House Judiciary Reported Substitute for HB248

A BILL

TO BE ENTITLED

AN ACT

Relating to the Alabama Business and Nonprofit Entities Code; to amend Sections 10A-1-1.04, 10A-1-1.11, 10A-1-1.13, 10A-1-2.17, 10A-1-3.32, 10A-1-4.14, 10A-1-4.21, 10A-1-4.23, 10A-1-4.24, 10A-1-4.25, and 10A-1-5.31, Section 10A-1-7.01, as amended by Act 2025-281, 2025 Regular Session, Sections 10A-1-7.11, 10A-2A-1.43, 10A-2A-2.02, 10A-2A-2.05, 10A-2A-2.07, 10A-2A-6.22, 10A-2A-8.27, 10A-2A-8.60, 10A-2A-14.10, 10A-2A-16.02, 10A-2A-16.03, 10A-2A-16.04, 10A-3A-1.60, 10A-3A-2.02, 10A-3A-2.07, 10A-3A-4.02, 10A-3A-4.03, and 10A-3A-4.04, Section 8 of Act 2025-281, now appearing as Section 10A-3A-8.26, Sections 10A-3A-8.60, 10A-5A-4.09, and 10A-8A-4.10, Section 10A-8A-5.02, as amended by Act 2025-281, 2025 Regular Session, Sections 10A-9A-3.04 and 10A-17-1.02, Code of Alabama 1975; to add Division G, consisting of Section 10A-2A-8.70, to Article 8 of Chapter 2A, Title 10A, Code of Alabama 1975; to add Sections 10A-3A-6.14, 10A-3A-8.61, and 10A-3A-8.62 to the Code of Alabama 1975; to add Division G, consisting of Section 10A-3A-8.70, to Article 8 of Chapter 3A, Title 10A, Code of Alabama 1975; to make technical corrections; to make technical corrections and codify common law; to clarify the law governing entities and clarify the internal affairs doctrine, thereby codifying common law; to provide a new procedure to correct or nullify filing instruments; to clarify that a registered agent may not perform its duties virtually; to clarify the process for a foreign entity doing business in the state that is withdrawing its certificate of authority to transact business in this state; to clarify certain proxy matters allowed in bylaws of business corporations and to clarify the forum selection provisions for business corporations and nonprofit corporations; to clarify the procedures, processes, rights, and responsibilities of owners and entities regarding records requests, to provide for expedited court review in the event of noncompliance, and to allow the court in any expedited review to determine the allocation among the parties to the review; to clarify the duties of stockholders to business corporations and fellow stockholders; to provide procedures for officers, directors, stockholders, and members of business corporations and nonprofit corporations to follow when the officers, directors, stockholders, and members of business corporations and nonprofit corporations are involved in a conflicting transaction or a corporate opportunity transaction, or both, which if followed would provide the officers, directors, stockholders, and members of business corporations and nonprofit corporations with certain safe harbors; and to repeal Sections 10A-2A-16.10 and 10A-3A-4.20, Code of Alabama 1975, providing for financial statements for stockholders and members, respectively.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§10A-1-1.04

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

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

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

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

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

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

(A) interested in the contract or transaction; or

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

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

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

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

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

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

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

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

"§10A-1-1.11

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

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

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

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

"§10A-1-1.13

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

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

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

(3) matters which are peculiar to the relationships

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

"§10A-1-2.17

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

"§10A-1-3.32

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

(b) With respect to a domestic entity covered by this section, the books and records maintained under the chapter of this title applicable to that entity and any other books and records of that entity, wherever situated, are subject to inspection and copying at the reasonable request, and at the expense of, any owner or member or the owner's or member's agent or attorney during regular business hours~~. The right of access extends to the legal representative of a deceased owner or member or owner or member under legal disability. The entity shall also provide former owners and members with access to its books and records pertaining to the period during which they were owners or members~~ at a reasonable location specified by the entity if the owner or member meets the requirements of subsection (c) and gives the entity a signed written notice of the owner's or member's demand at least 10 business days before the date on which the owner or member wishes to inspect and copy. If an owner or member shall designate an agent or attorney to inspect and copy the records, the demand shall be accompanied by a power of attorney or other writing which authorizes the agent or attorney to so act on behalf of that person.

