

1 SB96
2 208922-2
3 By Senators Givhan, Elliott, Jones and Singleton
4 RFD: Judiciary
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6 PFD: 01/27/2021

1 SB96

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4 ENROLLED, An Act,

5 Relating to the Alabama Business and Nonprofit
6 Entities Code; to amend Sections 10A-1-1.02, 10A-1-1.03, and
7 10A-1-4.02, as amended by Act 2020-73, 2020 Regular Session,
8 Code of Alabama 1975; to add Section 10A-1-5.18 to the Code of
9 Alabama 1975; to amend Sections 10A-2A-1.40 and 10A-2A-1.41,
10 as amended by Act 2020-73, 2020 Regular Session, Section
11 10A-2A-2.01, as added to the Code of Alabama 1975 by Act
12 2019-94, 2019 Regular Session, Sections 10A-2A-2.02 and
13 10A-2A-7.20, as amended by Act 2020-73, 2020 Regular Session,
14 Sections 10A-2A-8.30, 10A-2A-8.31, 10A-2A-8.42, 10A-2A-8.43,
15 10A-2A-8.59, 10A-2A-9.01, 10A-2A-10.06, 10A-2A-10.07,
16 10A-2A-10.08, 10A-2A-11.01, 10A-2A-13.01, and 10A-2A-16.01, as
17 added to the Code of Alabama 1975 by Act 2019-94, 2019 Regular
18 Session, and Section 10A-3-1.02, Code of Alabama 1975; to add
19 Section 10A-3-1.05 to the Code of Alabama 1975; to amend
20 Sections 10A-3-2.02, 10A-3-2.03, 10A-3-2.09, and 10A-3-2.21,
21 Section 10A-5A-1.02, as amended by Act 2018-125, 2018 Regular
22 Session, Sections 10A-5A-2.01, 10A-5A-2.02, and 10A-5A-7.02,
23 as amended by Act 2020-73, 2020 Regular Session, Section
24 10A-5A-7.04, Section 10A-5A-7.05, as amended by Act 2020-73,
25 2020 Regular Session, Sections 10A-5A-7.06, 10A-5A-7.07,

1 10A-5A-11.10, and 10A-5A-11.12, Section 10A-5A-11.13, as
2 amended by Act 2020-73, 2020 Regular Session, Sections
3 10A-5A-11.14 and 10A-5A-11.15, Section 10A-8A-1.02, as amended
4 by Act 2019-304, 2019 Regular Session, Section 10A-8A-4.10, as
5 added to the Code of Alabama 1975 by Act 2018-125, 2018
6 Regular Session, Section 10A-8A-8.02, as amended by Act
7 2020-73, 2020 Regular Session, Section 10A-8A-8.06, as added
8 to the Code of Alabama by Act 2018-125, 2018 Regular Session,
9 Section 10A-8A-8.07, as amended by Act 2020-73, 2020 Regular
10 Session, Sections 10A-8A-8.09, 10A-8A-8.10, and 10A-8A-9.01,
11 as added to the Code of Alabama 1975 by Act 2018-125, 2018
12 Regular Session, Section 10A-9A-1.02, Sections 10A-9A-2.01 and
13 10A-9A-2.02, as amended by Act 2020-73, 2020 Regular Session,
14 Sections 10A-9A-4.06 and 10A-9A-4.07, Section 10A-9A-8.02, as
15 amended by Act 2020-73, 2020 Regular Session, Section
16 10A-9A-8.06, Section 10A-9A-8.07, as amended by Act 2020-73,
17 2020 Regular Session, and Sections 10A-9A-8.09, 10A-9A-8.10,
18 and 10A-9A-10.01, Code of Alabama 1975; to clarify the
19 relationship between the general provisions of Chapter 1 and
20 the other chapters contained within the Alabama Business and
21 Nonprofit Entities Code; and to amend Section 40-9-12, Code of
22 Alabama 1975, to revise the definition for certain nonprofit
23 entities exempt from taxation.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Sections 10A-1-1.02, 10A-1-1.03, and
2 10A-1-4.02, as amended by Act 2020-73, 2020 Regular Session,
3 of the Code of Alabama 1975, are amended to read as follows:

4 "§10A-1-1.02.

5 "(a) All provisions of this chapter shall apply to
6 all entities formed pursuant to or governed by Chapters 2A to
7 11, inclusive, and Chapter 17, ~~except to the extent, if any,~~
8 ~~that any provision of this chapter is inconsistent with or as~~
9 ~~otherwise provided by the provisions of this title or other~~
10 ~~statutory or constitutional provisions specifically applicable~~
11 ~~to the entity~~ as set forth in this chapter and except as set
12 forth in subsections (c), (d), and (e).

13 "(b) The provisions of this chapter shall apply to
14 entities formed pursuant to or governed by Chapter 16, Chapter
15 20, and Chapter 30 only as provided therein or expressly
16 provided in this chapter.

17 "(c) If a provision of this chapter conflicts with a
18 provision in another chapter of this title, the provision of
19 the other chapter, to the extent of the conflict, supersedes
20 the provision of this chapter.

21 "(d) Provisions in another chapter may provide that
22 the provisions of this chapter do not apply by specifically
23 providing which provisions in this chapter do not apply.

24 "(e) Provisions in another chapter may provide that
25 the governing documents of an entity governed by that other

1 chapter may supersede the provisions of this chapter by
2 specifically providing which provisions in this chapter may be
3 superseded by those governing documents.

4 "§10A-1-1.03.

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

9 "(b) As used in this title, ~~unless~~ except as
10 provided in subsection (a) of this section or where the
11 context otherwise requires, the following terms mean:

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

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

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

3 "(i) an officer or governing person; or

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

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

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

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

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

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

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

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

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

7 "(8) CERTIFICATE OF FORMATION.

8 "(A) The document required to be filed publicly
9 under this title to form a filing entity; and

10 "(B) if appropriate, a restated certificate of
11 formation and all amendments of an original or restated
12 certificate of formation.

13 "(9) CERTIFICATE OF OWNERSHIP. An instrument
14 evidencing an ownership interest or membership interest in an
15 entity.

16 "(10) CERTIFICATED OWNERSHIP INTEREST. An ownership
17 interest of a domestic entity represented by a certificate.

18 "(11) CERTIFICATION or CERTIFIED. Duly authenticated
19 by the proper officer or filing officer of the jurisdiction
20 the laws of which govern the internal affairs of an entity.

21 "(12) CONTRIBUTION. A tangible or intangible benefit
22 that a person transfers to an entity in consideration for an
23 ownership interest in the entity or otherwise in the person's
24 capacity as an owner or a member. A benefit that may
25 constitute a contribution transferred in exchange for an

1 ownership interest or transferred in the transferor's capacity
2 as an owner or member may include cash, property, services
3 rendered, a contract for services to be performed, a
4 promissory note or other obligation of a person to pay cash or
5 transfer property to the entity, or securities or other
6 interests in or obligations of an entity. In either case, the
7 benefit does not include cash or property received by the
8 entity:

9 "(A) with respect to a promissory note or other
10 obligation to the extent that the agreed value of the note or
11 obligation has previously been included as a contribution; or

12 "(B) that the person intends to be a loan to the
13 entity.

14 "(13) CONVERSION. A conversion, whether referred to
15 as a conversion, domestication, or otherwise, means:

16 "(A) the continuance of a domestic entity as a
17 foreign entity of any type;

18 "(B) the continuance of a foreign entity as a
19 domestic entity of any type; or

20 "(C) the continuance of a domestic entity of one
21 type as a domestic entity of another type.

22 "(14) CONVERTED ENTITY. An entity resulting from a
23 conversion.

24 "(15) CONVERTING ENTITY. An entity as the entity
25 existed before the entity's conversion.

1 "(16) COOPERATIVE. Includes an employee cooperative
2 as defined in Chapter 11.

3 "(17) CORPORATION. Includes a domestic or foreign
4 business corporation, including a benefit corporation, as
5 defined in Chapter 2A, a domestic or foreign nonprofit
6 corporation as defined in Chapter 3, a domestic or foreign
7 professional corporation as defined in Chapter 4, and those
8 entities specified in Chapter 20 as corporate.

9 "(18) COURT. The designated court, and if none, the
10 circuit court specifically set forth in this title, and if
11 none, any other court having jurisdiction in a case.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 "(31) ENTITY. A domestic or foreign organization.

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

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

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

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

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

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

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

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

21 "(40) GENERAL PARTNER.

22 "(A) Each partner in a general partnership; or

23 "(B) a person who is admitted to a limited
24 partnership as a general partner in accordance with the
25 governing documents of the limited partnership.

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

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

22 "(43) GOVERNING DOCUMENTS.

23 "(A) In the case of a domestic entity:

1 "(i) the certificate of formation for a filing
2 entity or the document or agreement under which a nonfiling
3 entity is formed; and

4 "(ii) the other documents or agreements, including
5 bylaws, partnership agreements of partnerships, limited
6 liability company agreements of limited liability companies,
7 or similar documents, adopted by the entity pursuant to this
8 title to govern the formation or the internal affairs of the
9 entity; or

10 "(B) in the case of a foreign entity, the
11 instruments, documents, or agreements adopted under the law of
12 its jurisdiction of formation to govern the formation or the
13 internal affairs of the entity.

14 "(44) GOVERNING PERSON. A person serving as part of
15 the governing authority of an entity.

16 "(45) INDIVIDUAL. A natural person and the estate of
17 an incompetent or deceased natural person.

18 "(46) INSOLVENCY. The inability of a person to pay
19 the person's debts as they become due in the usual course of
20 business or affairs.

21 "(47) INSOLVENT. A person who is unable to pay the
22 person's debts as they become due in the usual course of
23 business or affairs.

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

4 "(49) JURISDICTION OF FORMATION.

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

6 "(B) in the case of a foreign entity, the
7 jurisdiction in which the entity's certificate of formation or
8 similar organizational instrument is filed, or if no
9 certificate of formation or similar organizational instrument
10 is filed, then the laws of the jurisdiction which govern the
11 internal affairs of the foreign entity;

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

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

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

24 "(i) the jurisdiction the laws of which are chosen
25 in the entity's governing documents to govern its internal

1 affairs if that jurisdiction bears a reasonable relation to
2 the owners or members or to the domestic or foreign nonfiling
3 entity's business and affairs under the principles of this
4 state that otherwise would apply to a contract among the
5 owners or members; or

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

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

10 "(51) LICENSE. A license, certificate of
11 registration, or other legal authorization.

12 "(52) LICENSING AUTHORITY. The state court, state
13 regulatory licensing board, or other like agency which has the
14 power to issue a license or other legal authorization to
15 render professional services.

16 "(53) LIMITED LIABILITY COMPANY. A limited liability
17 company as defined in Chapter 5A.

18 "(54) LIMITED LIABILITY LIMITED PARTNERSHIP. A
19 limited liability limited partnership as defined in Chapter
20 9A.

21 "(55) LIMITED LIABILITY PARTNERSHIP. A limited
22 liability partnership as defined in Chapter 8A.

23 "(56) LIMITED PARTNER. A person who has been
24 admitted to a limited partnership as a limited partner as
25 provided by:

1 "(A) in the case of a domestic limited partnership,
2 Chapter 9A; or

3 "(B) in the case of a foreign limited partnership,
4 the laws of its jurisdiction of formation.

5 "(57) LIMITED PARTNERSHIP. A limited partnership as
6 defined in Chapter 9A. The term includes a limited liability
7 limited partnership as defined in Chapter 9A.

8 "(58) MANAGERIAL OFFICIAL. An officer or a governing
9 person.

10 "(59) MEMBER.

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

12 "(B) in the case of a nonprofit corporation formed
13 pursuant to or governed by Chapter 3, a person having
14 membership rights in the nonprofit corporation in accordance
15 with its governing documents as provided in Chapter 3;

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

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

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

4 "(A) one or more surviving domestic entities or
5 foreign entities;

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

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

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

16 "(62) NONPROFIT ASSOCIATION. An unincorporated
17 nonprofit association as defined in Chapter 17. The term does
18 not include a general partnership which has filed a statement
19 of not for profit partnership in accordance with Chapter 8A, a
20 limited partnership which is carrying on a not for profit
21 purpose, or a limited liability company which is carrying on a
22 not for profit purpose.

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

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

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

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

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

19 "(68) OWNER.

20 "(A) With respect to a foreign or domestic business
21 corporation or real estate investment trust, a stockholder or
22 a shareholder;

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

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

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

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

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

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

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

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

18 "(72) PARTNERSHIP. Includes a general partnership, a
19 limited liability partnership, a foreign limited liability
20 partnership, a limited partnership, a foreign limited
21 partnership, a limited liability limited partnership, and a
22 foreign limited liability limited partnership.

23 "(73) PARTNERSHIP AGREEMENT. Any agreement (whether
24 referred to as a partnership agreement or otherwise), written,
25 oral or implied, of the partners as to the activities and

1 affairs of a general partnership or a limited partnership. The
2 partnership agreement includes any amendments to the
3 partnership agreement. In the case of limited partnerships
4 formed prior to October 1, 1998, partnership agreement
5 includes the certificate of partnership.

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

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

1 "(76) PRESIDENT.

2 "(A) The individual designated as president of an
3 entity under the entity's governing documents; or

4 "(B) the officer or committee of persons authorized
5 to perform the functions of the principal executive officer of
6 an entity without regard to the designated name of the officer
7 or committee.

8 "(77) PRINCIPAL OFFICE. The office, in or out of
9 this state, where the principal executive office, whether
10 referred to as the principal executive office, chief executive
11 office, or otherwise, of an entity is located.

12 "(78) PROFESSIONAL ASSOCIATION. A professional
13 association as defined in Chapter 30.

14 "(79) PROFESSIONAL CORPORATION. A domestic or
15 foreign professional corporation as defined in Chapter 4.

16 "(80) PROFESSIONAL ENTITY. A professional
17 association and a professional corporation.

18 "(81) PROFESSIONAL SERVICE. Any type of service that
19 may lawfully be performed only pursuant to a license issued by
20 a state court, state regulatory licensing board, or other like
21 agency pursuant to state laws.

22 "(82) PROPERTY. Includes all property, whether real,
23 personal, or mixed, or tangible or intangible, or any right or
24 interest therein.

1 "(83) REAL ESTATE INVESTMENT TRUST. An
2 unincorporated trust, association, or other entity as defined
3 in Chapter 10.

4 "(84) SECRETARY.

5 "(A) The individual designated as secretary of an
6 entity under the entity's governing documents; or

7 "(B) the officer or committee of persons authorized
8 to perform the functions of secretary of an entity without
9 regard to the designated name of the officer or committee.

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

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

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

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

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

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

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

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

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

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

14 "(91) TREASURER.

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

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

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

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

25 "(94) VICE PRESIDENT.

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

3 "(B) the officer or committee of persons authorized
4 to perform the functions of the president of the entity on the
5 death, absence, or resignation of the president or on the
6 inability of the president to perform the functions of office
7 without regard to the designated name of the officer or
8 committee.

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

13 "§10A-1-4.02.

14 "(a) A filing instrument required or allowed by this
15 title to be delivered to the Secretary of State for filing
16 shall be delivered to the Secretary of State for filing.

17 "(b) A filing instrument required or permitted by
18 this title to be delivered to the judge of probate for filing
19 shall be delivered to the judge of probate for filing.

20 "(c) If a provision of this title does not specify
21 which filing officer a filing instrument is to be delivered to
22 for filing, that filing instrument shall be delivered to the
23 Secretary of State for filing.

