonmembership
2713 nonprofit corporation:

2714 (a) Unless the certificate of incorporation otherwise
2715 provides:



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2716 (1) a sale, lease, exchange, mortgage, pledge, or other
2717 disposition of all, or substantially all, the property and
2718 assets of the nonmembership nonprofit corporation may be
2719 approved by the board of directors; and

2720 (2) a sale, lease, exchange, mortgage, pledge, or other
2721 disposition of all, or substantially all, of the property and
2722 assets of the nonmembership nonprofit corporation approved by
2723 the board of directors under this section must also be
2724 approved by that person or group of persons whose approval is
2725 required by the certificate of incorporation in accordance
2726 with Section 10A-3A-10.04.

2727 (b) Unless the certificate of incorporation otherwise
2728 provides, without limiting the rights of a secured party under
2729 applicable law, no approval by any person or group of persons
2730 specified in the certificate of incorporation shall be
2731 required by this section for a sale, lease, exchange, or other
2732 disposition of any of the nonmembership nonprofit
2733 corporation's assets if those assets are mortgaged, pledged,
2734 dedicated to the repayment of indebtedness, or otherwise
2735 encumbered for the benefit of a secured party or other
2736 creditor and either:

2737 (1) The secured party or other creditor exercises its
2738 rights under the law governing the mortgage, pledge,
2739 dedication, or encumbrance, or other applicable law, whether
2740 under the Uniform Commercial Code, a real property law, or
2741 other law, to effect the sale, lease, exchange, or other
2742 disposition of those assets without the consent of the
2743 nonmembership nonprofit corporation; or



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

(c) A failure to satisfy the condition in subsection (b)(2)(i) shall not result in the invalidation of a sale, lease, exchange, or other disposition of the nonmembership nonprofit corporation's assets if the transferee of those assets (i) provided value therefor (which may include the reduction or elimination of the total liabilities or obligations secured by those assets) and (ii) acted in good faith (as defined in Section 7-1-201(b)). The preceding sentence shall not apply to a proceeding against the nonmembership nonprofit corporation and any other necessary parties to enjoin the sale, lease, exchange, or other disposition of the nonmembership nonprofit corporation's



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assets before the consummation thereof and shall not eliminate any liability for monetary damages for any claim, including a claim in the right of the nonmembership nonprofit corporation, based upon a violation of a duty by a current or former director or officer, or other person.

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

"§10A-3A-10.04

(a) The certificate of incorporation of a membership nonprofit corporation may require that a disposition of assets under either or both Section 10A-3A-10.01 and Section 10A-3A-10.02 be approved in writing by a specified person or group of persons in addition to the board of directors and members.

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

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

"§10A-3A-11.07



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2800 (a) A dissolved nonprofit corporation continues its
2801 existence as a nonprofit corporation but may not carry on any
2802 activity except as is appropriate to wind up and liquidate its
2803 activities and affairs, including:

2804 (1) collecting its assets;

2805 (2) disposing of its properties that will not be
2806 distributed in kind;

2807 (3) discharging or making provisions for discharging
2808 its liabilities;

2809 (4) distributing its remaining property as required by
2810 law, its certificate of incorporation, bylaws, and as approved
2811 when the dissolution was authorized; and

2812 (5) doing every other act necessary to wind up and
2813 liquidate its activities and affairs.

2814 (b) In winding up its activities and affairs, a
2815 dissolved nonprofit corporation may:

2816 (1) preserve the nonprofit corporation's activities and
2817 affairs and property as a going concern for a reasonable time;

2818 (2) prosecute, defend, or settle actions or proceedings
2819 whether civil, criminal, or administrative;

2820 (3) transfer the nonprofit corporation's assets;

2821 (4) resolve disputes by mediation or arbitration; and

2822 (5) merge or convert in accordance with Article 12 or
2823 13 of this chapter or Article 8 of Chapter 1.

2824 (c) Dissolution of a nonprofit corporation does not:

2825 (1) transfer title to the nonprofit corporation's
2826 property;

2827 (2) subject its directors or officers to standards of



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2828 conduct different from those prescribed in Article 8 of this
2829 chapter;

2830 (3) change:

2831 (i) quorum or voting requirements for its board of
2832 directors or members;

2833 (ii) provisions for selection, resignation, or removal
2834 of its directors or officers or both; or

2835 (iii) provisions for amending its bylaws;

2836 (4) prevent commencement of a proceeding by or against
2837 the nonprofit corporation in its corporate name;

2838 (5) abate or suspend a proceeding pending by or against
2839 the nonprofit corporation on the effective date of
2840 dissolution; or

2841 (6) terminate the authority of the registered agent of
2842 the nonprofit corporation.

2843 (d) A distribution in liquidation under this section
2844 may only be made by a dissolved nonprofit corporation.

2845 "§10A-4-1.03

2846 As used in this chapter, unless the context otherwise
2847 requires, the term:

2848 (1) DISQUALIFIED PERSON. Any person who is not a
2849 qualified person.

2850 (2) DOMESTIC PROFESSIONAL CORPORATION. A business
2851 professional corporation ~~for profit~~ or nonprofit professional
2852 corporation organized pursuant to ~~the provisions of~~ this
2853 chapter.

2854 (3) FOREIGN PROFESSIONAL CORPORATION. A corporation or
2855 unincorporated association, for profit or nonprofit, organized



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2856 for the purpose of rendering professional services under a law
2857 other than the law of ~~Alabama~~ this state.

2858 (4) LICENSING AUTHORITY. As defined in Section
2859 ~~10A-1-1.03(49)~~ 10A-1-1.03.

2860 (5) PROFESSIONAL SERVICE. As defined in Section
2861 ~~10A-1-1.03(80)~~ 10A-1-1.03.

2862 (6) QUALIFIED PERSON. With respect to any domestic
2863 professional corporation:

2864 a. An individual who is authorized by law of ~~Alabama~~
2865 this state or of any qualified state to render a professional
2866 service permitted by the certificate of ~~formation~~
2867 incorporation of the professional corporation;

2868 b. A general partnership in which all the partners are
2869 qualified persons with respect to the professional
2870 corporation; and

2871 c. A professional corporation, domestic or foreign, in
2872 which all the ~~shareholders~~ stockholders are qualified persons
2873 with respect to the professional corporation.

2874 d. A limited liability company in which all the members
2875 are qualified persons with respect to the professional
2876 corporation.

2877 "Qualified person" does not include any person during
2878 any period in which the person's authorization to render
2879 professional services has been completely terminated or
2880 suspended.

2881 (7) QUALIFIED STATE. Any state, other than ~~Alabama~~ this
2882 state, or territory of the United States or the District of
2883 Columbia which allows individuals authorized to render



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2884 professional services in ~~Alabama~~ this state and not in the
2885 other state, or partnerships of the individuals, or domestic
2886 professional corporations or professional associations owned
2887 by the individuals to own ~~shares of~~ stock in professional
2888 corporations or to be members of professional associations
2889 organized under its laws."

2890 "§10A-4-2.01

2891 ~~Domestic~~ A domestic professional ~~corporations~~
2892 corporation may be organized under this chapter ~~only for the~~
2893 ~~purpose of rendering professional services and services~~
2894 ~~ancillary thereto within a single profession, except that the~~
2895 ~~same professional corporation or nonprofit professional~~
2896 ~~corporation may render medical, dental, and other health~~
2897 ~~related services~~ for the purpose of, and shall have the power
2898 to render, professional services if the domestic professional
2899 corporation complies with the rules of the licensing authority
2900 for such profession; provided that in the case of a
2901 professional corporation, at least one ~~shareholder~~ stockholder
2902 of the professional corporation is duly licensed to provide
2903 each professional service for which the professional
2904 corporation is organized, or, in the case of a nonprofit
2905 professional corporation, all of the professional services
2906 rendered by the professional corporation are rendered by
2907 persons duly licensed to render the professional service."

2908 "§10A-4-2.02

2909 (a) Any corporation whose certificate of ~~formation~~
2910 incorporation includes as a stated purpose the performance of
2911 professional services may be incorporated under this chapter



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2912 by stating in its certificate of ~~formation~~ incorporation that
2913 it is incorporated under this chapter.

2914 (b) A domestic professional ~~business~~ corporation, ~~other~~
2915 ~~than that is not~~ a nonprofit professional corporation, ~~which~~
2916 ~~is subject to this chapter~~ shall cease being governed by this
2917 chapter and shall be governed by the Alabama Business
2918 Corporation Law, ~~if it is a domestic corporation~~, if it amends
2919 its certificate of ~~formation~~ incorporation to delete the
2920 statement that it is organized under this chapter, and
2921 conforms its ~~articles~~ certificate of incorporation to the
2922 Alabama Business Corporation Law ~~and, if it is a foreign~~
2923 ~~corporation, complies with the provisions of this title~~
2924 ~~applicable to foreign entities~~. A domestic nonprofit
2925 professional corporation ~~which is subject to this chapter~~
2926 shall cease being governed by this chapter and shall be
2927 governed by the Alabama Nonprofit Corporation Law, ~~if it is a~~
2928 ~~domestic corporation~~, if it amends its certificate of
2929 ~~formation~~ incorporation to delete the statement that it is
2930 organized under this chapter, and conforms its certificate of
2931 incorporation to the Alabama Nonprofit Corporation Law ~~and, if~~
2932 ~~it is a foreign corporation, complies with the provisions of~~
2933 ~~this title applicable to foreign entities~~.