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

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

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

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

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

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

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

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

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

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

~~(c) The~~(f) Except as set forth in this section, 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.~~

(g) If an entity does not within a reasonable time allow an owner or member who complies with the requirements of this section to inspect and copy the records demanded by the owner or member, then the demanding owner or member may apply to the designated court, and if none, the circuit court for the county in which the entity's principal office is located in this state, and if none in this state, the circuit court for the county in which the entity's most recent registered office is located, for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis. If the court orders inspection and copying of the records demanded under this section, the court may impose reasonable restrictions on their confidentiality, use, or distribution by the demanding owner or member, and the court shall also order the entity to pay the owner's or member's expenses incurred to obtain the order unless the entity establishes that the entity refused inspection in good faith because the entity had:

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

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

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

"§10A-1-4.14

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

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

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

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

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

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

"§10A-1-4.21

(a) ~~A~~ Whenever any filing instrument ~~that has been filed with~~ authorized to be delivered to a filing officer ~~that is an inaccurate record of the event or transaction evidenced in the instrument, that~~ for filing under any provision of this title has been filed by the filing officer, and contains an inaccurate or erroneous statement, or ~~that~~ was defectively or erroneously signed, sealed, acknowledged, or verified, the filing instrument may be corrected or nullified by ~~filing~~ delivering a certificate of correction or a certificate of nullification of the instrument, as the case may be, to the appropriate filing officer for filing. If the filing instrument is to be corrected, the certificate of correction shall specify the inaccuracy or defect to be corrected and shall set forth the portion of the filing instrument in corrected form. If the filing instrument is to be nullified, the certificate of nullification shall specify the inaccuracy or defect with respect to the filing instrument and shall provide for the nullification of the filing instrument.

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

"§10A-1-4.23

(a) The certificate of correction must:

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

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

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

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

(b) The certificate of nullification must:

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

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

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

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

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

"§10A-1-4.24

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

"§10A-1-4.25

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

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

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

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

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

"§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 registered to transact business in this state; ~~and~~

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

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

(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-1-7.01

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

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

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

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

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

(2) is a foreign limited liability partnership; or

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

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

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

"§10A-1-7.11

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

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

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

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

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

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

(5) that the foreign entity:

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

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

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

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

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

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

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

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

<u>(f) The certificate of withdrawal of a foreign entity described in subsection (b), other than a foreign limited liability partnership, shall be executed by one or more</u>

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

"§10A-2A-1.43

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

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

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

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

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

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

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

~~(1)~~ As used in this chapter, unless otherwise specified or unless the context otherwise requires, a "material relationship" means a familial, financial, professional, employment, or other relationship that (i) in the case of a director, would reasonably be expected to impair the objectivity of the director's judgment when participating in the ~~action to be taken; and~~ negotiation, authorization, or approval of the act or transaction at issue and (ii) in the case of a stockholder, would be material to that stockholder.

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

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

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

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

"§10A-2A-2.02

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

(a) The certificate of incorporation must set forth:

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

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

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

(4) the name and address of each incorporator.

(b) The certificate of incorporation may set forth:

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

(2) provisions not inconsistent with law regarding:

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

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

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

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

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

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

(4) a provision eliminating or limiting the liability of a director or officer to the corporation or its stockholders 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 corporation or the stockholders; (iii) in the case of a director, a violation of Section 10A-2A-8.32; (iv) an intentional violation of criminal law; or (v) in the case of an officer, any claim by or in the right of the corporation;

(5) a provision permitting or making obligatory indemnification of a director for liability as defined in Section 10A-2A-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 corporation or its stockholders, (iii) a violation of Section 10A-2A-8.32, or (iv) an intentional violation of criminal law; and

(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~~ corporate opportunities, before the pursuit or taking of the corporate 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; 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, the term "control" or "controlled" has the meaning specified in Section 10A-2A-8.60 and the term "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 controlled by the corporation) controlled by the individual or any person specified above in this definition;

(v) a domestic or foreign:

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

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

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

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

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

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

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

Section 10A-2A-8.40 as (i) president, chief executive officer, chief operating officer, chief financial officer, chief legal officer, secretary, controller, treasurer, or chief accounting officer of the corporation; and (ii) any officer of the 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-2.05

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

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

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

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

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

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

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

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

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

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

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

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

(vi) any other lawful condition.

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

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

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

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

(iv) any other lawful condition.