24 "(d) If the filing officer finds that a filing
25 instrument delivered to the filing officer for filing

1 substantially conforms to the provisions of this title that
2 apply to that filing instrument and that all required fees
3 have been paid, the filing officer shall file it immediately
4 upon delivery by:

5 "(1) recording that filing instrument as "filed,"
6 together with the name and official title of the filing
7 officer and the date and time of receipt on the instrument and
8 all copies required hereunder and on the receipt for the
9 filing fee;

10 "(2) accepting that filing instrument into the
11 filing system adopted by the filing officer and assigning the
12 instrument a date and time of filing; and

13 "(3) delivering a copy of that filing instrument,
14 indicating the date and time of the filing on the copy along
15 with the filing fee receipt to the entity or its
16 representative.

17 "(e) The filing fee to be collected by the filing
18 officer shall be paid or provision for payment shall be made
19 in a manner permitted by the filing officer. The filing
20 officer may accept payment of the correct amount due by check,
21 credit card, charge card, or similar method. If the amount due
22 is tendered by any method other than cash, the liability shall
23 not be finally discharged until the filing officer receives
24 final irrevocable full payment of immediately available funds.
25 If after five consecutive calendar days prior notice by the

1 filing officer to the entity or person who delivered a filing
2 instrument for filing for which the filing fee was not
3 received in final irrevocable full payment of immediately
4 available funds, then the filing officer may declare the
5 filing instrument to be null and void and of no legal effect
6 as if it had never been filed and may remove the filing
7 instrument from the records of the filing officer.

8 "(f) If the filing officer refuses to file a filing
9 instrument, the filing officer shall return it to the entity
10 or its representative within five consecutive calendar days
11 after the filing instrument was delivered to the filing
12 officer for filing, together with a brief, written explanation
13 of the reason for the refusal.

14 "(g) Delivery by a filing officer of an
15 acknowledgement of filing, receipt for the filing fee, an
16 explanation for the reason a filing instrument was not filed,
17 notice that a filing fee was not made in final irrevocable
18 full payment of immediately available funds, or other
19 communication as to a filing instrument delivered for filing
20 to that filing officer may be accomplished by mail, courier,
21 or electronic transmission.

22 "(h) The duty of the filing officer to file filing
23 instruments pursuant to this title is ministerial. Filing or
24 refusing to file a filing instrument by the filing officer
25 does not:

1 "(1) affect the validity or invalidity of the filing
2 instrument in whole or in part;

3 "(2) relate to the correctness or incorrectness of
4 information contained in the filing instrument; or

5 "(3) create a presumption that the filing instrument
6 is valid or invalid or that information contained in the
7 filing instrument is correct or incorrect.

8 "(i) The Secretary of State shall assign a unique
9 identifying number to each domestic entity and each foreign
10 filing entity for which the Secretary of State has filed or
11 files a filing instrument and shall keep:

12 "(1) an alphabetical list of ~~all~~ those domestic
13 entities and ~~registered~~ foreign filing entities;

14 "(2) with respect to those domestic entities and
15 ~~registered~~ foreign filing entities, all filing instruments and
16 any other document required or permitted to be delivered to
17 the Secretary of State for filing pursuant to this title; and

18 "(3) the data contained in those filing instruments.

19 "(j) The Secretary of State shall establish and
20 maintain an automated electronic system that enables:

21 "(i) the delivery, acceptance, and filing by
22 electronic transmission of all filing instruments authorized
23 or required by this title to be delivered to the Secretary of
24 State for filing;

1 "(ii) all filing instruments to be in a form that
2 complies with this title but does not require the filing
3 instruments to be in a form adopted by or otherwise required
4 by the Secretary of State;

5 "(iii) the delivery, acceptance, and filing of
6 filing instruments by electronic transmission to occur 24
7 hours a day, seven days a week, each day of the year,
8 including holidays and weekends; and

9 "(iv) each person delivering a filing instrument by
10 means of electronic transmission to the Secretary of State for
11 filing to receive from the Secretary of State immediate
12 confirmation that the filing instrument has been delivered to,
13 and accepted and filed by, the Secretary of State with that
14 confirmation to include the information required in
15 subsections (d) (1), (d) (2), and (d) (3), associated with that
16 filing instrument, clearly set forth on a digital copy of that
17 filing instrument.

18 "(k) If a filing instrument which is authorized or
19 required to be delivered to the Secretary of State for filing
20 by this title is delivered to the Secretary of State by means
21 other than electronic transmission, and that filing instrument
22 complies with the requirements of this title, then the
23 Secretary of State shall:

24 "(i) file that filing instrument as of the date and
25 time of the receipt of that filing instrument;

1 "(ii) confirm that the filing instrument has been
2 delivered to, and accepted and filed by, the Secretary of
3 State with that confirmation to include the information
4 required in subsections (d)(1), (d)(2), and (d)(3), associated
5 with that filing instrument, clearly set forth on a copy of
6 that filing instrument; and

7 "(iii) either (A) place that confirmation and that
8 copy of the filing instrument in the United States mail,
9 postage prepaid, and properly addressed to the person who
10 delivered that filing instrument to the Secretary of State,
11 not later than the next business day or (B) transmit that
12 confirmation and that copy of the filing instrument by
13 electronic transmission to the person who delivered that
14 filing instrument to the Secretary of State, not later than
15 the next business day.

16 "(l) Subject to subsection (e), a filing officer who
17 has filed a filing instrument shall maintain that filing
18 instrument in perpetuity."

19 Section 2. Section 10A-1-5.18 is added to the Code
20 of Alabama 1975, to read as follows:

21 §10A-1-5.18.

22 If an entity is listed in the Secretary of State's
23 records as an entity that has been dissolved, then if that
24 entity is reinstated in accordance with this chapter or the
25 chapter that governs the dissolved entity, the name of that

1 entity following revocation and reinstatement shall be that
 2 entity's name at the time of revocation and reinstatement if
 3 that entity's name complies with this article at the time of
 4 revocation and reinstatement. If that entity's name does not
 5 comply with this article, the name of that entity following
 6 revocation and reinstatement shall be that entity's name
 7 followed by the word "reinstated."

8 Section 3. Sections 10A-2A-1.40 and 10A-2A-1.41, as
 9 amended by Act 2020-73, 2020 Regular Session, Section
 10 10A-2A-2.01, as added to the Code of Alabama 1975 by Act
 11 2019-94, 2019 Regular Session, Sections 10A-2A-2.02 and
 12 10A-2A-7.20, as amended by Act 2020-73, 2020 Regular Session,
 13 Sections 10A-2A-8.30, 10A-2A-8.31, 10A-2A-8.42, 10A-2A-8.43,
 14 10A-2A-8.59, 10A-2A-9.01, 10A-2A-10.06, 10A-2A-10.07,
 15 10A-2A-10.08, 10A-2A-11.01, 10A-2A-13.01, and 10A-2A-16.01, as
 16 added to the Code of Alabama 1975 by Act 2019-94, 2019 Regular
 17 Session, and Section 10A-3-1.02 of the Code of Alabama 1975,
 18 are amended to read as follows:

19 "§10A-2A-1.40.

20 "~~Notwithstanding Section 10A-1-1.03, as~~ As used in
 21 this chapter, unless otherwise specified or unless the context
 22 otherwise requires, the following terms have the following
 23 meanings:

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

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

8 "(3) CERTIFICATE OF INCORPORATION means the
9 certificate of incorporation described in Section 10A-2A-2.02,
10 all amendments to the certificate of incorporation, and any
11 other documents permitted or required to be delivered for
12 filing by a corporation with the Secretary of State under this
13 chapter or Chapter 1 that modify, amend, supplement, restate,
14 or replace the certificate of incorporation. After an
15 amendment of the certificate of incorporation or any other
16 document filed under this chapter or Chapter 1 that restates
17 the certificate of incorporation in its entirety, the
18 certificate of incorporation shall not include any prior
19 documents. When used with respect to a corporation
20 incorporated and existing on December 31, 2019, under a
21 predecessor law of this state, the term "certificate of
22 incorporation" means articles of incorporation, charter, or
23 similar incorporating document, and all amendments and
24 restatements to the certificate of incorporation, charter, or
25 similar incorporating document. When used with respect to a

1 foreign corporation, a nonprofit corporation, or a foreign
2 nonprofit corporation, the "certificate of incorporation" of
3 such an entity means the document of such entity that is
4 equivalent to the certificate of incorporation of a
5 corporation. The term "certificate of incorporation" as used
6 in this chapter is synonymous to the term "certificate of
7 formation" used in Chapter 1.

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

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

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

24 "(7) DOCUMENT means a writing as defined in Chapter
25 1.

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

4 "(9) ELECTRONIC MAIL means an electronic
5 transmission directed to a unique electronic mail address,
6 ~~which electronic mail shall be deemed to include any files~~
7 ~~attached thereto and any information hyperlinked to a website~~
8 ~~if such electronic mail includes the contact information of an~~
9 ~~officer or agent of the corporation who is available to assist~~
10 ~~with accessing those files and that information.~~

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

18 "(11) ELIGIBLE ENTITY means an unincorporated
19 entity, foreign unincorporated entity, nonprofit corporation,
20 or foreign nonprofit corporation.

21 "(12) ELIGIBLE INTERESTS means interests or
22 memberships.

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

1 "(14) ENTITY includes corporation; foreign
2 corporation; nonprofit corporation; foreign nonprofit
3 corporation; estate; trust; unincorporated entity; foreign
4 unincorporated entity; and state, United States, and foreign
5 government.

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

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

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

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

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

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

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

5 "(22) INTEREST means either or both of the following
6 rights under the governing statute governing an unincorporated
7 entity:

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

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

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

16 "(24) KNOWLEDGE is determined as follows:

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

18 "(1) has actual knowledge of it; or

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

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

22 "(1) knows of it;

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

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

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

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

9 "(d) A person is deemed to have notice of a
10 corporation's:

11 "(1) matters included in the certificate of
12 incorporation upon filing;

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

15 "(3) conversion, merger, or interest exchange under
16 Article 9 or Article 11, 90 days after a statement of
17 conversion, or statement of merger or interest exchange
18 becomes effective;

19 "(4) conversion or merger under Article 8 of Chapter
20 1, 90 days after a statement of conversion or statement of
21 merger becomes effective; and

22 "(5) revocation of dissolution and reinstatement, 90
23 days after certificate of revocation of dissolution and
24 reinstatement under Section 10A-2A-14.04 becomes effective.

1 "(e) A stockholder's knowledge, notice, or receipt
2 of a notification of a fact relating to the corporation is not
3 knowledge, notice, or receipt of a notification of a fact by
4 the corporation solely by reason of the stockholder's capacity
5 as a stockholder.

6 "(f) The date and time of the effectiveness of a
7 notice delivered in accordance with Section 10A-2A-1.41, is
8 determined by Section 10A-2A-1.41.

9 "(25) MEANS denotes an exhaustive definition.

10 "(26) MEMBERSHIP means the rights of a member in a
11 nonprofit corporation or foreign nonprofit corporation.

12 "(27) MERGER means a transaction pursuant to Section
13 10A-2A-11.02.

14 "(28) ORGANIZATIONAL DOCUMENTS means the public
15 organic record and private organizational documents of a
16 corporation, foreign corporation, or eligible entity.

17 "(29) PRINCIPAL OFFICE means the office (in or out
18 of this state) so designated in the annual report where the
19 principal executive offices of a corporation or foreign
20 corporation are located.

21 "(30) PRIVATE ORGANIZATIONAL DOCUMENTS means (i) the
22 bylaws of a corporation, foreign corporation, nonprofit
23 corporation, or foreign nonprofit corporation, or (ii) the
24 rules, regardless of whether in writing, that govern the
25 internal affairs of an unincorporated entity or foreign

1 unincorporated entity, are binding on all its interest
2 holders, and are not part of its public organic record, if
3 any. Where private organizational documents have been amended
4 or restated, the term means the private organizational
5 documents as last amended or restated.

6 "(31) PROCEEDING includes any civil suit and
7 criminal, administrative, and investigatory action.

8 "(32) PUBLIC ORGANIC RECORD means (i) the
9 certificate of incorporation of a corporation, foreign
10 corporation, nonprofit corporation, or foreign nonprofit
11 corporation, or (ii) the document, if any, the filing of which
12 is required to create an unincorporated entity or foreign
13 unincorporated entity, or which creates the unincorporated
14 entity or foreign unincorporated entity and is required to be
15 filed. Where a public organic record has been amended or
16 restated, the term means the public organic record as last
17 amended or restated.

18 "(33) RECORD DATE means the date fixed for
19 determining the identity of the corporation's stockholders and
20 their stockholdings for purposes of this chapter. Unless
21 another time is specified when the record date is fixed, the
22 determination shall be made as of the close of business at the
23 principal office of the corporation on the date so fixed.

24 "(34) RECORD STOCKHOLDER means (i) the person in
25 whose name shares of stock are registered in the records of

1 the corporation, or (ii) the person identified as the
2 beneficial owner of stock in a beneficial ownership
3 certificate pursuant to Section 10A-2A-7.23 on file with the
4 corporation to the extent of the rights granted by such
5 certificate.

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

11 "(36) STOCK EXCHANGE means a transaction pursuant to
12 Section 10A-2A-11.03.

13 "(37) STOCKHOLDER means a record stockholder.

14 "(38) STOCK means the units into which the
15 proprietary interests in a corporation or foreign corporation
16 are divided.

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

22 "(40) UNINCORPORATED ENTITY means an organization or
23 artificial legal person that either has a separate legal
24 existence or has the power to acquire an estate in real
25 property in its own name and that is not any of the following:

1 a corporation, foreign corporation, nonprofit corporation,
2 foreign nonprofit corporation, a series of a limited liability
3 company or of another type of entity, an estate, a trust, a
4 state, United States, or foreign government. The term includes
5 a general partnership, limited liability company, limited
6 partnership, business trust, joint stock association, and
7 unincorporated nonprofit association.

8 "(41) UNITED STATES includes any district,
9 authority, bureau, commission, department, and any other
10 agency of the United States.

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

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

23 "(44) VOTING POWER means the current power to vote
24 in the election of directors.

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

4 "§10A-2A-1.41.

5 "(a) A notice under this chapter must be in writing
6 unless oral notice is reasonable in the circumstances. Unless
7 otherwise agreed between the sender and the recipient, words
8 in a notice or other communication under this chapter must be
9 in English.

10 "(b) A notice or other communication may be given by
11 any method of delivery, except that notice or other
12 communication by electronic ~~transmissions~~ transmission must be
13 in accordance with this section. If the methods of delivery
14 are impracticable, a notice or other communication from the
15 corporation may be given by means of a broad non-exclusionary
16 distribution to the public (which may include a newspaper of
17 general circulation in the area where published; radio,
18 television, or other form of public broadcast communication;
19 or other methods of distribution that the corporation has
20 previously identified to its stockholders).

21 "(c) A notice or other communication to a
22 corporation or to a foreign corporation registered to ~~do~~
23 transact business in this state may be delivered to the
24 corporation's registered agent at its registered office or to
25 the secretary at the corporation's principal office shown in

1 its most recent annual report or, in the case of a foreign
2 corporation that has not yet delivered an annual report, in
3 its foreign registration under Chapter 1.