2934 (c) Any corporation which is not subject to this
2935 chapter may become subject to this chapter, if it is a
2936 domestic corporation, by conforming its ~~articles~~ certificate
2937 of incorporation to this chapter.

2938 (d) Any foreign professional corporation which renders
2939 professional services in ~~Alabama~~ this state shall be subject



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2940 to this chapter."

2941 "§10A-4-2.03

2942 (a) Subject to Section 10A-4-5.07, a domestic
2943 professional corporation, including a professional corporation
2944 that is a nonprofit corporation, shall have all the powers
2945 necessary or convenient to effectuate its purposes, including
2946 those enumerated in Sections 10A-1-2.11, 10A-1-2.12, and
2947 10A-1-2.13.

2948 (b) A domestic professional corporation shall not
2949 engage in any profession other than the profession or
2950 professions permitted by its certificate of ~~formation~~
2951 incorporation, except that a domestic professional corporation
2952 may invest its funds in real estate, mortgages, stocks, bonds,
2953 or any other type investment."

2954 "§10A-4-2.04

2955 A professional corporation, domestic or foreign, may
2956 render professional services in ~~Alabama~~ this state only
2957 through individuals permitted to render the services in
2958 ~~Alabama~~ this state; but nothing in this chapter shall be
2959 construed to require that any individual who is employed by a
2960 professional corporation be licensed to perform services for
2961 which no license is otherwise required or to prohibit the
2962 rendering of professional services by a licensed individual
2963 acting in ~~his or her~~ that person's individual capacity,
2964 notwithstanding the individual may be a ~~shareholder~~
2965 stockholder, member, director, officer, employee, or agent of
2966 a professional corporation, domestic or foreign."

2967 "§10A-4-3.01



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2968 (a) A domestic professional corporation may issue
2969 ~~shares, fractional shares~~ stock, fractions of a share of
2970 stock, and rights or options to purchase ~~shares~~ stock only to
2971 qualified persons.

2972 (b) Where deemed necessary by the licensing authority
2973 for any profession in order to prevent violations of the
2974 ethical standards of the profession, the licensing authority
2975 may, within its rule-making power, by rule further restrict,
2976 condition, or abridge the authority of domestic professional
2977 corporations to issue ~~shares~~ stock, but no rule shall, of
2978 itself, have the effect of causing a ~~shareholder~~ stockholder
2979 of a professional corporation at the time the rule becomes
2980 effective to become a disqualified person unless and to the
2981 extent specified by the licensing authority.

2982 (c) A ~~shareholder~~ stockholder of a domestic
2983 professional corporation may transfer or pledge ~~shares,~~
2984 ~~fractional shares~~ stock, fractions of a share of stock, and
2985 rights or options to purchase ~~shares~~ stock of the professional
2986 corporation only to qualified persons.

2987 (d) Any issuance or transfer of ~~shares~~ stock in
2988 violation of this section shall be void, however, nothing
2989 contained herein shall prohibit the transfer of ~~shares~~ stock
2990 of a domestic professional corporation by operation of law or
2991 court decree.

2992 (e) Nothing in this section shall require domestic
2993 nonprofit professional corporations to issue ~~shares~~ stock. ~~The~~
2994 Domestic nonprofit professional corporations may have members
2995 and all members must be qualified persons. A licensing



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2996 authority may, within its rule-making power, by rule further
2997 restrict, condition, or abridge membership in domestic
2998 nonprofit corporations, but no rule shall, of itself, have the
2999 effect of causing a member of a domestic nonprofit
3000 professional corporation at the time the rule becomes
3001 effective to become a disqualified person unless and to the
3002 extent specified by the licensing authority."

3003 "§10A-4-3.02

3004 (a) Upon the death of a ~~shareholder~~ stockholder of a
3005 domestic professional corporation, or if a ~~shareholder~~
3006 stockholder of a domestic professional corporation becomes a
3007 disqualified person, or if ~~shares~~ stock of a domestic
3008 professional corporation ~~are~~ is transferred by operation of
3009 law or court decree to a disqualified person, the ~~shares of~~
3010 stock owned by the deceased ~~shareholder~~ stockholder or ~~of~~ the
3011 disqualified person may be transferred to a qualified person
3012 and, if not so transferred, shall be purchased or redeemed by
3013 the domestic professional corporation to the extent of funds
3014 which may be legally made available for the purchase.

3015 (b) If the price for the ~~shares~~ stock is not fixed by
3016 the governing documents of the domestic professional
3017 corporation or by private agreement, the domestic professional
3018 corporation, within six months after the death or 30 days
3019 after the disqualification or transfer, as the case may be,
3020 shall make a written offer to pay for the ~~shares~~ stock at a
3021 specified price deemed by the domestic professional
3022 corporation to be the fair value thereof as of the date of the
3023 death, disqualification, or transfer. The offer shall be given



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to the executor or administrator of the estate of a deceased ~~shareholder~~ stockholder or to the disqualified ~~shareholder~~ person or transferee and shall be accompanied by a balance sheet of the domestic professional corporation, as of the latest available date and not more than 12 months prior to the making of the offer, and a profit and loss statement of the domestic professional corporation for the 12 months' period ended on the date of the balance sheet.

(c) If within 30 days after the date of the written offer from the domestic professional corporation the fair value of the ~~shares~~ stock is agreed upon between the disqualified person and the domestic professional corporation, payment therefor shall be made within 90 days, or other period as the parties may fix by agreement, after the date of the offer, upon surrender of the certificate or certificates representing the ~~shares~~ stock. Upon payment of the agreed value the disqualified persons shall cease to have any interest in the ~~shares~~ stock.

(d) If within 30 days from the date of the written offer from the domestic professional corporation, the disqualified person and the domestic professional corporation do not so agree, then either party may commence a civil action in the designated court, and if none, in the circuit court for the county in which the domestic professional corporation's principal office is located in this state, and if none in this state, in the circuit court for the county in which the domestic professional corporation's most recent registered office is located requesting that the fair value of the ~~shares~~



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stock be found and determined. The disqualified person, wherever residing, shall be made a party to the proceeding as an action against ~~his or her shares~~ the disqualified person's stock quasi in rem. Service shall be made in accordance with the rules of civil procedure. The disqualified person shall be entitled to judgment against the domestic professional corporation for the amount of the fair value of ~~his or her shares~~ the disqualified person's stock as of the date of death, disqualification, or transfer upon surrender to the domestic professional corporation of the certificate or certificates representing the ~~shares~~ stock. The court may, in its discretion, order that the judgment be paid in installments and with interest and on terms as the court may determine. The court may, if it so elects, appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have the power and authority as shall be specified in the order of their appointment or an amendment thereof.

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

(f) The costs and expenses of any proceeding shall be determined by the court and shall be assessed against the domestic professional corporation, but all or any part of the costs and expenses may be apportioned and assessed as the court may deem equitable against the disqualified person if the court shall find that the action of the disqualified



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person in failing to accept the offer was arbitrary or vexatious or not in good faith. The expenses shall include reasonable compensation for and reasonable expenses of the appraisers and a reasonable attorney's fee but shall exclude the fees and expenses of counsel for and of experts employed by any party; but if the fair value of the ~~shares~~ stock as determined materially exceeds the amount which the domestic professional corporation offered to pay therefor, or if no offer was made, the court in its discretion may award to the disqualified person the sum the court determines to be reasonable compensation to any expert or experts employed by the disqualified person in the proceeding.

(g) If a purchase, redemption, or transfer of the ~~shares~~ stock of a deceased stockholder or disqualified ~~shareholder~~ person or of a transferee who is a disqualified person is not completed within 12 months after the death of the deceased ~~shareholder~~ stockholder or 12 months after the disqualification or transfer, as the case may be, the domestic professional corporation shall forthwith cancel the ~~shares~~ stock on its books and the disqualified person shall have no further interest as a ~~shareholder~~ stockholder in the domestic professional corporation other than ~~his or her~~ the disqualified person's right to payment for the ~~shares~~ stock under this section.