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

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

"§10A-2A-2.07

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

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

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

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

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

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

"§10A-2A-6.22

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

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

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

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

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

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

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

"§10A-2A-8.27

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

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

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

"§10A-2A-8.60

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

conflicting interest transaction shall be given effect.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"§10A-2A-14.10

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

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

established that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"§10A-2A-16.02

<u>Subject to subsections (i) and (j) of this section:</u>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d)~~(1)~~ The corporation may redact portions of the records to be inspected and copied under subsections (a) and (b) to the extent the portions so redacted are not directly related to the stockholder's purpose. The corporation may also impose reasonable restrictions and conditions on access to and use of the records to be inspected and copied under subsections (a) and (b), including designating information confidential and imposing nondisclosure and safeguarding, and may further keep confidential from its stockholders and other persons, for a period of time as the corporation deems reasonable any information that the corporation reasonably believes to be in the nature of a trade secret or other information the disclosure of which the corporation in good faith believes is not in the best interest of the corporation or could damage the corporation or its business or affairs, or that the corporation is required by law or by agreement with a third party to keep confidential. In any dispute concerning the reasonableness of a restriction under this subsection, the corporation has the burden of proving reasonableness.

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

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

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

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

(g) This section does not affect~~:~~

~~(1)~~ the right of a stockholder to inspect records under Section 10A-2A-7.20 or, if the stockholder is in litigation with the corporation, to the same extent as any other litigant~~; or~~.

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

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

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

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

"§10A-2A-16.03

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

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

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

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

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

"§10A-2A-16.04

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

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

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

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

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

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

"§10A-3A-1.60

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

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

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

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

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

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

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

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

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

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

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

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

"§10A-3A-2.02

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

(a) The certificate of incorporation must set forth:

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

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

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

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

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

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

(b) The certificate of incorporation may set forth:

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

(2) provisions not inconsistent with law regarding:

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

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

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

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

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

(vi) the distribution of assets on dissolution;

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

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

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

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

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

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

(5) a provision permitting or making obligatory indemnification of a director for liability as defined in Section 10A-3A-8.50 to any person for any action taken, or any failure to take any action, as a director, except liability for (i) receipt of a financial benefit to which the director 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 corporate opportunity by the director or other person; provided that the 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 the disinterested or qualified directors taken in compliance with the same procedures as are set forth in Section ~~10A-3A-8.60,~~ 10A-3A-8.70; and (ii) may be

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

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

(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-3A-1.04.

(e) As used in this section, the term "control" or "controlled" has the meaning specified in Section 10A-3A-8.60 and the term "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 nonprofit corporation or an entity controlled by the nonprofit corporation) controlled by the individual or any person specified above in this definition;

(v) a domestic or foreign:

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

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

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

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

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

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

(h) For purposes of subsection (b)(4) only, unless the certificate of incorporation otherwise provides, "officer" means an individual appointed or elected in accordance with Section 10A-3A-8.40 as (i) president, chief executive officer, chief operating officer, chief financial officer, chief legal officer, secretary, controller, treasurer, or chief accounting officer of the nonprofit corporation and (ii) any officer of the nonprofit 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 such 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-3A-2.07

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

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

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

(b) With respect to claims that are not internal corporate claims, the certificate of incorporation or bylaws may require members, directors, officers, and the person or group of persons specified in the certificate of incorporation, when acting in that person's capacity as a member, director, officer, or person or group of persons specified in the certificate of incorporation, to bring any or all such claims only in any specified court or courts of this state and, if so specified, in any additional courts in this state or in any other jurisdictions with which the nonprofit corporation has a reasonable relationship, if those claims relate to the business and affairs of the nonprofit corporation, the conduct of its affairs, or the rights or powers of the nonprofit corporation or its members, directors, officers, or person or persons specified in the certificate of incorporation; provided that such requirement is consistent with applicable jurisdictional requirements and allows a member, director, officer, and person or group of persons specified in the certificate of incorporation to bring such claims in at least one court in this state that has jurisdiction over those claims.

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

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

"§10A-3A-4.02

Subject to subsection (h):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) This section does not affect~~:~~

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

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

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

"§10A-3A-4.03

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

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

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

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

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

"§10A-3A-4.04

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

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

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

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

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

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

"§10A-3A-8.26

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

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

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

"§10A-3A-8.60

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) With respect to a membership nonprofit corporation:

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

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

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

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

(2) With respect to a nonmembership nonprofit corporation:

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

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

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

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

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

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

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

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

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

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

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

"§10A-5A-4.09

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"§10A-8A-4.10

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

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

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

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

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

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

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

(3) it is determined that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) If a partnership does not within a reasonable time allow a person who complies with the requirements of this section to inspect and copy the records required by this section, the person who complies with this section may apply to the designated court, and if none, the circuit court for the county in which the partnership's principal office is located in this state, and if none in this state, the circuit court for the county in which the partnership's most recent registered office is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis. If the court orders inspection and copying of the records demanded under this section, it may impose reasonable restrictions on their confidentiality, use, or distribution by the demanding person and the court shall also order the partnership to pay the demanding person's expenses incurred to obtain the order unless the partnership establishes that the partnership refused inspection in good faith because the partnership had:

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

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

"§10A-8A-5.02

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

(1) is permissible;

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

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

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

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

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

(b) A transferee has a right:

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

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

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

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

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

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

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

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

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

"§10A-9A-3.04

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) the person meets the requirements of subsection

(b).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(m) If a limited partnership does not within a reasonable time allow a person who complies with the requirements of this section to inspect and copy the records required by this section, the person who complies with this section may apply to the designated court, and if none, the circuit court for the county in which the limited partnership's principal office is located in this state, and if none in this state, the circuit court for the county in which the limited partnership's most recent registered office is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis. If the court orders inspection and copying of the records demanded under this section, it may impose reasonable restrictions on their confidentiality, use, or distribution by the demanding person and the court shall also order the limited partnership to pay the demanding person's expenses incurred to obtain the order unless the limited partnership establishes that the limited partnership refused inspection in good faith because the limited partnership had:

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

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

"§10A-17-1.02

In this chapter:

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

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

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

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

Division G Corporate Opportunities.

§10A-2A-8.70 Corporate opportunities.

(a) If a director or officer pursues or takes advantage of a corporate opportunity directly, or indirectly through or on behalf of another person, that action may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against the director, officer, or other person, in a proceeding by or in the right of the corporation on the ground that the corporate opportunity should have first been offered to the corporation, if (1) before the director, officer, or other person becomes legally obligated respecting the corporate opportunity the director or officer brings it to the attention of the corporation and either: (i) action by qualified directors disclaiming the corporation's interest in the corporate opportunity is taken in compliance with the same procedures as are set forth in Section 10A-2A-8.60(c) or (ii) stockholders' action disclaiming the corporation's interest in the corporate opportunity is taken in compliance with the procedures set forth in Section 10A-2A-8.60(d), in either case as if the decision being made concerned a conflicting interest transaction, except that, rather than making "required disclosure" as defined in Section 10A-2A-8.60(a), the director or officer shall have made prior disclosure to those acting on behalf of the corporation of all material facts concerning the corporate opportunity known to the director or officer; or (2) the duty to offer the corporation the corporate opportunity has been limited or eliminated pursuant to a provision of the certificate of incorporation adopted (and where required, made effective by action of qualified directors) in accordance with Section 10A-2A-2.02(b)(6).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) A director or officer who has a conflicting

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Division G Corporate Opportunities.

§10A-3A-8.70 Corporate opportunities.

(a) If a director or officer pursues or takes advantage of a corporate opportunity directly, or indirectly through or on behalf of another person, that action may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against the director, officer, or other person on the grounds that the corporate opportunity should have first been offered to the nonprofit corporation, if (1) before the director, officer, or other person becomes legally obligated respecting the corporate opportunity the director or officer brings it to the attention of the nonprofit corporation and either: (i) action by qualified directors disclaiming the nonprofit corporation's interest in the corporate opportunity is taken in compliance with the same procedures as are set forth in Section 10A-3A-8.61(c) or Section 10A-3A-8.62(c); (ii) with respect to a membership nonprofit corporation, members' action disclaiming the membership nonprofit corporation's interest in the corporate opportunity is taken in compliance with the procedures set forth in Section 10A-3A-8.61(d); or (iii) if a controlling person has the power and authority to disclaim the nonprofit corporation's interest in the corporate opportunity pursuant to a provision in the certificate of incorporation permitted by Section 10A-3A-8.01, action disclaiming the nonprofit corporation's interest in the corporate opportunity is taken by that controlling person, in each case as if the decision being made concerned a conflicting interest transaction, except that, rather than making "required disclosure" as defined in Section 10A-3A-8.60, the director or officer shall have made prior disclosure to those acting on behalf of the nonprofit corporation of all material facts concerning the corporate opportunity known to the director or officer; or (2) the duty to offer the nonprofit corporation the corporate opportunity has been limited or eliminated pursuant to a provision of the certificate of incorporation adopted (and where required, made effective by action of qualified directors) in accordance with Section 10A-3A-2.02(b)(6).

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

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

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

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