4 "(d) A notice or other communications from the
5 corporation to a stockholder ~~from the corporation~~ may be
6 delivered by electronic mail to ~~that stockholder~~ at the
7 electronic mail address for that stockholder ~~as reflected in~~
8 ~~the books and records of the corporation~~ required to be
9 included in the record of stockholders maintained pursuant to
10 Section 10A-2A-16.01(d), unless that stockholder has
11 previously notified the corporation in writing that the
12 stockholder objects to receiving notices and other
13 communications by electronic mail. Any ~~such~~ notice or
14 communication may be delivered by another form of electronic
15 transmission ~~other than electronic mail~~ if consented to by the
16 stockholder or if authorized by subsection (j), ~~and any other.~~
17 Any notice or other communication from the corporation to any
18 other person may be delivered by electronic transmission if
19 consented to by the recipient or if authorized by subsection
20 (j). Any consent given under this subsection or subsection (j)
21 may be revoked with respect to future notices or
22 communications by the person who consented by written notice
23 to the person to whom the consent was delivered.

24 "~~(e) Any consent under subsection (d) may be revoked~~
25 ~~by the person who consented by written or electronic notice to~~

1 ~~the person to whom the consent was delivered. Authority to~~
2 ~~deliver notice or other communications to a stockholder by~~
3 ~~electronic mail or by electronic transmission~~ A notice or
4 other communication may no longer be delivered to an
5 electronic mail address or other electronic transmission
6 address pursuant to subsection (d) ~~shall cease~~ if (i) the
7 corporation ~~is unable to deliver~~ receives notice from the
8 information processing system into which the notice or other
9 communication was entered that two consecutive notices or
10 other communications given by electronic transmissions ~~to that~~
11 ~~stockholder in accordance with subsection (d)~~ have not been
12 delivered to the electronic mail address or other electronic
13 transmission address to which the notice or other
14 communication was directed, and (ii) the ~~inability~~ notice of
15 non-delivery becomes known to the secretary or an assistant
16 secretary or to the transfer agent, or ~~other~~ another person
17 responsible for the giving of ~~notice~~ notices or other
18 communications for the corporation; provided, however, the
19 inadvertent failure to ~~treat that inability~~ recognize the
20 notice of non-delivery as a cessation of authority to provide
21 a stockholder with notice by electronic mail or other
22 electronic transmission shall not invalidate any meeting or
23 other action.

1 "(f) Unless otherwise agreed between the sender and
2 the recipient, ~~an~~ a notice or other communication by
3 electronic transmission is received when:

4 "(1) it enters an information processing system ~~that~~
5 ~~the recipient has designated or uses for the purposes of~~
6 ~~receiving electronic transmissions or information of the type~~
7 ~~sent, and from which the recipient is able to retrieve the~~
8 directed to (i) in the case of a stockholder, the electronic
9 mail address for the stockholder required to be included in
10 the record of stockholders maintained pursuant to Section
11 10A-2A-16.01(d) or other electronic transmission address at
12 which the stockholder has consented to receive notice or other
13 communications by electronic transmission, or (ii) in the case
14 of any other recipient, the electronic transmission address at
15 which the recipient has consented to receive notice or other
16 communications by electronic transmission; and

17 "(2) it is in a form capable of being processed by
18 that system.

19 "(g) Receipt of an electronic acknowledgement from
20 an information processing system described in subsection
21 (f) (1) establishes that an electronic transmission was
22 received but, by itself, does not establish that the content
23 sent corresponds to the content received.

24 "(h) An electronic transmission is received under
25 this section even if no person is aware of its receipt.

1 "(i) A notice or other communication, if in a
2 comprehensible form or manner, is effective at the earliest of
3 the following:

4 "(1) if in a physical form, the earliest of when it
5 is actually received, or when it is left at:

6 "(i) a stockholder's address ~~shown on the~~
7 ~~corporation's~~ included in the record of stockholders
8 ~~maintained by the corporation under~~ pursuant to Section
9 10A-2A-16.01(d);

10 "(ii) a director's residence or usual place of
11 business; or

12 "(iii) the corporation's principal office;

13 "(2) if mailed by United States mail postage prepaid
14 and ~~correctly~~ addressed to a stockholder at the stockholder's
15 address included in the record of stockholders maintained
16 pursuant to Section 10A-2A-16.01(d), upon deposit in the
17 ~~United States~~ mail;

18 "(3) if mailed by United States mail postage prepaid
19 and ~~correctly~~ addressed to a recipient other than a
20 stockholder at the address included in the corporation's
21 records, the earliest of when it is actually received, or:

22 "(i) if sent by registered or certified mail, return
23 receipt requested, the date shown on the return receipt signed
24 by or on behalf of the addressee; or

1 "(ii) five days after it is deposited in the United
2 States mail;

3 "(4) if sent by a nationally recognized commercial
4 carrier that issues a receipt or other confirmation of
5 delivery, the earliest of when it is actually received or the
6 date shown on the receipt or other confirmation of delivery
7 issued by the commercial carrier;

8 "(5) if an electronic transmission, when it is
9 received as provided in subsection (f); and

10 "(6) if oral, when communicated.

11 "(j) A notice or other communication may be in the
12 form of an electronic transmission that cannot be directly
13 reproduced in paper form by the recipient through an automated
14 process used in conventional commercial practice only if (i)
15 the electronic transmission is otherwise retrievable in
16 perceivable form, and (ii) the sender and the recipient have
17 consented in writing to the use of such form of electronic
18 transmission.

19 "(k) If this chapter prescribes requirements for
20 notices or other communications in particular circumstances,
21 those requirements govern. If the certificate of incorporation
22 or bylaws prescribe requirements for notices or other
23 communications, not inconsistent with this section or other
24 provisions of this chapter, those requirements govern. The
25 certificate of incorporation or bylaws may authorize or

1 require delivery of notices of meetings of directors by
2 electronic transmission.

3 "(l) In the event that any provisions of this
4 chapter are deemed to modify, limit, or supersede the federal
5 Electronic Signatures in Global and National Commerce Act, 15
6 U.S.C. §§7001 et seq., the provisions of this chapter shall
7 control to the maximum extent permitted by Section 102(a)(2)
8 of that federal act.

9 "(m) Whenever a notice or communication would
10 otherwise be required to be given under this chapter to a
11 stockholder, the notice or communication need not be given if
12 the corporation is not permitted to deliver the notice or
13 communication by electronic transmission pursuant to
14 subsections (d) and (e) and:

15 "(1) notices and communications to stockholders of
16 two consecutive annual meetings, and all notices and
17 communications of meetings during the period between those two
18 consecutive annual meetings, have been sent to that
19 stockholder at that stockholder's address included in the
20 record of stockholders maintained pursuant to Section
21 10A-2A-16.01(d) and have been returned undeliverable or could
22 not be delivered; or

23 "(2) all, but not less than two, distributions to
24 stockholders during a 12-month period, or two consecutive
25 distributions to stockholders during a period of more than 12

1 months, have been sent to that stockholder at that
2 stockholder's address included in the record of stockholders
3 maintained pursuant to Section 10A-2A-16.01(d) and have been
4 returned undeliverable or could not be delivered; or

5 "(3) no address has been provided to the corporation
6 by or on behalf of a stockholder and the corporation has not
7 otherwise obtained an address for that stockholder it believes
8 to be reliable.

9 "In addition, if any stockholder to which this
10 subsection (m) applies delivers to the corporation a written
11 notice or communication setting forth that stockholder's
12 then-current address, the requirement that notice and
13 communication be given to that stockholder shall be
14 reinstated.

15 "(n) Whenever a notice or communication is required
16 to be given, under this chapter or the certificate of
17 incorporation or bylaws of any corporation, to any person with
18 whom notice to or communication with is unlawful, the giving
19 of the notice or communication to that person shall not be
20 required and there shall be no duty to apply to any
21 governmental authority or agency for a license or permit to
22 give the notice or communication to that person. Any action or
23 meeting which shall be taken or held without notice or
24 communication to the person with whom notice to or
25 communication with is unlawful shall have the same force and

1 effect as if the notice or communication had been duly given.
2 In the event that the action taken by the corporation is such
3 as to require the filing of a certificate or other filing
4 instrument under any other sections of this chapter, the
5 certificate or other filing instrument shall state, if that is
6 the fact and if notice or communication is required, that
7 notice or communication was given to all persons entitled to
8 receive notice or communication except those persons with whom
9 notice to or communication with is unlawful.

10 "§10A-2A-2.01.

11 ~~"Notwithstanding~~ Section 10A-1-3.04, in shall not
12 apply to this chapter. In order to incorporate a corporation,
13 one or more incorporators must execute a certificate of
14 incorporation and deliver it for filing to the Secretary of
15 State.

16 "§10A-2A-2.02.

17 ~~"Notwithstanding~~ Section 10A-1-3.05 shall not apply
18 to this chapter. Instead:

19 "(a) The certificate of incorporation must set
20 forth:

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

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

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

6 "(4) the name and address of each incorporator.

7 "(b) The certificate of incorporation may set forth:

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

10 "(2) provisions not inconsistent with law regarding:

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

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

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

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

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

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

4 "(4) a provision eliminating or limiting the
5 liability of a director to the corporation or its stockholders
6 for money damages for any action taken, or any failure to take
7 any action, as a director, except liability for (i) the amount
8 of a financial benefit received by a director to which the
9 director is not entitled; (ii) an intentional infliction of
10 harm on the corporation or the stockholders; (iii) a violation
11 of Section 10A-2A-8.32; or (iv) an intentional violation of
12 criminal law;

13 "(5) a provision permitting or making obligatory
14 indemnification of a director for liability as defined in
15 Section 10A-2A-8.50 to any person for any action taken, or any
16 failure to take any action, as a director, except liability
17 for (i) receipt of a financial benefit to which the director
18 is not entitled, (ii) an intentional infliction of harm on the
19 corporation or its stockholders, (iii) a violation of Section
20 10A-2A-8.32, or (iv) an intentional violation of criminal law;
21 and

22 "(6) a provision limiting or eliminating any duty of
23 a director or any other person to offer the corporation the
24 right to have or participate in any, or one or more classes or
25 categories of, business opportunities, before the pursuit or

1 taking of the opportunity by the director or other person;
2 provided that any application of that provision to an officer
3 or a related person of that officer (i) also requires approval
4 of that application by the board of directors, subsequent to
5 the effective date of the provision, by action of qualified
6 directors taken in compliance with the same procedures as are
7 set forth in Section 10A-2A-8.60, and (ii) may be limited by
8 the authorizing action of the board of directors.

9 "(c) The certificate of incorporation need not set
10 forth any of the corporate powers enumerated in Sections
11 10A-1-2.11, 10A-1-2.12, and 10A-1-2.13.

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

16 "(e) As used in this section, "related person" has
17 the meaning specified in Section 10A-2A-8.60.

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

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

1 "§10A-2A-7.20.

2 "(a) After fixing a record date for a meeting, a
 3 corporation shall prepare an alphabetical list of the names of
 4 all its stockholders who are entitled to notice of ~~a~~ the
 5 stockholders' meeting. If the board of directors fixes a
 6 different record date under Section 10A-2A-7.07(e) to
 7 determine the stockholders entitled to vote at the meeting, a
 8 corporation also shall prepare an alphabetical list of the
 9 names of all its stockholders who are entitled to vote at the
 10 meeting. ~~A~~ Each list must be arranged by voting group (and
 11 within each voting group by class or series of stock) and ~~show~~
 12 contain the address of, and number and class or series of
 13 shares of stock held by, each stockholder. ~~If, and if the~~
 14 notice or other communications regarding the meeting have been
 15 or will be sent by the corporation ~~has an electronic mail~~
 16 ~~address for~~ to a stockholder ~~and the corporation uses that by~~
 17 ~~electronic mail address to send notices and other~~
 18 ~~communications to that stockholder, then the corporation shall~~
 19 ~~include that electronic mail address on the stockholders' list~~
 20 or other electronic transmission, the electronic mail or other
 21 electronic transmission address of that stockholder.

22 "(b) The ~~stockholders'~~ list ~~for~~ of stockholders
 23 entitled to notice shall be available for inspection by any
 24 stockholder, beginning two business days after notice of the
 25 meeting is given for which the list was prepared and

1 continuing through the meeting, (i) at the corporation's
2 principal office or at a place identified in the meeting
3 notice in the city where the meeting will be held or (ii) on a
4 reasonably accessible electronic network, provided that the
5 information required to gain access to such list is provided
6 with the notice of the meeting. The list of stockholders
7 entitled to vote shall be similarly available for inspection
8 promptly after the record date for voting. In the event that
9 the corporation determines to make ~~the~~ a list of stockholders
10 available on an electronic network, the corporation may take
11 reasonable steps to ensure that such information is available
12 only to stockholders of the corporation. ~~A stockholders' list~~
13 ~~for voting shall be similarly available for inspection~~
14 ~~promptly after the record date for voting.~~ A stockholder, or
15 the stockholder's agent or attorney, is entitled on written
16 demand to inspect and, subject to the requirements of Section
17 10A-2A-16.02(c), to copy a list of stockholders, during
18 regular business hours and at the stockholder's expense,
19 during the period it is available for inspection. A
20 corporation may satisfy the stockholder's right to copy a list
21 of stockholders by furnishing a copy in the manner described
22 in Section 10A-2A-16.03(b). A stockholder and the
23 stockholder's agent or attorney who inspects or is furnished a
24 copy of a list of stockholders under this subsection (b) or
25 under subsection (c) or who copies the list under this

1 subsection (b) may use the information on that list only for
2 purposes related to the meeting and its subject matter and
3 must keep the information on that list confidential.

4 "(c) If the meeting is to be held at a place, the
5 corporation shall make the list of stockholders entitled to
6 vote available at the meeting and any adjournment, and any
7 stockholder, or the stockholder's agent or attorney, is
8 entitled to inspect the list at any time during the meeting ~~or~~
9 and any adjournment. If the meeting is to be held solely by
10 means of remote communication, then such list shall also be
11 ~~open to~~ available for such inspection during the meeting and
12 any adjournment on a reasonably accessible electronic network,
13 and the information required to access such list shall be
14 provided with the notice of the meeting. The corporation may
15 satisfy its obligation to make such list available for
16 inspection during a meeting by furnishing a copy of the list
17 in the manner described in Section 10A-2A-16.03(b) to the
18 stockholders prior to the meeting.

19 "(d) If the corporation refuses to allow a
20 stockholder, or the stockholder's agent or attorney, to
21 inspect a ~~stockholders'~~ list of stockholders before or at the
22 meeting or any adjournment (or copy a list as permitted by
23 subsection (b)), the designated court, and if none, the
24 circuit court for the county in which the corporation's
25 principal office is located in this state, and if none in this

1 state, the circuit court for the county in which the
2 corporation's most recent registered office is located, on
3 application of the stockholder, may summarily order the
4 inspection or copying at the corporation's expense and may
5 postpone the meeting for which the list was prepared until the
6 inspection or copying is complete.

7 "(e) Refusal or failure to prepare or make available
8 ~~the stockholders'~~ a list of stockholders does not affect the
9 validity of action taken at the meeting.

10 "(f) The stock transfer records of the corporation
11 shall be prima facie evidence as to who are the stockholders
12 entitled to examine the stockholders' list or transfer records
13 or to vote at any meeting of stockholders.

14 "§10A-2A-8.30.

15 ~~Notwithstanding~~ Division C of Article 3 of Chapter
16 1 shall not apply to this chapter. Instead:

17 "(a) Each member of the board of directors, when
18 discharging the duties of a director, shall act: (i) in good
19 faith, and (ii) in a manner the director reasonably believes
20 to be in the best interests of the corporation.

21 "(b) The members of the board of directors or a
22 board committee, when becoming informed in connection with
23 their decision-making function or devoting attention to their
24 oversight function, shall discharge their duties with the care

1 that a person in a like position would reasonably believe
2 appropriate under similar circumstances.