(h) ~~Shares acquired by a domestic professional corporation pursuant to payment of the agreed value therefor or to payment of the judgment entered therefor, as in this section provided, may be held, cancelled, or disposed of by~~



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3108 ~~the domestic professional corporation as in the case of other~~
3109 ~~treasury shares.~~ (1) A professional corporation may acquire its
3110 own stock, and, the stock so acquired shall constitute
3111 authorized but unissued stock, provided however:

3112 (A) the certificate of incorporation may provide that
3113 the acquired stock shall constitute authorized, issued, but
3114 not outstanding stock;

3115 (B) the certificate of incorporation may prohibit the
3116 reissue of the acquired stock, in which case, the number of
3117 authorized shares of stock is reduced by the number of shares
3118 of stock acquired; or

3119 (C) if the certificate incorporation does not (i)
3120 provide that the acquired stock shall constitute authorized
3121 but unissued stock, (ii) prohibit the reissuance of the
3122 acquired stock, or (iii) provide that the acquired stock shall
3123 constitute authorized, issued, but not outstanding stock, then
3124 the board of directors may determine, at or prior to the time
3125 of the acquisition, that the acquired stock will constitute
3126 authorized, issued, but not outstanding stock.

3127 (2) If the board of directors determines that any
3128 acquired stock was to be authorized, issued, but not
3129 outstanding in accordance with subsection (h) (1) (C), then the
3130 board of directors may thereafter determine that the acquired
3131 stock shall be converted to stock that is authorized but not
3132 issued.

3133 (i) This section shall not be deemed to require the
3134 purchase of ~~shares~~ stock of a disqualified person where the
3135 period of the disqualification is for less than 12 months from



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3136 the date of disqualification or transfer.

3137 (j) Any provision regarding purchase, redemption, or
3138 transfer of ~~shares~~ stock of a domestic professional
3139 corporation contained in the certificate of ~~formation~~
3140 incorporation, bylaws, or any private agreement shall be
3141 specifically enforceable in the courts of ~~Alabama~~ this state.

3142 (k) Nothing herein contained shall prevent or relieve a
3143 domestic professional corporation from paying pension benefits
3144 or other deferred compensation for services rendered to or on
3145 behalf of a former ~~shareholder~~ stockholder as otherwise
3146 permitted by law.

3147 (l) A domestic professional corporation may purchase
3148 its own ~~shares~~ stock from a disqualified person without regard
3149 to the availability of capital or surplus for the purchase;
3150 however, no purchase of or payment for the ~~shares~~ stock shall
3151 be made at a time when the domestic professional corporation
3152 is insolvent or when the purchase or payment would make it
3153 insolvent.

3154 (m) The foregoing provisions of this section shall not
3155 apply to a domestic nonprofit professional corporation. Any
3156 member of a corporation who becomes a disqualified person must
3157 cease being a member not more than 12 months after the date of
3158 disqualification if he or she is then a disqualified person."

3159 "§10A-4-3.03

3160 (a) Every individual who renders professional services
3161 as an employee of a ~~domestic or~~ professional corporation shall
3162 be liable for any negligent or wrongful act or omission in
3163 which ~~he or she~~ that individual personally participates to the



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3164 same extent as if ~~he or she~~ that individual rendered the
3165 services as a sole practitioner.

3166 (b) ~~The~~ Except as otherwise provided in subsection (a),
3167 the personal liability of a ~~shareholder~~ stockholder, employee,
3168 director, or officer of a domestic professional corporation,
3169 other than a domestic nonprofit professional corporation,
3170 shall be no greater in any respect than that of a ~~shareholder~~
3171 stockholder, employee, director, or officer of a corporation
3172 ~~organized under~~ governed by the Alabama Business Corporation
3173 Law.

3174 (c) ~~The~~ Except as otherwise provided in subsection (a),
3175 the personal liability of a member, employee, director, or
3176 officer of a domestic nonprofit professional corporation shall
3177 be no greater in any respect than that of a member, employee,
3178 director, or officer of a corporation ~~organized under~~ governed
3179 by the Alabama Nonprofit Corporation Law.

3180 (d) ~~The~~ Except as otherwise provided in subsection (a),
3181 the personal liability of a ~~shareholder~~ stockholder, member,
3182 employee, director, or officer of a foreign professional
3183 corporation shall be determined under the law of the
3184 jurisdiction in which it is organized."

3185 "§10A-4-3.05

3186 A voting trust with respect to ~~shares~~ stock of a
3187 domestic professional corporation shall not be valid unless
3188 all the trustees and beneficiaries thereof are qualified
3189 persons, except that a voting trust may be validly continued
3190 for a period of 12 months after the death of a deceased
3191 beneficiary or after a beneficiary has become a disqualified



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3192 person."

3193 "§10A-4-3.06

3194 At least one director of a domestic professional
3195 corporation and the president of a domestic professional
3196 corporation shall be qualified persons with respect to the
3197 domestic professional corporation; provided, however, that the
3198 foregoing restriction shall not apply for a period of 12
3199 months after the death of the sole ~~shareholder~~ stockholder of
3200 a domestic professional corporation."

3201 "§10A-4-4.01

3202 Administrators, executors, guardians, conservators, or
3203 receivers of the estates of ~~shareholders~~ stockholders of a
3204 domestic professional corporation who hold all of the
3205 outstanding ~~shares~~ stock of the domestic professional
3206 corporation may amend the certificate of ~~formation~~
3207 incorporation by signing a written consent to the certificate
3208 of amendment and delivering the certificate of amendment for
3209 filing to the Secretary of State. The certificate of amendment
3210 shall set forth, in addition to the information required to be
3211 included in the certificate of amendment by the Alabama
3212 Business Corporation Law, a statement that the administrators,
3213 executors, guardians, conservators, or receivers own all the
3214 outstanding ~~shares~~ stock."

3215 "§10A-4-4.02

3216 (a) A domestic professional corporation may convert to
3217 or merge with another corporation, professional corporation,
3218 or another type of entity, domestic or foreign, if permitted
3219 under the Alabama Business Corporation Law, the Alabama



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3220 Nonprofit Corporation Law, or ~~may merge with or convert to~~
3221 ~~another type of entity as permitted by~~ Article 8 of Chapter 1.
3222 Upon the merger, ~~consolidation~~, or conversion, if the
3223 surviving or new corporation or converted entity, as the case
3224 may be, is to render professional services in ~~Alabama~~ this
3225 state, it shall comply with ~~the provisions of~~ this chapter.

3226 (b) An unincorporated professional association
3227 organized under Article 1 of Chapter 30 may merge ~~or~~
3228 ~~consolidate~~ with a domestic professional corporation ~~organized~~
3229 ~~under this chapter~~. In the merger, the unincorporated
3230 professional association shall follow the procedure specified
3231 in the Alabama Business Corporation Law ~~shall apply~~, provided
3232 that:

3233 (1) The surviving corporation shall be a domestic
3234 professional corporation,

3235 (2) The following terms, when used in the Alabama
3236 Business Corporation Law to refer to an unincorporated
3237 professional association, shall have the following meanings:

3238 a. ~~"Board of directors" shall mean~~ BOARD OF DIRECTORS
3239 means "board of governors,".

3240 b. ~~"Corporation" shall mean~~ CORPORATION means
3241 "unincorporated association,".

3242 c. ~~"Shares or securities"~~ STOCK or SECURITIES in the
3243 case of an unincorporated professional association which is a
3244 nonstock organization, ~~shall mean~~ means the undivided
3245 interests of the members in the assets of the association,.

3246 d. ~~"Shareholder"~~ STOCKHOLDER in the case of an
3247 unincorporated association which is a nonstock organization,



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3248 ~~shall mean~~ means "member."

3249 (3) The plan of merger or plan of conversion shall be
3250 approved by a vote of ~~two-thirds~~ two-thirds of the members of
3251 the professional association."

3252 "§10A-4-5.01

3253 The Attorney General may institute proceedings to
3254 involuntarily dissolve a domestic professional corporation ~~or~~
3255 ~~a domestic nonprofit professional corporation~~. A licensing
3256 authority may request that the Attorney General institute ~~such~~
3257 the proceedings."

3258 "§10A-4-5.02

3259 (a) A foreign professional corporation shall be
3260 entitled to register under Article 7 of Chapter 1 for
3261 authority to render professional services in ~~Alabama~~ this
3262 state only if:

3263 (1) A domestic professional corporation ~~incorporated~~
3264 ~~under this chapter~~ would be allowed to register or procure a
3265 certificate of authority or equivalent authorization to render
3266 professional services in the state under whose laws the
3267 foreign professional corporation is organized;

3268 (2) The foreign professional corporation meets the
3269 requirements of Section 10A-4-2.01;

3270 (3) The foreign professional corporation designates the
3271 Alabama licensed individual or individuals through whom it
3272 will render professional services in ~~Alabama~~ this state and
3273 the individual or individuals are not, at the time of the
3274 designation, so designated by any other foreign professional
3275 corporation;



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3276 (4) The name of the foreign professional corporation
3277 meets the requirements of Section 10A-1-5.08, provided that
3278 the foreign professional corporation can meet the requirements
3279 of Section 10A-1-5.08 by adding at the end of its name, for
3280 use in ~~Alabama~~ this state, the words "professional
3281 corporation" or the abbreviation "P.C."; and

3282 (5) All the ~~shareholders~~ stockholders, or all the
3283 members, in the case of a nonprofit professional corporation
3284 which has members, at least one director, and the president of
3285 the foreign professional corporation are licensed in at least
3286 one state or territory of the United States or the District of
3287 Columbia to render the professional services which the foreign
3288 professional corporation would render in ~~Alabama~~ this state.

3289 (6) The foreign professional corporation includes in
3290 its application a statement acknowledging that it will be
3291 subject to the jurisdiction of the Alabama regulatory and
3292 licensing authorities with respect to any professional
3293 services rendered to clients or patients in ~~Alabama~~ this
3294 state.

3295 (b) No foreign professional corporation shall maintain
3296 an office in ~~Alabama~~ this state for the conduct of business or
3297 professional practice until it has obtained a certificate of
3298 authority to render professional services in ~~Alabama~~ this
3299 state."

3300 "§10A-4-5.03

3301 The certificate of authority of a foreign professional
3302 corporation may be revoked by the Secretary of State if the
3303 foreign professional corporation fails to comply with any



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3304 provision of this chapter applicable to ~~it~~ the foreign
3305 professional corporation. Each licensing authority in ~~Alabama~~
3306 this state shall certify to the Secretary of State, from time
3307 to time, the names of all foreign professional corporations
3308 which have given cause for revocation as provided in this
3309 chapter, together with the facts pertinent thereto. Whenever a
3310 licensing authority shall certify the name of a foreign
3311 professional corporation to the Secretary of State as having
3312 given cause for revocation, the licensing authority shall
3313 concurrently mail to the foreign professional corporation at
3314 its registered office in ~~Alabama~~ this state notice that the
3315 certification has been made. No certificate of authority of a
3316 foreign professional corporation shall be revoked by the
3317 Secretary of State unless ~~he or she~~ the Secretary of State
3318 shall have given the foreign professional corporation not less
3319 than 60 days' notice thereof and the foreign professional
3320 corporation shall fail prior to revocation to correct the
3321 noncompliance."

3322 "§10A-4-5.04

3323 (a) Every business professional corporation, domestic
3324 or foreign, is required to file an annual report under the
3325 Alabama Business Corporation Law, and shall include in the
3326 annual report, in addition to the items required by the
3327 Alabama Business Corporation Law:

3328 (1) A statement that all the ~~shareholders~~ stockholders,
3329 at least one director, and the president of the corporation
3330 are qualified persons with respect to the corporation, and

3331 (2) In the case of a foreign professional corporation,



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3332 the name or names of the Alabama licensed professional or
3333 professionals through whom the foreign professional
3334 corporation will render professional services in ~~Alabama~~ this
3335 state.

3336 (b) Financial information contained in the annual
3337 report of a professional corporation, other than the amount of
3338 stated capital of the corporation, shall not be open to public
3339 inspection nor shall the licensing authority disclose any
3340 facts or information obtained therefrom except insofar as its
3341 official duty may require the same to be made public or in the
3342 event the information is required for evidence in any criminal
3343 proceedings or in any other action by the State of Alabama."

3344 "§10A-4-5.05

3345 (a) Each licensing authority of ~~Alabama~~ this state may
3346 propound to any professional corporation, domestic or foreign,
3347 organized to practice a profession within the jurisdiction of
3348 the licensing authority, and to any officer or director
3349 thereof, the interrogatories as may be reasonably necessary
3350 and proper to enable the licensing authority to ascertain
3351 whether the professional corporation has complied with all the
3352 provisions of this chapter applicable to the professional
3353 corporation. The interrogatories shall be answered within 30
3354 days after the mailing thereof, or within the additional time
3355 as shall be fixed by the licensing authority, and the answers
3356 thereto shall be full and complete and shall be made in
3357 writing and under oath. If the interrogatories be directed to
3358 an individual they shall be answered by him or her, and if
3359 directed to a professional corporation they shall be answered



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3360 by the president, vice president, secretary, or assistant
3361 secretary thereof. The licensing authority shall certify to
3362 the Attorney General, for such action as the Attorney General
3363 may deem appropriate, all interrogatories and answers thereto
3364 which disclosed a violation of any of the provisions of this
3365 chapter.

3366 (b) Interrogatories propounded by a licensing authority
3367 and the answers thereto shall not be open to public inspection
3368 nor shall the licensing authority disclose any facts or
3369 information obtained therefrom except insofar as its official
3370 duty may require the same to be made public or in the event
3371 the interrogatories or the answers thereto are required for
3372 evidence in any criminal proceedings or in any other action by
3373 ~~the State of Alabama~~ this state."

3374 "§10A-4-5.06

3375 (a) Each officer and director of a professional
3376 corporation, domestic or foreign, who signs any ~~articles~~
3377 certificate, statement, report, application, answer to an
3378 interrogatory, or other document filed pursuant to this
3379 article with the licensing authority having jurisdiction which
3380 is known to the officer or director to be false in any
3381 material respect, shall be deemed to be guilty of a Class C
3382 misdemeanor.

3383 (b) If any professional corporation, domestic or
3384 foreign, or individual shall fail to answer interrogatories
3385 directed to the professional corporation or to the individual
3386 under Section 10A-4-5.05, the licensing authority which
3387 propounded the interrogatories may seek an order from ~~the~~ a



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3388 circuit court ~~compelling~~ with competent jurisdiction to compel
3389 an answer."

3390 "§10A-4-5.08

3391 (a) The provisions of this chapter shall apply to all
3392 existing corporations organized under the statute formerly
3393 codified as Article 11 of Chapter 4, Title 10 and repealed by
3394 Acts 1983, No. 83-514, effective January 1, 1984; provided,
3395 that any professional corporation, or nonprofit corporation,
3396 in existence on December 31, 1983, in which duly licensed
3397 medical and dental professionals are ~~shareholders~~
3398 stockholders, or in the case of a nonprofit professional
3399 corporation, render medical and dental services, shall be
3400 deemed to be in compliance with Sections 10A-4-2.01 and
3401 10A-4-2.03, as amended, and other applicable provisions of
3402 this chapter. The repeal of a prior act by this chapter shall
3403 not impair, or otherwise affect, the organization or continued
3404 existence of an existing domestic professional corporation nor
3405 the right of any foreign professional corporation presently
3406 qualified to render professional services in ~~Alabama~~ this
3407 state to continue to do so without again qualifying to render
3408 professional services in ~~Alabama~~ this state.

3409 (b) Any unincorporated professional association
3410 organized under ~~Section 10A-30-1.01~~ Article 1 of Chapter 30
3411 may become subject to the provisions of this chapter by
3412 amending its certificate of association as a certificate of
3413 ~~formation~~ incorporation in compliance with this chapter, and
3414 delivering its certificate of ~~formation~~ incorporation to the
3415 Secretary of State for filing.



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3416 (c) Any domestic nonprofit corporation rendering
3417 professional services may become subject to the provisions of
3418 this chapter by amending its certificate of ~~formation~~
3419 incorporation in compliance with this chapter and delivering
3420 the amendment to its certificate of ~~formation~~ incorporation to
3421 the Secretary of State for filing.

3422 (d) The provisions of this chapter shall not apply to
3423 any unincorporated professional association now in existence
3424 under Section 10A-30-1.01, or to any domestic nonprofit
3425 corporation rendering professional services unless the
3426 association or nonprofit corporation voluntarily becomes
3427 subject to this chapter as herein provided, and nothing
3428 contained in this chapter shall alter or affect any existing
3429 or future right or privilege permitting or not prohibiting
3430 performance of professional services through the use of any
3431 other form of business organization."

3432 "§10A-5A-1.08

3433 (a) Except as otherwise provided in subsections (b) and
3434 (c):

3435 (1) the limited liability company agreement governs
3436 relations among the members as members and between the members
3437 and the limited liability company; and

3438 (2) to the extent the limited liability company
3439 agreement does not otherwise provide for a matter described in
3440 subsection (a)(1), this chapter governs the matter.

3441 (b)(1) To the extent that, at law or in equity, a
3442 member or other person has duties, including fiduciary duties,
3443 to the limited liability company, or to another member or to



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3444 another person that is a party to or is otherwise bound by a
3445 limited liability company agreement, the member's or other
3446 person's duties may be expanded or restricted or eliminated by
3447 a written limited liability company agreement, but the implied
3448 contractual covenant of good faith and fair dealing may not be
3449 eliminated.

3450 (2) A written limited liability company agreement may
3451 provide for the limitation or elimination of any and all
3452 liabilities for breach of contract and breach of duties,
3453 including fiduciary duties, of a member or other person to a
3454 limited liability company or to another member or to another
3455 person that is a party to or is otherwise bound by a limited
3456 liability company agreement, but a limited liability company
3457 agreement may not limit or eliminate liability for any act or
3458 omission that constitutes a bad faith violation of the implied
3459 contractual covenant of good faith and fair dealing.