3 "(c) In discharging board of directors or board
4 committee duties, a director shall disclose, or cause to be
5 disclosed, to the other board of directors or board committee
6 members information not already known by them but known by the
7 director to be material to the discharge of their
8 decision-making or oversight functions, except that disclosure
9 is not required to the extent that the director reasonably
10 believes that doing so would violate a duty imposed under law,
11 a legally enforceable obligation of confidentiality, or a
12 professional ethics rule.

13 "(d) In discharging board of directors or board
14 committee duties, a director who does not have knowledge that
15 makes reliance unwarranted is entitled to rely on the
16 performance by any of the persons specified in subsection
17 (f) (1) or subsection (f) (3) to whom the board of directors may
18 have delegated, formally or informally by course of conduct,
19 the authority or duty to perform one or more of the board of
20 directors' functions that are delegable under applicable law.

21 "(e) In discharging board of directors or board
22 committee duties, a director who does not have knowledge that
23 makes reliance unwarranted is entitled to rely on information,
24 opinions, reports, or statements, including financial

1 statements and other financial data, prepared or presented by
2 any of the persons specified in subsection (f).

3 "(f) A director is entitled to rely, in accordance
4 with subsection (d) or (e), on:

5 "(1) one or more officers or employees of the
6 corporation whom the director reasonably believes to be
7 reliable and competent in the functions performed or the
8 information, opinions, reports or statements provided;

9 "(2) legal counsel, public accountants, or other
10 persons retained by the corporation as to matters involving
11 skills or expertise the director reasonably believes are
12 matters (i) within the particular person's professional or
13 expert competence, or (ii) as to which the particular person
14 merits confidence; or

15 "(3) a board committee of which the director is not
16 a member if the director reasonably believes the committee
17 merits confidence.

18 "§10A-2A-8.31.

19 "~~Notwithstanding~~ Division C of Article 3 of Chapter
20 1 shall not apply to this chapter. Instead:

21 "(a) A director shall not be liable to the
22 corporation or its stockholders for any decision to take or
23 not to take action, or any failure to take any action, as a
24 director, unless the party asserting liability in a proceeding
25 establishes that:

1 "(1) no defense interposed by the director based on
2 (i) any provision in the certificate of incorporation
3 authorized by Section 10A-2A-2.02(b)(4) or by Section
4 10A-2A-2.02(b)(6), or (ii) the protection afforded by Section
5 10A-2A-8.60, precludes liability; and

6 "(2) the challenged conduct consisted or was the
7 result of:

8 "(i) action not in good faith; or

9 "(ii) a decision

10 "(A) which the director did not reasonably believe
11 to be in the best interests of the corporation, or

12 "(B) as to which the director was not informed to an
13 extent the director reasonably believed appropriate in the
14 circumstances; or

15 "(iii) a lack of objectivity due to the director's
16 familial, financial or business relationship with, or a lack
17 of independence due to the director's domination or control
18 by, another person having a material interest in the
19 challenged conduct,

20 "(A) which relationship or which domination or
21 control could reasonably be expected to have affected the
22 director's judgment respecting the challenged conduct in a
23 manner adverse to the corporation, and

24 "(B) after a reasonable expectation to that effect
25 has been established, the director shall not have established

1 that the challenged conduct was reasonably believed by the
2 director to be in the best interests of the corporation; or

3 "(iv) a sustained failure of the director to devote
4 attention to ongoing oversight of the business and affairs of
5 the corporation, or a failure to devote timely attention, by
6 making (or causing to be made) appropriate inquiry, when
7 particular facts and circumstances of significant concern
8 materialize that would alert a reasonably attentive director
9 to the need for that inquiry; or

10 "(v) receipt of a financial benefit to which the
11 director was not entitled or any other breach of the
12 director's duties to deal fairly with the corporation and its
13 stockholders that is actionable under applicable law.

14 "(b) The party seeking to hold the director liable:

15 "(1) for money damages, shall also have the burden
16 of establishing that:

17 "(i) harm to the corporation or its stockholders has
18 been suffered, and

19 "(ii) the harm suffered was proximately caused by
20 the director's challenged conduct; or

21 "(2) for other money payment under a legal remedy,
22 such as compensation for the unauthorized use of corporate
23 assets, shall also have whatever persuasion burden may be
24 called for to establish that the payment sought is appropriate
25 in the circumstances; or

1 "(3) for other money payment under an equitable
2 remedy, such as profit recovery by or disgorgement to the
3 corporation, shall also have whatever persuasion burden may be
4 called for to establish that the equitable remedy sought is
5 appropriate in the circumstances.

6 "(c) Nothing contained in this section shall (i) in
7 any instance where fairness is at issue alter the burden of
8 proving the fact or lack of fairness otherwise applicable,
9 (ii) alter the fact or lack of liability of a director under
10 another section of this chapter, such as the provisions
11 governing the consequences of an unlawful distribution under
12 Section 10A-2A-8.32 or a transactional interest under Section
13 10A-2A-8.60, or (iii) affect any rights to which the
14 corporation or a stockholder may be entitled under another
15 statute of this state or the United States.

16 "§10A-2A-8.42.

17 "~~Notwithstanding~~ Division C of Article 3 of Chapter
18 1 shall not apply to this chapter. Instead:

19 "(a) An officer, when performing in his or her
20 capacity as such, has the duty to act:

21 "(1) in good faith;

22 "(2) with the care that a person in a like position
23 would reasonably exercise under similar circumstances; and

24 "(3) in a manner the officer reasonably believes to
25 be in the best interests of the corporation.

1 "(b) The duty of an officer includes the obligation:

2 "(1) to inform the superior officer to whom, or the
3 board of directors or the board committee to which, the
4 officer reports of information about the affairs of the
5 corporation known to the officer, within the scope of the
6 officer's functions, and known to the officer to be material
7 to that superior officer, board of directors or board
8 committee; and

9 "(2) to inform his or her superior officer, or
10 another appropriate person within the corporation, or the
11 board of directors, or a board committee, of any actual or
12 probable material violation of law involving the corporation
13 or material breach of duty to the corporation by an officer,
14 employee, or agent of the corporation, that the officer
15 believes has occurred or is likely to occur.

16 "(c) In discharging an officer's duties, an officer
17 who does not have knowledge that makes reliance unwarranted is
18 entitled to rely on:

19 "(1) the performance of properly delegated
20 responsibilities by one or more employees of the corporation
21 whom the officer reasonably believes to be reliable and
22 competent in performing the responsibilities delegated; or

23 "(2) information, opinions, reports or statements,
24 including financial statements and other financial data,
25 prepared or presented by one or more employees of the

1 corporation whom the officer reasonably believes to be
2 reliable and competent in the matters presented or by legal
3 counsel, public accountants, or other persons retained by the
4 corporation as to matters involving skills or expertise the
5 officer reasonably believes are matters (i) within the
6 particular person's professional or expert competence or (ii)
7 as to which the particular person merits confidence.

8 "(d) An officer shall not be liable to the
9 corporation or its stockholders for any decision to take or
10 not to take action, or any failure to take any action, as an
11 officer, if the duties of the office are performed in
12 compliance with this section. Whether an officer who does not
13 comply with this section shall have liability will depend in
14 each instance on applicable law, including those principles of
15 Section 10A-2A-8.31 that have relevance.

16 "§10A-2A-8.43.

17 ~~"Notwithstanding~~ Division C of Article 3 of Chapter
18 1 shall not apply to this chapter. Instead:

19 "(a) An officer may resign at any time by delivering
20 a written notice to the board of directors, its chair, the
21 appointing officer, the secretary, or the corporation. A
22 resignation is effective as provided in Section 10A-2A-1.41(i)
23 unless the notice provides for a delayed effectiveness,
24 including effectiveness determined upon a future event or
25 events. If effectiveness of a resignation is stated to be

1 delayed and the board of directors or the appointing officer
2 accepts the delay, the board of directors or the appointing
3 officer may fill the pending vacancy before the delayed
4 effectiveness but the new officer may not take office until
5 the vacancy occurs.

6 "(b) An officer may be removed at any time with or
7 without cause by (i) the board of directors; (ii) the
8 appointing officer, unless the certificate of incorporation,
9 bylaws, or the board of directors provide otherwise; or (iii)
10 any other officer if authorized by the certificate of
11 incorporation, bylaws, or the board of directors.

12 "(c) In this section, "appointing officer" means the
13 officer (including any successor to that officer) who
14 appointed the officer resigning or being removed.

15 "§10A-2A-8.59.

16 ~~"Notwithstanding~~ Division A of Article 6 of Chapter
17 1 shall not apply to this chapter. Instead, a corporation may
18 provide indemnification or advance expenses to a director or
19 an officer only as permitted by this Division E of this
20 Article 8.

21 "§10A-2A-9.01.

22 "As used in this Article 9:

23 ~~"Notwithstanding Section 10A-1-1.03, as~~ As used in
24 this article, unless the context otherwise requires, the
25 following terms have the following meanings:

1 "~~(1) "Converted organization"~~ CONVERTED ORGANIZATION
2 means the organization into which a converting organization
3 converts pursuant to this article.

4 "~~(2) "Converting corporation"~~ CONVERTING CORPORATION
5 means a converting organization that is a corporation.

6 "~~(3) "Converting organization"~~ CONVERTING
7 ORGANIZATION means an organization that converts into another
8 organization pursuant to this article.

9 "~~(4) "Governing statute"~~ GOVERNING STATUTE of an
10 organization means the statute that governs the organization's
11 internal affairs.

12 "~~(5) "Organization"~~ ORGANIZATION means a general
13 partnership, including a limited liability partnership;
14 limited partnership, including a limited liability limited
15 partnership; limited liability company; business trust;
16 corporation; nonprofit corporation; professional corporation;
17 or any other person having a governing statute. The term
18 includes domestic and foreign organizations whether or not
19 organized for profit.

20 "~~(6) "Organizational documents"~~ ORGANIZATIONAL
21 DOCUMENTS means:

22 "(A) for a general partnership or foreign general
23 partnership, its partnership agreement and if applicable, its
24 registration as a limited liability partnership or a foreign
25 limited liability partnership;

1 "(B) for a limited partnership or foreign limited
2 partnership, its certificate of formation and partnership
3 agreement, or comparable writings as provided in its governing
4 statute;

5 "(C) for a limited liability company or foreign
6 limited liability company, its certificate of formation and
7 limited liability company agreement, or comparable writings as
8 provided in its governing statute;

9 "(D) for a business or statutory trust or foreign
10 business or statutory trust, its agreement of trust and
11 declaration of trust, or comparable writings as provided in
12 its governing statute;

13 "(E) for a corporation for profit or foreign
14 corporation for profit, its certificate of incorporation,
15 bylaws, and other agreements among its stockholders that are
16 authorized by its governing statute, or comparable writings as
17 provided in its governing statute;

18 "(F) for a nonprofit corporation or foreign
19 nonprofit corporation, its certificate of incorporation,
20 bylaws, and other agreements that are authorized by its
21 governing statute, or comparable writings as provided in its
22 governing statute;

23 "(G) for a professional corporation or foreign
24 professional corporation, its certificate of incorporation,
25 bylaws, and other agreements among its stockholders that are

1 authorized by its governing statute, or comparable writings as
2 provided in its governing statute; and

3 "(H) for any other organization, the basic writings
4 that create the organization and determine its internal
5 governance and the relations among the persons that own it,
6 have an interest in it, or are members of it.

7 "§10A-2A-10.06.

8 ~~"Notwithstanding~~ Division B of Article 3 of Chapter
9 1 shall not apply to this chapter. Instead:

10 "(a) After an amendment to the certificate of
11 incorporation has been adopted and approved in the manner
12 required by this chapter and by the certificate of
13 incorporation, the corporation shall deliver to the Secretary
14 of State for filing a certificate of amendment, which must set
15 forth:

16 "(1) the name of the corporation;

17 "(2) the text of each amendment adopted, or the
18 information required by Section 10A-2A-1.20(c) (5);

19 "(3) if an amendment provides for an exchange,
20 reclassification, or cancellation of issued stock, provisions
21 for implementing the amendment if not contained in the
22 amendment itself, (which may be made dependent upon facts
23 objectively ascertainable outside the certificate of amendment
24 in accordance with Section 10A-2A-1.20(c) (5));

25 "(4) the date of each amendment's adoption; ~~and~~

1 "(5) if an amendment:

2 "(i) was adopted by the incorporators or board of
3 directors without stockholder approval, a statement that the
4 amendment was duly adopted by the incorporators or by the
5 board of directors, as the case may be, and that stockholder
6 approval was not required;

7 "(ii) required approval by the stockholders, a
8 statement that the amendment was duly approved by the
9 stockholders in the manner required by this chapter and by the
10 certificate of incorporation; or

11 "(iii) is being filed pursuant to Section
12 10A-2A-1.20(c) (5), a statement to that effect~~;~~ and

13 "(6) the unique identifying number or other
14 designation as assigned by the Secretary of State.

15 "(b) A certificate of amendment shall take effect at
16 the effective date determined in accordance with Article 4 of
17 Chapter 1.

18 "§10A-2A-10.07.

19 "~~Notwithstanding~~ Division B of Article 3 of Chapter
20 1 shall not apply to this chapter. Instead:

21 "(a) A corporation's board of directors may restate
22 its certificate of incorporation at any time, without
23 stockholder approval, to consolidate all amendments into a
24 single document.

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

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

8 "(1) the name of the corporation;

9 "(2) the text of the restated certificate of
10 incorporation;

11 "(3) a statement that the restated certificate of
12 incorporation consolidates all amendments into a single
13 document; ~~and~~

14 "(4) if a new amendment is included in the restated
15 certificate of incorporation, the statements required under
16 Section 10A-2A-10.06 with respect to the new amendment; and

17 "(5) the unique identifying number or other
18 designation as assigned by the Secretary of State.

19 "(d) The duly adopted restated certificate of
20 incorporation supersedes the original certificate of
21 incorporation and all amendments to the certificate of
22 incorporation.

23 "(e) The Secretary of State may certify the restated
24 certificate of incorporation as the certificate of

1 incorporation currently in effect, without including the
2 statements required by subsection (c) (4).

3 "§10A-2A-10.08.

4 "~~Notwithstanding~~ Division B of Article 3 of Chapter
5 1 shall not apply to this chapter. Instead:

6 "(a) A corporation's certificate of incorporation
7 may be amended without action by the board of directors or
8 stockholders to carry out a plan of reorganization ordered or
9 decreed by a court of competent jurisdiction under the
10 authority of a law of the United States if the certificate of
11 incorporation after the amendment only contains provisions
12 required or permitted by Section 10A-2A-2.02.

13 "(b) The individual or individuals designated by the
14 court shall deliver to the Secretary of State for filing a
15 certificate of amendment setting forth:

16 "(1) the name of the corporation;

17 "(2) the text of each amendment approved by the
18 court;

19 "(3) the date of the court's order or decree
20 approving the certificate of amendment;

21 "(4) the title of the reorganization proceeding in
22 which the order or decree was entered; ~~and~~

23 "(5) a statement that the court had jurisdiction of
24 the proceeding under federal statute ~~;~~ and

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

3 "(c) Stockholders of a corporation undergoing
4 reorganization do not have dissenters' rights except as and to
5 the extent provided in the reorganization plan.

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

10 "§10A-2A-11.01.

11 "~~Notwithstanding Section 10A-1-1.03, as~~ As used in
12 this article, unless the context otherwise requires, the
13 following terms mean:

14 "(1) ~~"Acquired entity"~~ ACQUIRED ENTITY means the
15 corporation or foreign corporation that will have all of one
16 or more classes or series of its stock acquired in a stock
17 exchange.