3460 (3) A member or other person shall not be liable to a
3461 limited liability company or to another member or to another
3462 person that is a party to or is otherwise bound by a limited
3463 liability company agreement for breach of fiduciary duty for
3464 the member's or other person's good faith reliance on the
3465 limited liability company agreement.

3466 (4) A limited liability company agreement may provide
3467 ~~that~~ any or all of the following:

3468 (A) a member, dissociated member, or transferee who
3469 fails to perform in accordance with, or to comply with the
3470 terms and conditions of, the limited liability company
3471 agreement shall be subject to specified penalties or specified



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3472 consequences; ~~and~~

3473 (B) at the time or upon the happening of events
3474 specified in the limited liability company agreement, a
3475 member, dissociated member, or transferee may be subject to
3476 specified penalties or specified consequences ~~;~~ and

3477 (C) subject to Section 10A-5A-1.08(c), an act or
3478 transaction under the limited liability company agreement by
3479 the limited liability company, a member, dissociated member,
3480 or transferee is void or voidable.

3481 (5) A penalty or consequence that may be specified
3482 under paragraph (4) of this subsection may include and take
3483 the form of reducing or eliminating the defaulting member's or
3484 transferee's proportionate interest in a limited liability
3485 company, subordinating the member's or transferee's
3486 transferable interest to that of non-defaulting members or
3487 transferees, forcing a sale of that transferable interest,
3488 forfeiting the defaulting member's or transferee's
3489 transferable interest, the lending by other members or
3490 transferees of the amount necessary to meet the defaulting
3491 member's or transferee's commitment, a fixing of the value of
3492 the defaulting member's or transferee's transferable interest
3493 by appraisal or by formula and redemption or sale of the
3494 transferable interest at that value, or other penalty or
3495 consequence.

3496 (6) A written limited liability company agreement may
3497 supersede, in whole or in part, the provisions of Division C
3498 of Article 3 of Chapter 1.

3499 (c) A limited liability company agreement may not:



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3500 (1) vary the nature of the limited liability company as
3501 a separate legal entity under Section 10A-5A-1.04(a);

3502 (2) vary the law applicable under Section 10A-5A-1.05;

3503 (3) restrict the rights under this chapter of a person
3504 other than a member, dissociated member, or transferee;

3505 (4) vary the power of the court under Section
3506 10A-5A-2.05;

3507 (5) eliminate the implied contractual covenant of good
3508 faith and fair dealing as provided under Section
3509 10A-5A-1.08(b)(1);

3510 (6) eliminate or limit the liability of a member or
3511 other person for any act or omission that constitutes a bad
3512 faith violation of the implied contractual covenant of good
3513 faith and fair dealing as provided under Section
3514 10A-5A-1.08(b)(2);

3515 (7) waive the requirements of Section 10A-5A-4.04(c);

3516 (8) vary the law applicable under Section
3517 10A-5A-4.06(c);

3518 (9) reduce the limitations period specified under
3519 Section 10A-5A-4.06(d) for an action commenced under other
3520 applicable law;

3521 (10) waive the prohibition on issuance of a certificate
3522 of a transferable interest in bearer form under Section
3523 10A-5A-5.02(c);

3524 (11) vary the power of a court to decree dissolution in
3525 the circumstances specified in Section 10A-5A-7.01(d) or in
3526 Section 10A-5A-11.09(e);

3527 (12) vary the requirement to wind up a limited



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3528 liability company's activities and affairs as specified in
3529 Section 10A-5A-7.02(a);

3530 (13) vary the provisions of Section 10A-5A-8.01;

3531 (14) vary the right of a member under Section
3532 10A-5A-10.09; ~~or~~

3533 (15) waive the requirements of Section
3534 10A-5A-11.02(b) ~~or~~; or

3535 (16) vary the provisions of Section 10A-5A-1.11(c),
3536 (d), or (e)."

3537 "§10A-5A-2.01

3538 (a) In order to form a limited liability company, one
3539 or more organizers must execute a certificate of formation and
3540 deliver it for filing to the filing officer provided for in
3541 subsection (e). Section 10A-1-3.05 shall not apply to this
3542 chapter. Instead, the certificate of formation shall set
3543 forth:

3544 (1) the name of the limited liability company, which
3545 must comply with Article 5 of Chapter 1;

3546 (2) the street address in this state, including the
3547 county, of the registered office required by Article 5 of
3548 Chapter 1;

3549 (3) the name of the registered agent at the registered
3550 office required by Article 5 of Chapter 1;

3551 (4) a statement that there is at least one member of
3552 the limited liability company;

3553 (5) if applicable, a statement as provided in Section
3554 10A-5A-11.02(b)(3); and

3555 (6) any other matters the members determine to include



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3556 therein.

3557 (b) A limited liability company is formed when its
3558 certificate of formation becomes effective in accordance with
3559 Article 4 of Chapter 1.

3560 (c) The fact that a certificate of formation has been
3561 filed and is effective in accordance with Article 4 of Chapter
3562 1 is notice of the matters required to be included by
3563 subsections (a)(1), (a)(2), (a)(3), and (a)(4) and if
3564 applicable, (a)(5), but is not notice of any other fact.

3565 (d) A limited liability company agreement shall be
3566 entered into either before, after, or at the time of the
3567 filing of the certificate of formation and, whether entered
3568 into before, after, or at the time of the filing, may be made
3569 effective as of the filing of the certificate of formation or
3570 at any other time or date provided in the limited liability
3571 company agreement.

3572 (e) A certificate of formation shall be delivered for
3573 filing to the Secretary of State."

3574 "§10A-5A-2.02

3575 Division B of Article 3 of Chapter 1 shall not apply to
3576 this chapter. Instead:

3577 (a) A certificate of formation may be amended at any
3578 time.

3579 (b) A certificate of formation may be restated with or
3580 without amendment at any time.

3581 (c) To amend its certificate of formation, a limited
3582 liability company must deliver a certificate of amendment for
3583 filing to the Secretary of State which certificate of



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3584 amendment shall state:

3585 (1) the name of the limited liability company;

3586 (2) the unique identifying number or other designation
3587 as assigned by the Secretary of State; and

3588 (3) the changes the amendment makes to the certificate
3589 of formation as most recently amended or restated.

3590 (d) To restate its certificate of formation, a limited
3591 liability company must deliver a restated certificate of
3592 formation for filing to the Secretary of State. A restated
3593 certificate of formation must:

3594 (1) be designated as such in the heading;

3595 (2) state the limited liability company's name;

3596 (3) state the unique identifying number or other
3597 designation as assigned by the Secretary of State; and

3598 (4) set forth any amendment or change effected in
3599 connection with the restatement of the certificate of
3600 formation.

3601 Any such restatement that effects an amendment shall be
3602 subject to any other provision of this chapter, not
3603 inconsistent with this section, which would apply if a
3604 separate certificate of amendment were filed to effect the
3605 amendment or change.

3606 (e) The original certificate of formation, as
3607 theretofore amended, shall be superseded by the restated
3608 certificate of formation and thenceforth, the restated
3609 certificate of formation, including any further amendment or
3610 changes made thereby, shall be the certificate of formation of
3611 the limited liability company, but the original effective date



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3612 of formation shall remain unchanged.

3613 (f) An amended or restated certificate of formation may
3614 contain only provisions that would be permitted at the time of
3615 the amendment if the amended or restated certificate of
3616 formation were a newly filed original certificate of
3617 formation.

3618 (g) A restated certificate of formation may omit any
3619 information that is not required to be in the certificate of
3620 formation under this chapter, including the name and address
3621 of the initial registered agent or registered office, if a
3622 statement of change is on file with the Secretary of State.
3623 Any omission other than the initial registered agent, shall be
3624 an amendment to the certificate of formation, which amendment
3625 must be approved in accordance with the limited liability
3626 company agreement, and if the limited liability company
3627 agreement does not state the approval required for an
3628 amendment of the certificate of formation, then the amendment
3629 must be approved by all of the members."

3630 "§10A-5A-3.02

3631 No person shall have the power to bind the limited
3632 liability company, or a series thereof, except:

3633 (a) to the extent the person is authorized to act as
3634 the agent of the limited liability company or a series thereof
3635 under or pursuant to the limited liability company agreement;

3636 (b) to the extent the person is authorized to act as
3637 the agent of the limited liability company or a series thereof
3638 ~~pursuant to~~ in accordance with Sections 10A-5A-4.07,
3639 10A-5A-7.03, or 10A-5A-11.11; or



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3640 (c) to the extent provided by law other than this
3641 chapter."

3642 "§10A-5A-8.01

3643 (a) A limited liability company shall have the power to
3644 render professional services if it complies with the rules of
3645 the licensing authority for such profession.