18 "(2) ~~"Acquiring entity"~~ ACQUIRING ENTITY means the
19 corporation or foreign corporation that will acquire all of
20 one or more classes or series of stock of the acquired entity
21 in a stock exchange.

22 "(3) ~~"Constituent corporation"~~ CONSTITUENT
23 CORPORATION means a constituent organization that is a
24 corporation.

1 "~~Constituent organization~~" CONSTITUENT
2 ORGANIZATION means an organization that is party to a merger
3 under this article.

4 "~~Governing statute~~" GOVERNING STATUTE of an
5 organization means the statute that governs the organization's
6 internal affairs.

7 "~~Organization~~" ORGANIZATION means a general
8 partnership, including a limited liability partnership;
9 limited partnership, including a limited liability limited
10 partnership; limited liability company; business trust;
11 corporation; nonprofit corporation; professional corporation;
12 or any other person having a governing statute. The term
13 includes domestic and foreign organizations whether or not
14 organized for profit.

15 "~~Organizational documents~~" ORGANIZATIONAL
16 DOCUMENTS means:

17 "(A) for a general partnership or foreign general
18 partnership, its partnership agreement and if applicable, its
19 registration as a limited liability partnership or a foreign
20 limited liability partnership;

21 "(B) for a limited partnership or foreign limited
22 partnership, its certificate of formation and partnership
23 agreement, or comparable writings as provided in its governing
24 statute;

1 "(C) for a limited liability company or foreign
2 limited liability company, its certificate of formation and
3 limited liability company agreement, or comparable writings as
4 provided in its governing statute;

5 "(D) for a business or statutory trust or foreign
6 business or statutory trust its agreement of trust and
7 declaration of trust, or comparable writings as provided in
8 its governing statute;

9 "(E) for a corporation or foreign corporation, its
10 certificate of incorporation, bylaws, and other agreements
11 among its stockholders that are authorized by its governing
12 statute, or comparable writings as provided in its governing
13 statute;

14 "(F) for a nonprofit corporation or foreign
15 nonprofit corporation, its certificate of incorporation,
16 bylaws, and other agreements that are authorized by its
17 governing statute, or comparable writings as provided in its
18 governing statute;

19 "(G) for a professional corporation or foreign
20 professional corporation, its certificate of incorporation,
21 bylaws, and other agreements among its stockholders that are
22 authorized by its governing statute, or comparable writings as
23 provided in its governing statute; and

24 "(H) for any other organization, the basic writings
25 that create the organization and determine its internal

1 governance and the relations among the persons that own it,
2 have an interest in it, or are members of it.

3 "(8) ~~"New personal liability"~~ NEW PERSONAL LIABILITY
4 means personal liability of a person, resulting from a merger
5 or stock exchange, that is (i) (A) in respect of an entity
6 which is different from the entity in which the person held
7 stock or eligible interests immediately before the merger
8 became effective, or (B) in respect of an entity which is
9 different from the entity in which the person held stock
10 immediately before the stock exchange became effective; or
11 (ii) in respect of the same entity as the one in which the
12 person held stock or eligible interests immediately before the
13 merger became effective if (A) the person did not have
14 personal liability immediately before the merger became
15 effective, or (B) the person had personal liability
16 immediately before the merger became effective, the terms and
17 conditions of which were changed when the merger became
18 effective; or (iii) in respect of the same entity as the one
19 in which the person held stock immediately before the stock
20 exchange became effective if (A) the person did not have
21 personal liability immediately before the stock exchange
22 became effective, or (B) the person had personal liability
23 immediately before the stock exchange became effective, the
24 terms and conditions of which were changed when the stock
25 exchange became effective.

1 "~~Surviving organization~~" SURVIVING ORGANIZATION
2 means an organization into which one or more other
3 organizations are merged under this article, whether the
4 organization pre-existed the merger or was created pursuant to
5 the merger.

6 "§10A-2A-13.01.

7 "~~Notwithstanding Chapter 1, in~~ In this Article 13:

8 "(1) "~~Affiliate~~" AFFILIATE means a person that
9 directly or indirectly through one or more intermediaries
10 controls, is controlled by, or is under common control with
11 another person or is a senior executive of that person. For
12 purposes of Section 10A-2A-13.02(b)(4), a person is deemed to
13 be an affiliate of its senior executives.

14 "(2) "~~Corporation~~" CORPORATION means the corporation
15 that is the issuer of the stock held by a stockholder
16 demanding appraisal and, for matters covered in Section
17 10A-2A-13.22 through Section 10A-2A-13.31, includes the
18 surviving organization of a merger.

19 "(3) "~~Fair value~~" FAIR VALUE means the value of the
20 corporation's stock determined:

21 "(i) immediately before the effectiveness of the
22 corporate action to which the stockholder objects;

23 "(ii) using customary and current valuation concepts
24 and techniques generally employed for similar businesses in
25 the context of the transaction requiring appraisal; and

1 "(iii) without discounting for lack of marketability
2 or minority status.

3 "(4) ~~"Interest"~~ INTEREST means interest from the
4 date the corporate action becomes effective until the date of
5 payment, and shall be compounded quarterly and shall accrue at
6 five percent over the Federal Reserve discount rate (including
7 any surcharge) as established from time to time during the
8 period between the effective date of the corporate action and
9 the date of payment.

10 "(5) ~~"Interested transaction"~~ INTERESTED TRANSACTION
11 means a corporate action described in Section 10A-2A-13.02(a),
12 other than a merger pursuant to Section 10A-2A-11.05,
13 involving an interested person in which any of the stock or
14 assets of the corporation are being acquired or converted. As
15 used in this definition:

16 "(i) "Interested person" means a person, or an
17 affiliate of a person, who at any time during the one-year
18 period immediately preceding approval by the board of
19 directors of the corporate action:

20 "(A) was the beneficial owner of 20 percent or more
21 of the voting power of the corporation, other than as owner of
22 excluded stock;

23 "(B) had the power, contractually or otherwise,
24 other than as owner of excluded stock, to cause the

1 appointment or election of 25 percent or more of the directors
2 to the board of directors of the corporation; or

3 "(C) was a senior executive or director of the
4 corporation or a senior executive of any affiliate of the
5 corporation, and that senior executive or director will
6 receive, as a result of the corporate action, a financial
7 benefit not generally available to other stockholders as such,
8 other than:

9 "(I) employment, consulting, retirement, or similar
10 benefits established separately and not as part of or in
11 contemplation of the corporate action;

12 "(II) employment, consulting, retirement, or similar
13 benefits established in contemplation of, or as part of, the
14 corporate action that are not more favorable than those
15 existing before the corporate action or, if more favorable,
16 that have been approved on behalf of the corporation in the
17 same manner as is provided in Section 10A-2A-8.60; or

18 "(III) in the case of a director of the corporation
19 who will, in the corporate action, become a director or
20 governing person of the acquiror or any of its affiliates,
21 rights and benefits as a director or governing person that are
22 provided on the same basis as those afforded by the acquiror
23 generally to other directors or governing persons of the
24 acquiror or its affiliate.

1 "(ii) "Beneficial owner" means any person who,
2 directly or indirectly, through any contract, arrangement, or
3 understanding, other than a revocable proxy, has or shares the
4 power to vote, or to direct the voting of, stock; except that
5 a member of a national securities exchange is not deemed to be
6 a beneficial owner of securities held directly or indirectly
7 by it on behalf of another person if the member is precluded
8 by the rules of the exchange from voting without instruction
9 on contested matters or matters that may affect substantially
10 the rights or privileges of the holders of the securities to
11 be voted. When two or more persons agree to act together for
12 the purpose of voting their stock of the corporation, each
13 member of the group formed thereby is deemed to have acquired
14 beneficial ownership, as of the date of the agreement, of all
15 stock having voting power of the corporation beneficially
16 owned by any member of the group.

17 "(iii) "Excluded stock" means stock acquired
18 pursuant to an offer for all stock having voting power if the
19 offer was made within one year before the corporate action for
20 consideration of the same kind and of a value equal to or less
21 than that paid in connection with the corporate action.

22 "(6) ~~"Preferred stock"~~ PREFERRED STOCK means a class
23 or series of stock whose holders have preference over any
24 other class or series of stock with respect to distributions.

1 "~~Senior executive~~" SENIOR EXECUTIVE means the
2 chief executive officer, chief operating officer, chief
3 financial officer, and any individual in charge of a principal
4 business unit or function.

5 "~~Stockholder~~" STOCKHOLDER means a record
6 stockholder, a beneficial stockholder, and a voting trust
7 beneficial owner.

8 "§10A-2A-16.01.

9 "(a) A corporation shall maintain the following
10 records:

11 "(1) its certificate of incorporation as currently
12 in effect;

13 "(2) any notices to stockholders referred to in
14 Section 10A-2A-1.20(c) (5) specifying facts on which a filed
15 document is dependent if those facts are not included in the
16 certificate of incorporation or otherwise available as
17 specified in Section 10A-2A-1.20(c) (5);

18 "(3) its bylaws as currently in effect;

19 "(4) all written communications within the past
20 three years to stockholders generally;

21 "(5) minutes of all meetings of, and records of all
22 actions taken without a meeting by, its stockholders, its
23 board of directors, and board committees established under
24 Section 10A-2A-8.25;

1 "(6) a list of the names and business addresses of
2 its current directors and officers; and

3 "(7) its most recent annual report delivered to the
4 Secretary of State under Section 10A-2A-16.11.

5 "(b) A corporation shall maintain all annual
6 financial statements prepared for the corporation for its last
7 three fiscal years (or any shorter period of existence) and
8 any audit or other reports with respect to those financial
9 statements.

10 "(c) A corporation shall maintain accounting records
11 in a form that permits preparation of its financial
12 statements.

13 "(d) A corporation shall maintain a record of its
14 current stockholders in alphabetical order by class or series
15 of stock showing the address of each stockholder to which
16 notices and other communications from the corporation are to
17 be sent, and which shall include the number and class or
18 series of stock held by⁷ each stockholder. ~~Nothing contained~~
19 ~~in this subsection shall require the corporation to include in~~
20 ~~that record the electronic mail address or other electronic~~
21 ~~contact information of a stockholder.~~ In addition if a
22 stockholder has provided an electronic mail address to the
23 corporation or has consented to receive notices or other
24 communications by electronic mail or other electronic
25 transmission, the record of stockholders shall include the

1 electronic mail or other electronic transmission address of
2 the stockholder if notices or other communications are being
3 delivered by the corporation to the stockholder at that
4 electronic mail or other electronic transmission address
5 pursuant to Section 10A-2A-1.41(d). An electronic mail address
6 of a stockholder shall be deemed to be provided by a
7 stockholder if it is contained in a communication to the
8 corporation by or on behalf of the stockholder, unless the
9 communication expressly indicates that the electronic mail
10 address may not be used to deliver notices or other
11 communications.

12 "(e) A corporation shall maintain the records
13 specified in this section in a manner so that they may be made
14 available for inspection within a reasonable time.

15 "§10A-3-1.02.

16 "As used in this chapter, the following terms shall
17 have the following meanings, respectively, unless the context
18 otherwise requires:

19 "(1) ARTICLES OF INCORPORATION. The original or
20 restated articles of incorporation or articles of
21 consolidation and all amendments thereto, including articles
22 of merger, of a domestic or foreign nonprofit corporation. The
23 term articles of incorporation of a nonprofit corporation
24 constitutes its certificate of formation as defined in ~~Section~~
25 ~~10A-1-1.03(7)~~ Chapter 1. The terms may be used

1 interchangeably. The articles of incorporation or certificate
2 of formation of a nonprofit corporation, together with its
3 bylaws, constitute its governing documents ~~within the meaning~~
4 ~~of Section 10A-1-1.03(40)~~ as described in Chapter 1.

5 "(2) BOARD OF DIRECTORS. The group of persons vested
6 with the management of the affairs of the corporation
7 irrespective of the name by which the group is designated. The
8 board of directors of a nonprofit corporation is its governing
9 authority as that term is defined in ~~Section 10A-1-1.03(39)~~
10 Chapter 1, unless the certificate of formation provides
11 otherwise as provided in Section 10A-3-2.08.

12 "(3) BYLAWS. The code or codes of rules adopted for
13 the regulation or management of the affairs of the corporation
14 irrespective of the name or names by which the rules are
15 designated. The bylaws of a nonprofit corporation, together
16 with its articles of incorporation or certificate of
17 formation, constitute the nonprofit corporation's governing
18 documents ~~within the meaning of Section 10A-1-1.03(40)~~ as
19 described in Chapter 1.

20 "(4) ELECTRONIC MAIL means an electronic
21 transmission directed to a unique electronic mail address.

22 "(5) ELECTRONIC MAIL ADDRESS means a destination,
23 commonly expressed as a string of characters, consisting of a
24 unique user name or mailbox (commonly referred to as the
25 "local part" of the address) and a reference to an internet

1 domain (commonly referred to as the "domain part" of the
2 address), whether or not displayed, to which electronic mail
3 can be sent or delivered.

4 "~~(4)~~ (6) FOREIGN NONPROFIT CORPORATION. A nonprofit
5 corporation organized under laws other than the laws of
6 Alabama.

7 "~~(5)~~ (7) MEMBER. One having membership rights in a
8 corporation in accordance with the provisions of its governing
9 documents. A member may be a natural person, a partnership, a
10 professional association or professional corporation, a
11 corporation for profit or a nonprofit corporation.

12 "~~(6)~~ (8) NONPROFIT CORPORATION. A nonprofit
13 corporation no part of the income or profit of which is
14 distributable to its members, directors, or officers.

15 "~~(7)~~ (9) NONPROFIT CORPORATION or DOMESTIC NONPROFIT
16 CORPORATION. A nonprofit corporation subject to the provisions
17 of this chapter, except a foreign nonprofit corporation.

18 "~~(8)~~ (10) VERIFIED. Supported by an affidavit or oath
19 confirming the correctness, truth, or authenticity of the
20 matter set forth therein."

21 Section 4. Section 10A-3-1.05 is added to the Code
22 of Alabama 1975, to read as follows:

23 §10A-3-1.05.

24 (a) A notice under this chapter must be in writing
25 unless oral notice is reasonable in the circumstances. Unless

1 otherwise agreed between the sender and the recipient, words
2 in a notice or other communication under this chapter must be
3 in English.

4 (b) A notice or other communication may be given by
5 any method of delivery, except that notice or other
6 communication by electronic transmission must be in accordance
7 with this section. If the methods of delivery are
8 impracticable, a notice or other communication from the
9 nonprofit corporation may be given by means of a broad
10 non-exclusionary distribution to the public (which may include
11 a newspaper of general circulation in the area where
12 published; radio, television, or other form of public
13 broadcast communication; or other methods of distribution that
14 the nonprofit corporation has previously identified to its
15 recipients).

16 (c) A notice or other communication to a nonprofit
17 corporation or to a foreign nonprofit corporation registered
18 to transact business in this state may be delivered to the
19 nonprofit corporation's registered agent at its registered
20 office or to the secretary at the nonprofit corporation's
21 principal office shown in its most recent annual report or, in
22 the case of a foreign nonprofit corporation that has not yet
23 delivered an annual report, in its foreign registration under
24 Chapter 1.

1 (d) A notice or other communication from the
2 nonprofit corporation to a member may be delivered by
3 electronic mail to an electronic mail address for that member
4 as reflected in the books and records of the nonprofit
5 corporation, unless that member has previously notified the
6 nonprofit corporation in writing that the member objects to
7 receiving notices and other communications by electronic mail.
8 The notice or other communication may be delivered to a member
9 by another form of electronic transmission if consented to by
10 that member or if authorized by subsection (j). Any notice or
11 other communication from the nonprofit corporation to any
12 other person may be delivered by electronic transmission if
13 consented to by the recipient or if authorized by subsection
14 (j). Any consent under this subsection or subsection (j) may
15 be revoked with respect to future notices or communications by
16 the person who consented by giving written or electronic
17 notice to the person to whom the consent was delivered.

18 (e) A notice or other communication may no longer be
19 delivered to an electronic mail address or other electronic
20 transmission address pursuant to subsection (d) if (i) the
21 nonprofit corporation receives notice from the information
22 processing system into which the notice or other communication
23 was entered that two consecutive notices or other
24 communications given by electronic transmission have not been
25 delivered to the electronic mail address or other electronic

1 transmission address to which the notice or other
2 communication was directed, and (ii) the notice of
3 non-delivery becomes known to the secretary or an assistant
4 secretary, or another person responsible for the giving of
5 notices or other communications for the nonprofit corporation;
6 provided, however, that the inadvertent failure to recognize
7 the notice of non-delivery as a cessation of authority to
8 provide a member with notice by electronic mail or other
9 electronic transmission shall not invalidate any meeting or
10 other action.

11 (f) Unless otherwise agreed between the sender and
12 the recipient, a notice or other communication by electronic
13 transmission is received when:

14 (1) it enters an information processing system
15 directed to (i) in the case of a member, the electronic mail
16 address for the member as reflected in the books and records
17 of the nonprofit corporation or other electronic transmission
18 address at which the member has consented to receive notice or
19 other communication by electronic transmission, or (ii) in the
20 case of any other recipient, the electronic transmission
21 address at which the recipient has consented to receive notice
22 or other communication by electronic transmission; and

23 (2) it is in a form capable of being processed by
24 that system.

1 (g) Receipt of an electronic acknowledgement from an
2 information processing system described in subsection (f)(1)
3 establishes that an electronic transmission was received but,
4 by itself, does not establish that the content sent
5 corresponds to the content received.

6 (h) An electronic transmission is received under
7 this section even if no person is aware of its receipt.

8 (i) A notice or other communication, if in a
9 comprehensible form or manner, is effective at the earliest of
10 the following:

11 (1) if in a physical form, the earliest of when it
12 is actually received, or when it is left at:

13 (i) a member's address reflected in the books and
14 records of the nonprofit corporation;

15 (ii) a director's residence or usual place of
16 business; or

17 (iii) the nonprofit corporation's principal office;

18 (2) if mailed by United States mail postage prepaid
19 and addressed to a member at the member's address reflected in
20 the books and records of the nonprofit corporation, upon
21 deposit in the United States mail;

22 (3) if mailed by United States mail postage prepaid
23 and addressed to a recipient other than a member, at the
24 address of the recipient reflected in the books and records of

1 the nonprofit corporation, the earliest of when it is actually
2 received, or:

3 (i) if sent by registered or certified mail, return
4 receipt requested, the date shown on the return receipt signed
5 by or on behalf of the addressee; or

6 (ii) five days after it is deposited in the United
7 States mail;

8 (4) if sent by a nationally recognized commercial
9 carrier that issues a receipt or other confirmation of
10 delivery, the earliest of when it is actually received or the
11 date shown on the receipt or other confirmation of delivery
12 issued by the commercial carrier;

13 (5) if an electronic transmission, when it is
14 received as provided in subsection (f); and

15 (6) if oral, when communicated.

16 (j) A notice or other communication may be in the
17 form of an electronic transmission that cannot be directly
18 reproduced in paper form by the recipient through an automated
19 process used in conventional commercial practice only if (i)
20 the electronic transmission is otherwise retrievable in
21 perceivable form, and (ii) the sender and the recipient have
22 consented in writing to the use of that form of electronic
23 transmission.

24 (k) If this chapter prescribes requirements for
25 notices or other communications in particular circumstances,

1 those requirements govern. If the certificate of incorporation
2 or bylaws prescribe requirements for notices or other
3 communications, not inconsistent with this section or other
4 provisions of this chapter, those requirements govern. The
5 certificate of incorporation or bylaws may authorize or
6 require delivery of notices of meetings of directors by
7 electronic transmission.

8 (l) In the event that any provisions of this chapter
9 are deemed to modify, limit, or supersede the federal
10 Electronic Signatures in Global and National Commerce Act, 15
11 U.S.C. §§7001 et seq., the provisions of this chapter shall
12 control to the maximum extent permitted by Section 102(a)(2)
13 of that federal act.

14 (m) Whenever a notice or communication would
15 otherwise be required to be given under any provision of this
16 chapter to a member, the notice or communication need not be
17 given if the nonprofit corporation is not permitted to deliver
18 the notice or communication by electronic transmission
19 pursuant to subsections (d) and (e) and:

20 (1) notices and communications to members of two
21 consecutive annual meetings, and all notices and
22 communications of meetings during the period between those two
23 consecutive annual meetings, have been sent to that member at
24 that member's address as reflected in the books and records of

1 the nonprofit corporation and have been returned undeliverable
2 or could not be delivered; or

3 (2) no address has been provided to the nonprofit
4 corporation by or on behalf of a member and the nonprofit
5 corporation has not otherwise obtained an address for that
6 member it believes to be reliable.

7 In addition if any member to which this subsection
8 (m) applies delivers to the nonprofit corporation a written
9 notice or communication setting forth that member's
10 then-current address, the requirement that notice and
11 communication be given to that member shall be reinstated.

12 (n) Whenever a notice or communication is required
13 to be given, under any provision of this chapter or of the
14 certificate of incorporation or bylaws of any nonprofit
15 corporation, to any person with whom notice to or
16 communication with is unlawful, the giving of the notice or
17 communication to that person shall not be required and there
18 shall be no duty to apply to any governmental authority or
19 agency for a license or permit to give the notice or
20 communication to that person. Any action or meeting which
21 shall be taken or held without notice or communication to the
22 person with whom notice to or communication with is unlawful
23 shall have the same force and effect as if the notice or
24 communication had been duly given. In the event that the
25 action taken by the nonprofit corporation is such as to

1 require the filing of a certificate or other filing instrument
2 under any of the other sections of this chapter, the
3 certificate or other filing instrument shall state, if that is
4 the fact and if notice or communication is required, that
5 notice or communication was given to all persons entitled to
6 receive notice or communication except those persons with whom
7 notice to or communication with is unlawful.

8 Section 5. Sections 10A-3-2.02, 10A-3-2.03,
9 10A-3-2.09, and 10A-3-2.21, Section 10A-5A-1.02, as amended by
10 Act 2018-125, 2018 Regular Session, Sections 10A-5A-2.01,
11 10A-5A-2.02, and 10A-5A-7.02, as amended by Act 2020-73, 2020
12 Regular Session, Section 10A-5A-7.04, Section 10A-5A-7.05, as
13 amended by Act 2020-73, 2020 Regular Session, Sections
14 10A-5A-7.06, 10A-5A-7.07, 10A-5A-11.10, and 10A-5A-11.12,
15 Section 10A-5A-11.13, as amended by Act 2020-73, 2020 Regular
16 Session, Sections 10A-5A-11.14 and 10A-5A-11.15, Section
17 10A-8A-1.02, as amended by Act 2019-304, 2019 Regular Session,
18 Section 10A-8A-4.10, as added to the Code of Alabama 1975 by
19 Act 2018-125, 2018 Regular Session, Section 10A-8A-8.02, as
20 amended by Act 2020-73, 2020 Regular Session, Section
21 10A-8A-8.06, as added to the Code of Alabama by Act 2018-125,
22 2018 Regular Session, Section 10A-8A-8.07, as amended by Act
23 2020-73, 2020 Regular Session, Sections 10A-8A-8.09,
24 10A-8A-8.10, and 10A-8A-9.01, as added to the Code of Alabama
25 1975 by Act 2018-125, 2018 Regular Session, Section

1 10A-9A-1.02, Sections 10A-9A-2.01 and 10A-9A-2.02, as amended
2 by Act 2020-73, 2020 Regular Session, Sections 10A-9A-4.06 and
3 10A-9A-4.07, Section 10A-9A-8.02, as amended by Act 2020-73,
4 2020 Regular Session, Section 10A-9A-8.06, Section
5 10A-9A-8.07, as amended by Act 2020-73, 2020 Regular Session,
6 and Sections 10A-9A-8.09, 10A-9A-8.10, and 10A-9A-10.01, of
7 the Code of Alabama 1975, are amended to read as follows:

8 "§10A-3-2.02.

9 "(a) ~~Meetings~~ Unless the board of directors
10 determines to hold the meeting of the members solely by means
11 of remote communication in accordance with subsections (d),
12 (e), and (f), meetings of members may be held at the place,
13 either within or without Alabama, as may be provided in the
14 bylaws. ~~In~~ and, in the absence of any provision, all meetings
15 shall be held at the registered office of the corporation in
16 Alabama.

17 "(b) An annual meeting of the members shall be held
18 at the time as may be provided in the bylaws. Failure to hold
19 the annual meeting at the designated time shall not work a
20 forfeiture or dissolution of the corporation.

21 "(c) Special meetings of the members may be called
22 by the president or by the board of directors. Special
23 meetings of the members may also be called by other officers
24 or persons or number or proportion of members as may be
25 provided in the governing documents. In the absence of a

1 provision fixing the number or proportion of members entitled
2 to call a meeting, a special meeting of members may be called
3 by members having one-twentieth of the votes entitled to be
4 cast at the meeting.

5 "(d) Members may participate in any meeting of the
6 members by means of remote communication to the extent the
7 governing authority authorizes participation for that meeting.
8 Participation as a member by means of remote communication
9 shall be subject to guidelines and procedures as the governing
10 authority adopts, and shall be in conformity with this
11 subsection.

12 "(e) Members participating in a meeting of the
13 members by means of remote communication shall be deemed
14 present and may vote at that meeting if the corporation has
15 implemented reasonable measures:

16 "(1) to verify that each person participating
17 remotely as a member is a member; and

18 "(2) to provide members participating remotely a
19 reasonable opportunity to participate in the meeting and to
20 vote on matters submitted to the members, including an
21 opportunity to communicate, and to read or hear the
22 proceedings of the meeting, substantially concurrently with
23 the proceedings.

24 "(f) Unless the certificate of incorporation or
25 bylaws require the meeting of members to be held at a place,

1 the governing authority may determine that any meeting of the
2 members shall not be held at any place and shall instead be
3 held solely by means of remote communication, but only if the
4 corporation implements the measures specified in subsection
5 (e).

6 "§10A-3-2.03.

7 "Unless otherwise provided in the nonprofit
8 corporation's governing documents, ~~written~~ notice stating the
9 place, if any, day, and hour of the meeting and, in case of a
10 special meeting, the purpose or purposes for which the meeting
11 is called, shall be delivered not less than 10 nor more than
12 ~~50~~ 60 days before the date of the meeting, ~~either personally~~
13 ~~or by mail,~~ by or at the direction of the president, or the
14 secretary, or the officers or persons calling the meeting, to
15 each member entitled to vote at the meeting. ~~If mailed, the~~
16 ~~notice shall be deemed to be delivered when deposited in the~~
17 ~~United States mail addressed to the member at his or her~~
18 ~~address as it appears on the records of the nonprofit~~
19 ~~corporation, with postage thereon prepaid. If the board of~~
20 directors has authorized participation by means of remote
21 communication pursuant to Section 10A-3A-2.02(d), (e), and
22 (f), the notice to the members must describe the means of
23 remote communication to be used.

24 "§10A-3-2.09.

1 "(a) The number of directors of a nonprofit
2 corporation shall be not less than ~~three~~ one. Subject to this
3 limitation, unless the number of directors ~~shall be~~ is fixed
4 by the certificate of formation or the bylaws, ~~except as to~~
5 the board of directors may fix the number of ~~the first board~~
6 ~~of directors which number~~ from time to time. The number of
7 directors to serve on the initial board of directors shall be
8 fixed by the certificate of formation. ~~The~~ Unless the
9 certificate of formation or bylaws require an amendment to the
10 certificate or the bylaws, the number of directors may be
11 increased or decreased from time to time by ~~amendment to the~~
12 ~~bylaws, unless the certificate of formation provides that a~~
13 ~~change in the number of directors shall be made only by~~
14 ~~amendment of the certificate of formation~~ the board of
15 directors. No decrease in number shall have the effect of
16 shortening the term of any incumbent director. ~~In the absence~~
17 ~~of a bylaw fixing the number of directors, the number shall be~~
18 ~~the same as that stated in the certificate of formation.~~

19 "(b) The directors constituting the ~~first~~ initial
20 board of directors shall be named in the certificate of
21 formation and shall hold office until the first annual
22 election of directors or for any other period as may be
23 specified in the governing documents. Thereafter, directors
24 shall be elected or appointed in the manner and for the terms
25 provided in the governing documents of the nonprofit

1 corporation. In the absence of a provision fixing the term of
2 office, the term of office of a director shall be one year.

3 "(c) Directors may be divided into classes and the
4 terms of office of the several classes need not be uniform.
5 Each director shall hold office for the term to which he or
6 she is elected or appointed and until his or her successor
7 shall have been elected or appointed and qualified.

8 "(d) A director may be removed from office pursuant
9 to any procedure therefor provided in the certificate of
10 formation.

11 "§10A-3-2.21.

12 "(a) The officers of a nonprofit corporation shall
13 consist of a president, one or more ~~vice-presidents~~ vice
14 presidents, a secretary, a treasurer, and other officers and
15 assistant officers as may be deemed necessary, each of whom
16 shall be elected or appointed at such time, in the manner and
17 for the terms ~~not exceeding three years~~ as may be prescribed
18 in the nonprofit corporation's governing documents. In the
19 absence of any provision, all officers shall be elected or
20 appointed annually by the board of directors. Each officer
21 shall hold office for the term to which he or she is elected
22 or appointed and until his or her successor shall have been
23 elected or appointed. If the bylaws so provide, any two or
24 more offices may be held by the same person, ~~except the~~
25 ~~offices of president and secretary.~~

1 "(b) The governing documents of the nonprofit
2 corporation may provide that any one or more officers of the
3 corporation shall be ex officio members of the board of
4 directors.

5 "(c) The officers of a corporation may be designated
6 by additional titles as may be provided in the governing
7 documents of the nonprofit corporation.

8 "(d) The officers and employees of the nonprofit
9 corporation shall not be liable for obligations of the
10 corporation.

11 "§10A-5A-1.02.

12 "~~Notwithstanding Section 10A-1-1.03, as~~ As used in
13 this chapter, unless the context otherwise requires, the
14 following terms mean:

15 "(a) ~~"Certificate of formation,"~~ CERTIFICATE OF
16 FORMATION, with respect to a limited liability company, means
17 the certificate provided for by Section 10A-5A-2.01, and the
18 certificate as amended or restated.

19 "(b) ~~"Constituent limited liability company"~~
20 CONSTITUENT LIMITED LIABILITY COMPANY means a constituent
21 organization that is a limited liability company.

22 "(c) ~~"Constituent organization"~~ CONSTITUENT
23 ORGANIZATION means an organization that is party to a merger
24 under Article 10.

1 "~~Converted organization~~" CONVERTED ORGANIZATION
2 means the organization into which a converting organization
3 converts pursuant to Article 10.