3646 (b) Every individual who renders professional services
3647 as a member or as an employee of a limited liability company
3648 shall be liable for any negligent or wrongful act or omission
3649 in which the individual personally participates to the same
3650 extent the individual would be liable if the individual
3651 rendered the services as a sole practitioner.

3652 (c) Except as otherwise provided in subsection (b), the
3653 personal liability of a member of any limited liability
3654 company engaged in providing professional services shall be
3655 governed by Section 10A-5A-3.01.

3656 (d) ~~The~~ Except as otherwise provided in subsection (b),
3657 the personal liability of a member, manager, or employee of a
3658 foreign limited liability company engaged in providing
3659 professional services shall be determined under the law of the
3660 jurisdiction in which the foreign limited liability company is
3661 organized.

3662 (e) Nothing in this article shall restrict or limit in
3663 any manner the authority or duty of a licensing authority with
3664 respect to individuals rendering a professional service within
3665 the jurisdiction of the licensing authority. Nothing in this
3666 article shall restrict or limit any law, rule, or regulation
3667 pertaining to standards of professional conduct.



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3668 (f) Nothing in this article shall limit the authority
3669 of a licensing authority to impose requirements in addition to
3670 those stated in this chapter on any limited liability company
3671 or foreign limited liability company rendering professional
3672 services within the jurisdiction of the licensing authority.

3673 (g) A member's transferrable interest in a limited
3674 liability company organized to render professional services
3675 may be voluntarily transferred only to a qualified person."

3676 "§10A-8A-1.08

3677 (a) Except as otherwise provided in subsections (b) and
3678 (c) :

3679 (1) the partnership agreement governs relations among
3680 the partners as partners and between the partners and the
3681 partnership; and

3682 (2) to the extent the partnership agreement does not
3683 otherwise provide for a matter described in subsection (a)(1),
3684 this chapter governs the matter.

3685 (b)(1) To the extent that, at law or in equity, a
3686 partner or other person has duties, including fiduciary
3687 duties, to a partnership or to another partner or to another
3688 person that is a party to or is otherwise bound by a
3689 partnership agreement, the partner's or other person's duties
3690 may be expanded or restricted or eliminated by provisions in a
3691 written partnership agreement, but the implied contractual
3692 covenant of good faith and fair dealing may not be eliminated.

3693 (2) A written partnership agreement may provide for the
3694 limitation or elimination of any and all liabilities for
3695 breach of contract and breach of duties, including fiduciary



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duties, of a partner or other person to a partnership or to another partner or to another person that is a party to or is otherwise bound by a partnership agreement, but a partnership agreement may not limit or eliminate liability for any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing.

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

(4) A partnership agreement may provide that:

(A) a partner, dissociated partner, or transferee who fails to perform in accordance with, or to comply with the terms and conditions of, the partnership agreement shall be subject to specified penalties or specified consequences; ~~and~~

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

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

(5) A penalty or consequence that may be specified under paragraph (4) of this subsection may include and take the form of reducing or eliminating the defaulting partner's or transferee's proportionate transferable interest in a



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3724 partnership, subordinating the partner's or transferee's
3725 transferable interest to that of non-defaulting partners or
3726 transferees, forcing a sale of that transferable interest,
3727 forfeiting the defaulting partner's or transferee's
3728 transferable interest, the lending by other partners or
3729 transferees of the amount necessary to meet the defaulting
3730 partner's or transferee's commitment, a fixing of the value of
3731 the defaulting partner's or transferee's transferable interest
3732 by appraisal or by formula and redemption or sale of the
3733 transferable interest at that value, or other penalty or
3734 consequence.

3735 (6) A written partnership agreement may supersede, in
3736 whole or in part, the provisions of Division C and Division D
3737 of Article 3 of Chapter 1.

3738 (c) A partnership agreement may not:

3739 (1) vary the nature of the partnership as a separate
3740 legal entity under Section 10A-8A-1.04(a);

3741 (2) vary a partnership's power under Section
3742 10A-8A-1.05 to sue, be sued, and defend in its own name;

3743 (3) vary the law applicable to a limited liability
3744 partnership under Section 10A-8A-1.06;

3745 (4) restrict rights under this chapter of a person
3746 other than a partner, a dissociated partner, or a transferee;

3747 (5) vary the requirements of Section 10A-8A-2.03;

3748 (6) unreasonably restrict the right of access to books
3749 and records under Section 10A-8A-4.10, but the partnership
3750 agreement may impose reasonable restrictions on the
3751 availability and use of information obtained under those



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3752 sections and may define appropriate remedies, including
3753 liquidated damages, for a breach of any reasonable restriction
3754 on use;

3755 (7) eliminate the implied contractual covenant of good
3756 faith and fair dealing as provided under Section
3757 10A-8A-1.08(b)(1);

3758 (8) eliminate or limit the liability of a partner or
3759 other person for any act or omission that constitutes a bad
3760 faith violation of the implied contractual covenant of good
3761 faith and fair dealing as provided under Section
3762 10A-8A-1.08(b)(2);

3763 (9) waive the requirements of Section 10A-8A-4.04(e);

3764 (10) reduce the limitations period specified under
3765 Section 10A-8A-4.09(e) for an action commenced under other
3766 applicable law;

3767 (11) waive the prohibition on issuance of a certificate
3768 of a transferable interest in bearer form under Section
3769 10A-8A-5.02(c);

3770 (12) vary the power of a person to dissociate as a
3771 partner under Section 10A-8A-6.02(a) except that the
3772 partnership agreement may require that the notice under
3773 Section 10A-8A-6.01(1) be in a writing or in a specific form
3774 thereof;

3775 (13) vary the right of a court to expel a partner in
3776 the events specified in Section 10A-8A-6.01(5);

3777 (14) vary the power of a court to decree dissolution in
3778 the circumstances specified in Section 10A-8A-8.01(4) or (5);

3779 (15) vary the requirement to wind up the partnership's



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3780 business or not for profit activity as specified in Section
3781 10A-8A-8.01(4), (5), (6), or (7);

3782 (16) vary the right of a partner to approve or consent
3783 to the cancellation of a statement of limited liability
3784 partnership as specified in Section 10A-8A-10.01(m); ~~or~~

3785 (17) vary the rights of a partner under Section
3786 10A-8A-9.10~~;~~ or

3787 (18) vary the provisions of Section 10A-8A-1.14(c),
3788 (d), or (e)."

3789 "§10A-8A-10.02

3790 (a) A limited liability partnership shall have the
3791 power to render professional services if it complies with the
3792 rules of the licensing authority for such profession.

3793 (b) Every individual who renders professional services
3794 as a partner or as an employee of a limited liability
3795 partnership shall be liable for any negligent or wrongful act
3796 or omission in which the individual personally participates to
3797 the same extent the individual would be liable if the
3798 individual rendered the services as a sole practitioner.

3799 (c) Except as otherwise provided in subsection (b), the
3800 personal liability of a partner of any limited liability
3801 partnership engaged in providing professional services shall
3802 be governed by Section 10A-8A-3.06.

3803 (d) ~~The~~ Except as otherwise provided in subsection (b),
3804 the personal liability of a partner or employee of a foreign
3805 limited liability partnership engaged in providing
3806 professional services shall be determined under the law of the
3807 jurisdiction which governs the foreign limited liability



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3808 partnership.

3809 (e) Nothing in this article shall restrict or limit in
3810 any manner the authority or duty of a licensing authority with
3811 respect to individuals rendering a professional service within
3812 the jurisdiction of the licensing authority. Nothing in this
3813 article shall restrict or limit any law, rule, or regulation
3814 pertaining to standards of professional conduct.

3815 (f) Nothing in this article shall limit the authority
3816 of a licensing authority to impose requirements in addition to
3817 those stated in this chapter on any limited liability
3818 partnership or foreign limited liability partnership rendering
3819 professional services within the jurisdiction of the licensing
3820 authority.

3821 (g) A partner's transferable interest in a limited
3822 liability partnership organized to render professional
3823 services may be voluntarily transferred only to a qualified
3824 person."

3825 "§10A-9A-1.08

3826 (a) Except as otherwise provided in subsections (b) and
3827 (c):

3828 (1) the partnership agreement governs relations among
3829 the partners as partners and between the partners and the
3830 partnership; and

3831 (2) to the extent the partnership agreement does not
3832 otherwise provide for a matter described in subsection (a)(1),
3833 this chapter governs the matter.

3834 (b)(1) To the extent that, at law or in equity, a
3835 partner or other person has duties, including fiduciary



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duties, to a limited partnership or to another partner or to another person that is a party to or is otherwise bound by a partnership agreement, the partner's or other person's duties may be expanded or restricted or eliminated by provisions in a written partnership agreement, but the implied contractual covenant of good faith and fair dealing may not be eliminated.