4 "~~Converting limited liability company~~"
5 CONVERTING LIMITED LIABILITY COMPANY means a converting
6 organization that is a limited liability company.

7 "~~Converting organization~~" CONVERTING
8 ORGANIZATION means an organization that converts into another
9 organization pursuant to Article 10.

10 "~~Disqualified person~~" DISQUALIFIED PERSON means
11 any person who is not a qualified person.

12 "~~Distribution~~" DISTRIBUTION except as otherwise
13 provided in Section 10A-5A-4.06(e), means a transfer of money
14 or other property from a limited liability company, or series
15 thereof, to another person on account of a transferable
16 interest.

17 "~~Foreign limited liability company~~" FOREIGN
18 LIMITED LIABILITY COMPANY means a limited liability company
19 governed by the laws of a jurisdiction other than this state
20 which would be a limited liability company if governed by the
21 laws of this state.

22 "~~Governing statute~~" GOVERNING STATUTE means the
23 statute that governs an organization's internal affairs.

24 "~~Limited liability company,~~" LIMITED LIABILITY
25 COMPANY, except in the phrase "foreign limited liability

1 company," means an entity formed or existing under this
2 chapter.

3 "(l) ~~"Limited liability company agreement"~~ LIMITED
4 LIABILITY COMPANY AGREEMENT means any agreement (whether
5 referred to as a limited liability company agreement,
6 operating agreement or otherwise), written, oral or implied,
7 of the member or members as to the activities and affairs of a
8 limited liability company or series thereof. The limited
9 liability company agreement of a limited liability company
10 having only one member shall not be unenforceable by reason of
11 there being only one person who is a party to the limited
12 liability company agreement. The limited liability company
13 agreement includes any amendments to the limited liability
14 company agreement.

15 "(m) ~~"Member"~~ MEMBER means a person admitted under
16 Section 10A-5A-4.01 and not dissociated under Section
17 10A-5A-6.02.

18 "(n) ~~"Organization"~~ ORGANIZATION means a general
19 partnership, including a limited liability partnership;
20 limited partnership, including a limited liability limited
21 partnership; limited liability company; business trust;
22 corporation; nonprofit corporation; professional corporation;
23 or any other person having a governing statute. The term
24 includes domestic and foreign organizations whether or not
25 organized for profit.

1 "~~(o) "Organizational documents"~~ ORGANIZATIONAL
2 DOCUMENTS means:

3 "(1) for a general partnership or foreign general
4 partnership, its partnership agreement and if applicable, its
5 registration as a limited liability partnership or a foreign
6 limited liability partnership;

7 "(2) for a limited partnership or foreign limited
8 partnership, its certificate of formation and partnership
9 agreement, or comparable writings as provided in its governing
10 statute;

11 "(3) for a limited liability company or foreign
12 limited liability company, its certificate of formation and
13 limited liability company agreement, or comparable writings as
14 provided in its governing statute;

15 "(4) for a business or statutory trust or foreign
16 business or statutory trust its agreement of trust and
17 declaration of trust, or comparable writings as provided in
18 its governing statute;

19 "(5) for a corporation for profit or foreign
20 corporation for profit, its certificate of formation, bylaws,
21 and other agreements among its shareholders that are
22 authorized by its governing statute, or comparable writings as
23 provided in its governing statute;

24 "(6) for a nonprofit corporation or foreign
25 nonprofit corporation, its certificate of formation, bylaws,

1 and other agreements that are authorized by its governing
2 statute, or comparable writings as provided in its governing
3 statute;

4 "(7) for a professional corporation or foreign
5 professional corporation, its certificate of formation,
6 bylaws, and other agreements among its shareholders that are
7 authorized by its governing statute, or comparable writings as
8 provided in its governing statute; and

9 "(8) for any other organization, the basic writings
10 that create the organization and determine its internal
11 governance and the relations among the persons that own it,
12 have an interest in it, or are members of it.

13 "(p) ~~"Qualified person,"~~ QUALIFIED PERSON, with
14 respect to a limited liability company rendering professional
15 services in this state, means a person authorized by this
16 state or a regulatory authority of this state to own a
17 transferable interest in that limited liability company.

18 "(q) ~~"Surviving organization"~~ SURVIVING ORGANIZATION
19 means an organization into which one or more other
20 organizations are merged under Article 10, whether the
21 organization pre-existed the merger or was created pursuant to
22 the merger.

23 "(r) ~~"Transfer"~~ TRANSFER means an assignment,
24 conveyance, deed, bill of sale, lease, mortgage, security
25 interest, encumbrance, gift, or transfer by operation of law.

1 "(s) ~~"Transferee"~~ TRANSFEEE means a person to which
2 all or part of a transferable interest has been transferred,
3 whether or not the transferor is a member.

4 "(t) ~~"Transferable interest"~~ TRANSFERABLE INTEREST
5 means a member's right to receive distributions from a limited
6 liability company or a series thereof.

7 "§10A-5A-2.01.

8 "(a) In order to form a limited liability company,
9 one or more organizers must execute a certificate of formation
10 and deliver it for filing to the filing officer provided for
11 in subsection (e). ~~Notwithstanding~~ Section 10A-1-3.05 shall
12 not apply to this chapter. Instead, the certificate of
13 formation shall set forth:

14 "(1) the name of the limited liability company,
15 which must comply with Article 5 of Chapter 1;

16 "(2) the address of the registered office required
17 by Article 5 of Chapter 1;

18 "(3) the name of the registered agent at the
19 registered office required by Article 5 of Chapter 1;

20 "(4) a statement that there is at least one member
21 of the limited liability company;

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

24 "(6) any other matters the members determine to
25 include therein.

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

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

9 "(d) A limited liability company agreement shall be
10 entered into either before, after, or at the time of the
11 filing of the certificate of formation and, whether entered
12 into before, after, or at the time of the filing, may be made
13 effective as of the filing of the certificate of formation or
14 at any other time or date provided in the limited liability
15 company agreement.

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

18 "§10A-5A-2.02.

19 "~~Notwithstanding~~ Division B of Article 3 of Chapter
20 1 shall not apply to this chapter. Instead:

21 "(a) A certificate of formation may be amended at
22 any time.

23 "(b) A certificate of formation may be restated with
24 or without amendment at any time.

1 "(c) To amend its certificate of formation, a
2 limited liability company must deliver a certificate of
3 amendment for filing to the Secretary of State which
4 certificate of amendment shall state:

5 "(1) the name of the limited liability company;

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

8 "(3) the changes the amendment makes to the
9 certificate of formation as most recently amended or restated.

10 "(d) To restate its certificate of formation, a
11 limited liability company must deliver a restated certificate
12 of formation for filing to the Secretary of State. A restated
13 certificate of formation must:

14 "(1) be designated as such in the heading;

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

16 "(3) state the unique identifying number or other
17 designation as assigned by the Secretary of State; and

18 "(4) set forth any amendment or change effected in
19 connection with the restatement of the certificate of
20 formation.

21 Any such restatement that effects an amendment shall
22 be subject to any other provision of this chapter, not
23 inconsistent with this section, which would apply if a
24 separate certificate of amendment were filed to effect the
25 amendment or change.

1 "(e) The original certificate of formation, as
2 theretofore amended, shall be superseded by the restated
3 certificate of formation and thenceforth, the restated
4 certificate of formation, including any further amendment or
5 changes made thereby, shall be the certificate of formation of
6 the limited liability company, but the original effective date
7 of formation shall remain unchanged.

8 "(f) An amended or restated certificate of formation
9 may contain only provisions that would be permitted at the
10 time of the amendment if the amended or restated certificate
11 of formation were a newly filed original certificate of
12 formation.

13 "§10A-5A-7.02.

14 ~~"Notwithstanding Section 10A-1-9.12:~~

15 "(a) A dissolved limited liability company continues
16 its existence as a limited liability company but may not carry
17 on any activities and affairs except as is appropriate to wind
18 up and liquidate its activities and affairs, including:

19 "(1) collecting its assets;

20 "(2) disposing of its properties that will not be
21 distributed in kind to persons owning transferable interests;

22 "(3) discharging or making provisions for
23 discharging its liabilities;

24 "(4) distributing its remaining property in
25 accordance with Section 10A-5A-7.06; and

1 "(5) doing every other act necessary to wind up and
2 liquidate its activities and affairs.

3 "(b) In winding up its activities and affairs, a
4 limited liability company may:

5 "(1) deliver for filing a statement of dissolution
6 to the Secretary of State setting forth:

7 "(A) The name of the limited liability company.

8 "(B) The unique identifying number or other
9 designation as assigned by the Secretary of State.

10 "(C) That the limited liability company has
11 dissolved.

12 "(D) Any other information the limited liability
13 company deems appropriate.

14 "(2) preserve the limited liability company's
15 activities and affairs and property as a going concern for a
16 reasonable time;

17 "(3) prosecute, defend, or settle actions or
18 proceedings, whether civil, criminal, or administrative;

19 "(4) transfer the limited liability company's
20 assets;

21 "(5) resolve disputes by mediation or arbitration;
22 and

23 "(6) merge or convert in accordance with Article 10
24 of this chapter or Article 8 of Chapter 1.

1 "(c) The dissolution of a limited liability company
2 does not:

3 "(1) transfer title to the limited liability
4 company's property;

5 "(2) prevent the commencement of a proceeding by or
6 against the limited liability company in its limited liability
7 company name;

8 "(3) terminate, abate, or suspend a proceeding
9 pending by or against the limited liability company on the
10 effective date of dissolution;

11 "(4) terminate the authority of its registered
12 agent; or

13 "(5) abate, suspend, or otherwise alter the
14 application of Section 10A-5A-3.01.

15 "(d) A statement of dissolution shall be deemed to
16 be a filing instrument under Chapter 1.

17 "~~§10A-5A-7.04.~~

18 "~~Notwithstanding Sections 10A-1-9.01 and 10A-1-9.21:~~

19 "(a) A dissolved limited liability company may
20 dispose of any known claims against it by following the
21 procedures described in subsection (b) at any time after the
22 effective date of the dissolution of the limited liability
23 company.

1 "(b) A dissolved limited liability company may give
2 notice of the dissolution in a record to the holder of any
3 known claim. The notice must:

4 "(1) identify the dissolved limited liability
5 company;

6 "(2) describe the information required to be
7 included in a claim;

8 "(3) provide a mailing address to which the claim is
9 to be sent;

10 "(4) state the deadline, which may not be fewer than
11 120 days from the effective date of the notice, by which the
12 dissolved limited liability company must receive the claim;
13 and

14 "(5) state that if not sooner barred, the claim will
15 be barred if not received by the deadline.

16 "(c) Unless sooner barred by any other statute
17 limiting actions, a claim against a dissolved limited
18 liability company is barred:

19 "(1) if a claimant who was given notice under
20 subsection (b) does not deliver the claim to the dissolved
21 limited liability company by the deadline; or

22 "(2) if a claimant whose claim was rejected by the
23 dissolved limited liability company does not commence a
24 proceeding to enforce the claim within 90 days from the
25 effective date of the rejection notice.

1 "(d) For purposes of this section, known claim or
2 claim includes unliquidated claims, but does not include a
3 contingent liability that has not matured so that there is no
4 immediate right to bring suit or a claim based on an event
5 occurring after the effective date of dissolution.

6 "(e) Nothing in this section shall be deemed to
7 extend any otherwise applicable statute of limitations.

8 "§10A-5A-7.05.

9 ~~"Notwithstanding Sections 10A-1-9.01 and 10A-1-9.22:~~

10 "(a) A dissolved limited liability company may
11 publish notice of its dissolution and request that persons
12 with claims against the dissolved limited liability company
13 present them in accordance with the notice.

14 "(b) The notice authorized by subsection (a) must:

15 "(1) be published at least one time in a newspaper
16 of general circulation in the county in which the dissolved
17 limited liability company's principal office is located or, if
18 it has none in this state, in the county in which the
19 dissolved limited liability company's most recent registered
20 office is located;

21 "(2) describe the information that must be included
22 in a claim and provide a mailing address to which the claim is
23 to be sent; and

24 "(3) state that if not sooner barred, a claim
25 against the dissolved limited liability company will be barred

1 unless a proceeding to enforce the claim is commenced within
2 two years after the publication of the notice.

3 "(c) If a dissolved limited liability company
4 publishes a newspaper notice in accordance with subsection
5 (b), unless sooner barred by any other statute limiting
6 actions, the claim of each of the following claimants is
7 barred unless the claimant commences a proceeding to enforce
8 the claim against the dissolved limited liability company
9 within two years after the publication date of the newspaper
10 notice:

11 "(1) a claimant who was not given notice under
12 Section 10A-5A-7.04(b);

13 "(2) a claimant whose claim was timely sent to the
14 dissolved limited liability company but not acted on by the
15 dissolved limited liability company; and

16 "(3) a claimant whose claim is contingent at the
17 effective date of the dissolution of the limited liability
18 company, or is based on an event occurring after the effective
19 date of the dissolution of the limited liability company.

20 "(d) A claim that is not barred under this section,
21 any other statute limiting actions, or Section 10A-5A-7.04 may
22 be enforced:

23 "(1) against a dissolved limited liability company,
24 to the extent of its undistributed assets; and

1 "(2) except as provided in subsection (h), if the
2 assets of a dissolved limited liability company have been
3 distributed after dissolution, against the person or persons
4 owning the transferable interests to the extent of that
5 person's proportionate share of the claim or of the assets
6 distributed to that person after dissolution, whichever is
7 less, but a person's total liability for all claims under
8 subsection (d) may not exceed the total amount of assets
9 distributed to that person after dissolution of the limited
10 liability company.

11 "(e) A dissolved limited liability company that
12 published a notice under this section may file an application
13 with the circuit court for the county in which the dissolved
14 limited liability company's principal office is located in
15 this state, and if the limited liability company does not have
16 a principal office within this state, with the circuit court
17 for the county in which the dissolved limited liability
18 company's most recent registered office is located, for a
19 determination of the amount and form of security to be
20 provided for payment of claims that are contingent or have not
21 been made known to the dissolved limited liability company or
22 that are based on an event occurring after the effective date
23 of the dissolution of the limited liability company but that,
24 based on the facts known to the dissolved limited liability
25 company, are reasonably estimated to arise after the effective

1 date of the dissolution of the limited liability company.
2 Provision need not be made for any claim that is or is
3 reasonably anticipated to be barred under subsection (c).

4 "(f) Within 10 days after the filing of the
5 application provided for in subsection (e), notice of the
6 proceeding shall be given by the dissolved limited liability
7 company to each potential claimant as described in subsection
8 (e).

9 "(g) The circuit court under subsection (e) may
10 appoint a guardian ad litem to represent all claimants whose
11 identities are unknown in any proceeding brought under this
12 section. The reasonable fees and expenses of the guardian,
13 including all reasonable expert witness fees, shall be paid by
14 the dissolved limited liability company.

15 "(h) Provision by the dissolved limited liability
16 company for security in the amount and the form ordered by the
17 circuit court under subsection (e) shall satisfy the dissolved
18 limited liability company's obligation with respect to claims
19 that are contingent, have not been made known to the dissolved
20 limited liability company, or are based on an event occurring
21 after the effective date of the dissolution of the limited
22 liability company, and those claims may not be enforced
23 against a person owning a transferable interest to whom assets
24 have been distributed by the dissolved limited liability

1 company after the effective date of the dissolution of the
2 limited liability company.

3 "(i) Nothing in this section shall be deemed to
4 extend any otherwise applicable statute of limitations.