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

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

(4) A partnership agreement may provide ~~that~~ any of the following:

(A) a partner, dissociated partner, or transferee who fails to perform in accordance with, or to comply with the terms and conditions of, the partnership agreement shall be subject to specified penalties or specified consequences; ~~and~~



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3864 (B) at the time or upon the happening of events
3865 specified in the partnership agreement, a partner, dissociated
3866 partner, or transferee may be subject to specified penalties
3867 or specified consequences-; and

3868 (C) subject to Section 10A-9A-1.08(c), an act or
3869 transaction under the partnership agreement by the
3870 partnership, a partner, a dissociated partner, or a transferee
3871 is void or voidable.

3872 (5) A penalty or consequence that may be specified
3873 under paragraph (4) of this subsection may include and take
3874 the form of reducing or eliminating the defaulting partner's
3875 or transferee's proportionate interest in a limited
3876 partnership, subordinating the partner's or transferee's
3877 transferable interest to that of non-defaulting partners or
3878 transferees, forcing a sale of that transferable interest,
3879 forfeiting the defaulting partner's or transferee's
3880 transferable interest, the lending by other partners or
3881 transferees of the amount necessary to meet the defaulting
3882 partner's or transferee's commitment, a fixing of the value of
3883 the defaulting partner's or transferee's transferable interest
3884 by appraisal or by formula and redemption or sale of the
3885 transferable interest at that value, or other penalty or
3886 consequence.

3887 (6) A written partnership agreement may supersede, in
3888 whole or in part, the provisions of Division C and Division D
3889 of Article 3 of Chapter 1.

3890 (c) A partnership agreement may not:

3891 (1) vary the nature of the limited partnership as a



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3892 separate legal entity under Section 10A-9A-1.04(a);

3893 (2) vary a limited partnership's power under Section

3894 10A-9A-1.05 to sue, be sued, and defend in its own name;

3895 (3) vary the law applicable to a limited partnership

3896 under Section 10A-9A-1.06;

3897 (4) restrict rights under this chapter of a person

3898 other than a partner, a dissociated partner, or a transferee;

3899 (5) vary the requirements of Section 10A-9A-2.03;

3900 (6) vary the information required under Section

3901 10A-9A-1.11 or unreasonably restrict the right to information

3902 under Sections 10A-9A-3.04 or 10A-9A-4.07, but the partnership

3903 agreement may impose reasonable restrictions on the

3904 availability and use of information obtained under those

3905 sections and may define appropriate remedies, including

3906 liquidated damages, for a breach of any reasonable restriction

3907 on use;

3908 (7) vary the power of the court under Section

3909 10A-9A-2.04;

3910 (8) eliminate the implied contractual covenant of good

3911 faith and fair dealing as provided under Section

3912 10A-9A-1.08(b)(1);

3913 (9) eliminate or limit the liability of a partner or

3914 other person for any act or omission that constitutes a bad

3915 faith violation of the implied contractual covenant of good

3916 faith and fair dealing as provided under Section

3917 10A-9A-1.08(b)(2);

3918 (10) waive the requirements of Section 10A-9A-5.02(e);

3919 (11) reduce the limitations period specified under



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3920 Section 10A-9A-5.08(d) for an action commenced under other
3921 applicable law;

3922 (12) waive the prohibition on issuance of a certificate
3923 of a transferable interest in bearer form under Section
3924 10A-9A-7.02(c);

3925 (13) vary the power of a person to dissociate as a
3926 general partner under Section 10A-9A-6.04(a) except that the
3927 partnership agreement may require that the notice under
3928 Section 10A-9A-6.03(1) be in a writing or in a specific form
3929 thereof;

3930 (14) vary the power of a court to decree dissolution in
3931 the circumstances specified in Section 10A-9A-8.01(f);

3932 (15) vary the requirement to wind up the partnership's
3933 activities and affairs as specified in Section 10A-9A-8.02;~~or~~

3934 (16) vary the rights of a partner under Section
3935 10A-9A-10.10~~or~~; or

3936 (17) vary the provisions of Section 10A-9A-1.15(c),
3937 (d), or (e)"

3938 "§10A-9A-2.01

3939 (a) In order to form a limited partnership, a person
3940 must deliver a certificate of formation for filing to the
3941 Secretary of State. Section 10A-1-3.05 shall not apply to this
3942 chapter. Instead, the certificate of formation shall set
3943 forth:

3944 (1) the name of the limited partnership, which must
3945 comply with Article 5 of Chapter 1;

3946 (2) the street address in this state, including the
3947 county, of the registered office required by Article 5 of



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3948 Chapter 1;

3949 (3) the name of the registered agent at the registered
3950 office as required by Article 5 of Chapter 1;

3951 (4) the name and the street and mailing address of each
3952 general partner;

3953 (5) whether the limited partnership is a limited
3954 liability limited partnership;

3955 (6) any additional information required by Article 8 of
3956 Chapter 1 or by Article 10 of this chapter; and

3957 (7) any other matters the partners determine to include
3958 therein which comply with Section 10A-9A-1.08.

3959 (b) A limited partnership is formed when the
3960 certificate of formation becomes effective in accordance with
3961 Article 4 of Chapter 1.

3962 (c) The fact that a certificate of formation has been
3963 filed and is effective in accordance with Article 4 of Chapter
3964 1 is notice of the matters required to be included by
3965 subsections (a)(1), (a)(2), (a)(3), (a)(4), if applicable,
3966 (a)(5), and (a)(6), but is not notice of any other fact.

3967 (d) A partnership agreement shall be entered into
3968 either before, after, or at the time of filing the certificate
3969 of formation and, whether entered into before, after, or at
3970 the time of filing, may be made effective as of the filing of
3971 the certificate of formation or at any other time or date
3972 provided in the partnership agreement."

3973 "§10A-9A-2.02

3974 Division B of Article 3 of Chapter 1 shall not apply to
3975 this chapter. Instead:



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3976 (a) A certificate of formation may be amended at any
3977 time.

3978 (b) A certificate of formation may be restated with or
3979 without amendment at any time.

3980 (c) To amend its certificate of formation, a limited
3981 partnership must deliver a certificate of amendment for filing
3982 to the Secretary of State which certificate of amendment shall
3983 state:

3984 (1) the name of the limited partnership;

3985 (2) the unique identifying number or other designation
3986 as assigned by the Secretary of State; and

3987 (3) the changes the amendment makes to the certificate
3988 of formation as most recently amended or restated.

3989 (d) Prior to a statement of dissolution being delivered
3990 to the Secretary of State for filing, a limited partnership
3991 shall promptly deliver a certificate of amendment for filing
3992 with the Secretary of State to reflect:

3993 (1) the admission of a new general partner; or

3994 (2) the dissociation of a person as a general partner.

3995 (e) Prior to a statement of dissolution being delivered
3996 to the Secretary of State for filing, if a general partner
3997 knows that any information in a filed certificate of formation
3998 was inaccurate when the certificate of formation was filed or
3999 has become inaccurate due to changed circumstances and if ~~such~~
4000 the information is required to be set forth in a newly filed
4001 certificate of formation under this chapter, the general
4002 partner shall promptly:

4003 (1) cause the certificate of formation to be amended;



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4004 or

4005 (2) if appropriate, deliver for filing with the
4006 Secretary of State a certificate of correction in accordance
4007 with Chapter 1.

4008 (f) A certificate of formation may be amended at any
4009 time pursuant to this section for any other proper purpose as
4010 determined by the limited partnership. A certificate of
4011 formation may also be amended in a statement of merger
4012 pursuant to Article 8 of Chapter 1 or Article 10 of this
4013 chapter.

4014 (g) In order to restate its certificate of formation, a
4015 limited partnership must deliver a restated certificate of
4016 formation for filing with the Secretary of State. A restated
4017 certificate of formation must:

4018 (1) be designated as such in the heading;

4019 (2) state the name of the limited partnership;

4020 (3) state the unique identifying number or other
4021 designation as assigned by the Secretary of State;

4022 (4) set forth any amendment or change effected in
4023 connection with the restatement of the certificate of
4024 formation. Any such restatement that effects an amendment
4025 shall be subject to any other provision of this chapter not
4026 inconsistent with this section, which would apply if a
4027 separate certificate of amendment were filed to effect the
4028 amendment or change;

4029 (5) set forth the text of the restated certificate of
4030 formation; and

4031 (6) state that the restated certificate of formation



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4032 consolidates all amendments into a single document.

4033 (h) The original certificate of formation, as
4034 theretofore amended, shall be superseded by the restated
4035 certificate of formation and thenceforth, the restated
4036 certificate of formation, including any further amendment or
4037 changes made thereby, shall be the certificate of formation of
4038 the limited partnership, but the original effective date of
4039 formation shall remain unchanged.

4040 (i) An amended or restated certificate of formation may
4041 contain only the provisions that would be permitted at the
4042 time of the amendment if the amended or restated certificate
4043 of formation were a newly filed original certificate of
4044 formation.

4045 (j) (1) An amendment to a certificate of formation takes
4046 effect when the filing of the certificate of amendment takes
4047 effect as provided by Article 4 of Chapter 1.

4048 (2) An amendment to a certificate of formation does not
4049 affect:

4050 (i) an existing cause of action in favor of or against
4051 the limited partnership for which the certificate of amendment
4052 is sought;

4053 (ii) a pending suit to which the limited partnership is
4054 a party; or

4055 (iii) an existing right of a person other than an
4056 existing partner.

4057 (3) If the name of a limited partnership is changed by
4058 amendment, an action brought by or against the limited
4059 partnership in the former name of that limited partnership



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4060 does not abate because of the name change.

4061 (k) (1) A restated certificate of formation takes effect
4062 when the filing of the restated certificate of formation takes
4063 effect as provided by Article 4 of Chapter 1.

4064 (2) On the date and time the restated certificate of
4065 formation takes effect, the original certificate of formation
4066 and each prior amendment or restatement of the certificate of
4067 formation is superseded and the restated certificate of
4068 formation is the effective certificate of formation.

4069 (3) Subsections (j) (2) and ~~(3)~~ (j) (3) apply to an
4070 amendment effected by a restated certificate of formation.

4071 (1) A restated certificate of formation may omit any
4072 information that is not required to be in the certificate of
4073 formation under this chapter, including the name and address
4074 of the initial registered agent or registered office, if a
4075 statement of change is on file with the Secretary of State.
4076 Any omission other than the initial registered agent, shall be
4077 an amendment to the certificate of formation, which amendment
4078 must be approved in accordance with the partnership agreement,
4079 and if the partnership agreement does not state the approval
4080 required for an amendment of the certificate of formation,
4081 then the amendment must be approved by all of the partners."

4082 Section 2. Sections 10A-5A-1.11, 10A-8A-1.14, and
4083 10A-9A-1.15, are added to the Code of Alabama 1975 to read as
4084 follows:

4085 §10A-5A-1.11

4086 (a) If a limited liability company agreement provides
4087 that an act or transaction is void or voidable when taken,



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4088 then that act or transaction may be ratified or waived by:

4089 (1) the members or other persons entitled to ratify or
4090 waive that act or transaction under the limited liability
4091 company agreement;

4092 (2) if the limited liability company agreement does not
4093 specify the approval required for the ratification or waiver,
4094 then those members or other persons entitled to approve the
4095 amendment of the limited liability company agreement; or

4096 (3) if the limited liability company agreement does not
4097 specify the approval required for the amendment of the limited
4098 liability company agreement, then all of the members.

4099 (b) If the void or voidable act or transaction was the
4100 issuance or transfer of any transferable interest, then for
4101 purposes of determining who may ratify or waive any act or
4102 transaction, the transferable interest purportedly issued or
4103 transferred shall be deemed not to have been issued or
4104 transferred.

4105 (c) Any act or transaction ratified, or with respect to
4106 which the failure to comply with any requirements of the
4107 limited liability company agreement is waived, pursuant to
4108 this section shall be deemed validly taken at the time of the
4109 act or transaction.

4110 (d) Upon application of the limited liability company,
4111 any member, or any person claiming to be substantially and
4112 adversely affected by a ratification or waiver pursuant to
4113 this section, the designated court, and if none, the circuit
4114 court for the county in which the limited liability company's
4115 principal office is located in this state, and if none in this



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state, in the circuit court for the county in which the limited liability company's most recent registered office is located, may hear and determine the validity and effectiveness of the ratification of, or waiver with respect to, any void or voidable act or transaction effectuated pursuant to this section, and in any such application, the limited liability company shall be named as a party and service of the application upon the registered agent of the limited liability company shall be deemed to be service upon the limited liability company, and no other party need be joined in order for the court to adjudicate the validity and effectiveness of the ratification or waiver, and the court may make such order respecting further or other notice of the application as the court deems proper under the circumstances; provided, that nothing herein limits or affects the right to serve process in any other manner now or hereafter provided by law, and this sentence is an extension of and not a limitation upon the right otherwise existing of service of legal process upon nonresidents.

(e) The provisions of this section shall not be construed to limit the accomplishment of a ratification or waiver of a void or voidable act or transaction by other means permitted by law.

§10A-8A-1.14

(a) If a partnership agreement provides that an act or transaction is void or voidable when taken, then that act or transaction may be ratified or waived by:

(1) the partners or other persons entitled to ratify or



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4144 waive that act or transaction under the partnership agreement;

4145 (2) if the partnership agreement does not specify the
4146 approval required for the ratification or waiver, then those
4147 partners or other persons entitled to approve the amendment of
4148 the partnership agreement; or

4149 (3) if the partnership agreement does not specify the
4150 approval required for the amendment of the partnership
4151 agreement, then all of the partners.

4152 (b) If the void or voidable act or transaction was the
4153 issuance or transfer of any transferable interest, then for
4154 purposes of determining who may ratify or waive any act or
4155 transaction, the transferable interest purportedly issued or
4156 transferred shall be deemed not to have been issued or
4157 transferred.

4158 (c) Any act or transaction ratified, or with respect to
4159 which the failure to comply with any requirements of the
4160 partnership agreement is waived, pursuant to this section
4161 shall be deemed validly taken at the time of the act or
4162 transaction.

4163 (d) Upon application of the partnership, any partner,
4164 or any person claiming to be substantially and adversely
4165 affected by a ratification or waiver pursuant to this section,
4166 the designated court, and if none, the circuit court for the
4167 county in which the partnership's principal office is located
4168 in this state, and if none in this state, in the circuit court
4169 for the county in which the partnership's most recent
4170 registered office is located, may hear and determine the
4171 validity and effectiveness of the ratification of, or waiver



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with respect to, any void or voidable act or transaction effectuated pursuant to this section, and in any such application, the partnership shall be named as a party and service of the application upon the registered agent of the partnership shall be deemed to be service upon the partnership, and no other party need be joined in order for the court to adjudicate the validity and effectiveness of the ratification or waiver, and the court may make such order respecting further or other notice of the application as the court deems proper under the circumstances; provided, that nothing herein limits or affects the right to serve process in any other manner now or hereafter provided by law, and this sentence is an extension of and not a limitation upon the right otherwise existing of service of legal process upon nonresidents.

(e) The provisions of this section shall not be construed to limit the accomplishment of a ratification or waiver of a void or voidable act or transaction by other means permitted by law.

§10A-9A-1.15

(a) If a partnership agreement provides that an act or transaction is void or voidable when taken, then that act or transaction may be ratified or waived by:

(1) the partners or other persons entitled to ratify or waive that act or transaction under the partnership agreement;

(2) if the partnership agreement does not specify the approval required for the ratification or waiver, then those partners or other persons entitled to approve the amendment of



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4200 the partnership agreement; or

4201 (3) if the partnership agreement does not specify the
4202 approval required for the amendment of the partnership
4203 agreement, then all of the partners.

4204 (b) If the void or voidable act or transaction was the
4205 issuance or transfer of any transferable interest, then for
4206 purposes of determining who may ratify or waive any act or
4207 transaction, the transferable interest purportedly issued or
4208 transferred shall be deemed not to have been issued or
4209 transferred.

4210 (c) Any act or transaction ratified, or with respect to
4211 which the failure to comply with any requirements of the
4212 partnership agreement is waived, pursuant to this section
4213 shall be deemed validly taken at the time of the act or
4214 transaction.

4215 (d) Upon application of the partnership, any partner,
4216 or any person claiming to be substantially and adversely
4217 affected by a ratification or waiver pursuant to this section,
4218 the designated court, and if none, the circuit court for the
4219 county in which the partnership's principal office is located
4220 in this state, and if none in this state, in the circuit court
4221 for the county in which the partnership's most recent
4222 registered office is located, may hear and determine the
4223 validity and effectiveness of the ratification of, or waiver
4224 with respect to, any void or voidable act or transaction
4225 effectuated pursuant to this section, and in any such
4226 application, the partnership shall be named as a party and
4227 service of the application upon the registered agent of the



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partnership shall be deemed to be service upon the partnership, and no other party need be joined in order for the court to adjudicate the validity and effectiveness of the ratification or waiver, and the court may make such order respecting further or other notice of the application as the court deems proper under the circumstances; provided, that nothing herein limits or affects the right to serve process in any other manner now or hereafter provided by law, and this sentence is an extension of and not a limitation upon the right otherwise existing of service of legal process upon nonresidents.

(e) The provisions of this section shall not be construed to limit the accomplishment of a ratification or waiver of a void or voidable act or transaction by other means permitted by law.

Section 3. Although this bill would have as its purpose or effect the requirement of a new or increased expenditure of local funds, the bill is excluded from further requirements and application under Section 111.05 of the Constitution of Alabama of 2022, because the bill defines a new crime or amends the definition of an existing crime.

Section 4. This act shall become effective on January 1, 2025.