5 "(j) If a claim has been satisfied, disposed of, or
6 barred under Section 10A-5A-7.04, this section, or other law,
7 the person or persons designated to wind up the affairs of a
8 limited liability company, and the owners of the transferable
9 interests receiving assets from the limited liability company,
10 shall not be liable for that claim.

11 "§10A-5A-7.06.

12 ~~"Notwithstanding Section 10A-1-9.12, upon~~ Upon the
13 winding up of a limited liability company, the assets shall be
14 applied as follows:

15 "(a) Payment, or adequate provision for payment,
16 shall be made to creditors, including, to the extent permitted
17 by law, members who are creditors, in satisfaction of
18 liabilities of the limited liability company.

19 "(b) After a limited liability company complies with
20 subsection (a), any surplus must be distributed:

21 "(1) first, to each person owning a transferable
22 interest that reflects contributions made on account of the
23 transferable interest and not previously returned, an amount
24 equal to the value of the person's unreturned contributions;
25 and

1 "(2) then to each person owning a transferable
2 interest in the proportions in which the owners of
3 transferable interests share in distributions before
4 dissolution.

5 "(c) If the limited liability company does not have
6 sufficient surplus to comply with subsection (b)(1), any
7 surplus must be distributed among the owners of transferable
8 interests in proportion to the value of their respective
9 unreturned contributions.

10 "§10A-5A-7.07.

11 ~~"Notwithstanding Sections 10A-1-9.31 and 10A-1-9.32,~~
12 ~~a~~ A limited liability company that has been dissolved may be
13 reinstated upon compliance with the following conditions:

14 "(a) the consent shall have been obtained from the
15 members or other persons entitled to consent at the time that
16 is:

17 "(1) required for reinstatement under the limited
18 liability company agreement; or

19 "(2) if the limited liability company agreement does
20 not state the consent required for reinstatement, sufficient
21 for dissolution under the limited liability company agreement;
22 or

23 "(3) if the limited liability company agreement
24 neither states the consent required for reinstatement nor for
25 dissolution, sufficient for dissolution under this chapter;

1 "(b) in the case of a written objection to
2 reinstatement having been delivered to the limited liability
3 company before or at the time of the consent required by
4 subsection (a) by the members or other persons having
5 authority under the limited liability company agreement to
6 bring about or prevent dissolution of the limited liability
7 company, those members or persons withdrawing that written
8 objection effective at the time of the consent required by
9 subsection (a);

10 "(c) in the case of a limited liability company
11 dissolved in a judicial proceeding initiated by one or more of
12 the members, the consent of each of those members shall have
13 been obtained and shall be included in the consent required by
14 subsection (a); and

15 "(d) the filing of a certificate of reinstatement in
16 accordance with Section 10A-5A-7.08.

17 "§10A-5A-11.10.

18 ~~"Notwithstanding Section 10A-1-9.12:~~

19 "(a) A dissolved series continues its existence as a
20 series but may not carry on any activities and affairs except
21 as is appropriate to wind up and liquidate its activities and
22 affairs, including:

23 "(1) collecting the assets of the series;

1 "(2) disposing of the properties of the series that
2 will not be distributed in kind to persons owning transferable
3 interests;

4 "(3) discharging or making provisions for
5 discharging the liabilities of the series;

6 "(4) distributing the remaining property of the
7 series in accordance with Section 10A-5A-11.14; and

8 "(5) doing every other act necessary to wind up and
9 liquidate the series' activities and affairs.

10 "(b) In winding up a series' activities and affairs,
11 a series may:

12 "(1) preserve the series' activities and affairs and
13 property as a going concern for a reasonable time;

14 "(2) prosecute, defend, or settle actions or
15 proceedings whether civil, criminal, or administrative;

16 "(3) transfer the series' property; and

17 "(4) resolve disputes by mediation or arbitration.

18 "(c) The dissolution of a series does not:

19 "(1) transfer title to the series' property;

20 "(2) prevent the commencement of a proceeding by or
21 against the series in the series' name;

22 "(3) terminate, abate, or suspend a proceeding
23 pending by or against the series on the effective date of
24 dissolution; or

1 "(4) abate, suspend, or otherwise alter the
2 application of Section 10A-5A-3.01.

3 "§10A-5A-11.12.

4 ~~"Notwithstanding Sections 10A-1-9.01 and 10A-1-9.21:~~

5 "(a) A dissolved series may dispose of any known
6 claims against it by following the procedures described in
7 subsection (b), at any time after the effective date of the
8 dissolution of the series.

9 "(b) A dissolved series may give notice of the
10 dissolution in a writing to the holder of any known claim. The
11 notice must:

12 "(1) identify the limited liability company and the
13 dissolved series;

14 "(2) describe the information required to be
15 included in a claim;

16 "(3) provide a mailing address to which the claim is
17 to be sent;

18 "(4) state the deadline, which may not be fewer than
19 120 days from the effective date of the notice, by which the
20 dissolved series must receive the claim; and

21 "(5) state that if not sooner barred, the claim will
22 be barred if not received by the deadline.

23 "(c) Unless sooner barred by any other statute
24 limiting actions, a claim against a dissolved series is
25 barred:

1 "(1) If a claimant who was given notice under
2 subsection (b) does not deliver the claim to the dissolved
3 series by the deadline; or

4 "(2) If a claimant whose claim was rejected by the
5 dissolved series does not commence a proceeding to enforce the
6 claim within 90 days from the effective date of the rejected
7 notice.

8 "(d) For purposes of this section, known claim or
9 claim includes unliquidated claims, but does not include a
10 contingent liability that has not matured so that there is no
11 immediate right to bring suit or a claim based on an event
12 occurring after the effective date of dissolution.

13 "(e) Nothing in this section shall be deemed to
14 extend any otherwise applicable statute of limitations.

15 "§10A-5A-11.13.

16 ~~"Notwithstanding Sections 10A-1-9.01 and 10A-1-9.22:~~

17 "(a) A dissolved series may publish notice of its
18 dissolution and request that persons with claims against the
19 dissolved series present them in accordance with the notice.

20 "(b) The notice authorized by subsection (a) must:

21 "(1) be published at least one time in a newspaper
22 of general circulation in the county in which the limited
23 liability company's principal office is located or, if it has
24 none in this state, in the county in which the limited
25 liability company's most recent registered office is located;

1 "(2) describe the information that must be included
2 in a claim and provide a mailing address to which the claim is
3 to be sent; and

4 "(3) state that if not sooner barred, a claim
5 against the dissolved series will be barred unless a
6 proceeding to enforce the claim is commenced within two years
7 after the publication of the notice.

8 "(c) If a dissolved series publishes a newspaper
9 notice in accordance with subsection (b), unless sooner barred
10 by any other statute limiting actions, the claim of each of
11 the following claimants is barred unless the claimant
12 commences a proceeding to enforce the claim against the
13 dissolved series within two years after the publication date
14 of the newspaper notice:

15 "(1) a claimant who was not given notice under
16 Section 10A-5A-11.12(b);

17 "(2) a claimant whose claim was timely sent to the
18 dissolved series but not acted on by the dissolved series; and

19 "(3) a claimant whose claim is contingent at the
20 effective date of the dissolution of the series, or is based
21 on an event occurring after the effective date of the
22 dissolution of the series.

23 "(d) A claim that is not barred under this section,
24 any other statute limiting actions, or Section 10A-5A-11.12
25 may be enforced:

1 "(1) against a dissolved series, to the extent of
2 its undistributed assets associated with the series; and

3 "(2) except as provided in subsection (h), if the
4 assets of a dissolved series have been distributed after
5 dissolution, against the person or persons owning the
6 transferable interests associated with the series to the
7 extent of that person's proportionate share of the claim or of
8 the assets of the series distributed to that person after
9 dissolution, whichever is less, but a person's total liability
10 for all claims under this subsection may not exceed the total
11 amount of assets of the series distributed to that person
12 after dissolution of the series.

13 "(e) A dissolved series that published a notice
14 under this section may file an application with the circuit
15 court for the county in which the limited liability company's
16 principal office is located in this state and if the limited
17 liability company does not have a principal office within this
18 state then the circuit court for the county in which the
19 limited liability company's most recent registered office is
20 located, for a determination of the amount and form of
21 security to be provided for payment of claims that are
22 contingent or have not been made known to the dissolved series
23 or that are based on an event occurring after the effective
24 date of the dissolution of the series but that, based on the
25 facts known to the dissolved series, are reasonably estimated

1 to arise after the effective date of the dissolution of the
2 series. Provision need not be made for any claim that is or is
3 reasonably anticipated to be barred under subsection (c).

4 "(f) Within 10 days after the filing of the
5 application provided for in subsection (e), notice of the
6 proceeding shall be given by the dissolved series to each
7 potential claimant as described in subsection (e).

8 "(g) The circuit court under subsection (e) may
9 appoint a guardian ad litem to represent all claimants whose
10 identities are unknown in any proceeding brought under this
11 section. The reasonable fees and expenses of the guardian,
12 including all reasonable expert witness fees, shall be paid by
13 the dissolved series.

14 "(h) Provision by the dissolved series for security
15 in the amount and the form ordered by the circuit court under
16 subsection (e) shall satisfy the dissolved series' obligation
17 with respect to claims that are contingent, have not been made
18 known to the dissolved series, or are based on an event
19 occurring after the effective date of the dissolution of the
20 series, and those claims may not be enforced against a person
21 owning a transferable interest to whom assets have been
22 distributed by the dissolved series after the effective date
23 of the dissolution of the series.

24 "(i) Nothing in this section shall be deemed to
25 extend any otherwise applicable statute of limitations.

1 "(j) If a claim has been satisfied, disposed of, or
2 barred under Section 10A-5A-11.12, this section, or other law,
3 the person or persons designated to wind up the affairs of a
4 limited liability company, and the owners of the transferable
5 interests receiving assets from the limited liability company,
6 shall not be liable for that claim.

7 "§10A-5A-11.14.

8 ~~"Notwithstanding Section 10A-1-9.12, upon~~ Upon the
9 winding up of a series, the assets of the series shall be
10 applied as follows:

11 "(a) Payment, or adequate provision for payment,
12 shall be made to creditors of the series, including, to the
13 extent permitted by law, members who are associated with the
14 series and who are also creditors of the series, in
15 satisfaction of liabilities of the series.

16 "(b) After a series complies with subsection (a),
17 any surplus must be distributed:

18 "(1) first, to each person owning a transferable
19 interest associated with that series that reflects
20 contributions made on account of that transferable interest
21 and not previously returned, an amount equal to the value of
22 the unreturned contributions; and

23 "(2) then to each person owning a transferable
24 interest associated with that series in the proportions in
25 which the owners of transferable interests associated with

1 that series share in distributions prior to the dissolution of
2 the series.

3 "(c) If the series does not have sufficient surplus
4 to comply with subsection (b) (1), any surplus must be
5 distributed among the owners of transferable interests
6 associated with that series in proportion to the value of
7 their respective unreturned contributions.

8 "§10A-5A-11.15.

9 ~~"Notwithstanding Sections 10A-1-9.31 and 10A-1-9.32,~~
10 ~~a~~ A series that has been dissolved may be reinstated upon
11 compliance with the following conditions:

12 "(a) the consent shall have been obtained from the
13 members or other persons associated with the series entitled
14 to consent at the time that is:

15 "(1) required for reinstatement of the series under
16 the limited liability company agreement; or

17 "(2) if the limited liability company agreement does
18 not state the consent required for reinstatement, sufficient
19 for dissolution of the series under the limited liability
20 company agreement; or

21 "(3) if the limited liability company agreement
22 neither states the consent required for reinstatement nor for
23 dissolution, sufficient for dissolution of the series under
24 this chapter;

1 "(b) in the case of a written objection to
2 reinstatement having been delivered to the series before or at
3 the time of the consent required by subsection (a) by the
4 members or other persons having authority under the limited
5 liability company agreement to bring about or prevent
6 dissolution of the series, those members or persons
7 withdrawing that written objection effective at the time of
8 the consent required by subsection (a); and

9 "(c) In the case of a series dissolved in a judicial
10 proceeding initiated by one or more of the members associated
11 with the series, the consent of each of those members shall
12 have been obtained and shall be included in the consent
13 required by subsection (a) (1).

14 "§10A-8A-1.02.

15 "~~Notwithstanding Section 10A-1-1.03, as As~~ used in
16 this chapter, unless the context otherwise requires, the
17 following terms mean:

18 "(1) "~~Business~~" BUSINESS includes every trade,
19 occupation, and profession for profit.

20 "(2) "~~Disqualified person~~" DISQUALIFIED PERSON means
21 any person who is not a qualified person.

22 "(3) "~~Distribution~~" DISTRIBUTION except as otherwise
23 provided in Section 10A-8A-4.09(f), means a transfer of money
24 or other property from a partnership to another person on
25 account of a transferable interest.

1 "~~Foreign limited liability partnership~~" FOREIGN
 2 LIMITED LIABILITY PARTNERSHIP means a foreign partnership
 3 whose partners have limited liability for the debts,
 4 obligations, or other liabilities of the foreign partnership
 5 under a provision similar to Section 10A-8A-3.06(c).

6 "~~Foreign partnership~~" FOREIGN PARTNERSHIP means
 7 a partnership governed by the laws of a jurisdiction other
 8 than this state which would be a partnership if governed by
 9 the laws of this state. The term includes a foreign limited
 10 liability partnership.

11 "~~Limited liability partnership~~" LIMITED
 12 LIABILITY PARTNERSHIP, except in the phrase "foreign limited
 13 liability partnership", means a partnership that has filed a
 14 statement of limited liability partnership under Section
 15 10A-8A-10.01, and does not have a similar statement in effect
 16 in any other jurisdiction.

17 "~~Not for profit activity~~" NOT FOR PROFIT
 18 ACTIVITY includes every undertaking not for profit.

19 "~~Partner~~" PARTNER means a person that:

20 "(A) has become a partner in a partnership under
 21 Section 10A-8A-4.02 or was a partner in a partnership when the
 22 partnership became subject to this chapter; and

23 "(B) has not dissociated as a partner under Section
 24 10A-8A-6.01.

1 "~~Partnership~~" PARTNERSHIP means an entity that
2 is formed under this chapter or that is governed by this
3 chapter. The term includes, for all purposes of the laws of
4 this state, a limited liability partnership.

5 "~~Partnership agreement~~" PARTNERSHIP AGREEMENT
6 means any agreement (whether referred to as a partnership
7 agreement or otherwise), written, oral or implied, of the
8 partners as to the business or not for profit activity of a
9 partnership. The partnership agreement includes any amendments
10 to the partnership agreement.

11 "~~Partnership at will~~" PARTNERSHIP AT WILL
12 means a partnership in which the partners have not agreed to
13 remain partners until the expiration of a definite term or the
14 completion of a particular undertaking.

15 "~~Person dissociated as a partner~~" PERSON
16 DISSOCIATED AS A PARTNER means a person dissociated as a
17 partner of a partnership.

18 "~~Qualified person,~~" QUALIFIED PERSON, with
19 respect to a partnership rendering professional services in
20 this state, means a person authorized by this state or a
21 regulatory authority of this state to own a transferable
22 interest in that partnership.

23 "~~Required information~~" REQUIRED INFORMATION
24 means the information that a partnership is required to
25 maintain under Section 10A-8A-1.11.

1 "~~(15) "Statement"~~ STATEMENT means a statement of
2 partnership under Section 10A-8A-2.02, a statement of not for
3 profit partnership under Section 10A-8A-2.02, a statement of
4 authority under Section 10A-8A-3.03, a statement of denial
5 under Section 10A-8A-3.04, a statement of dissociation under
6 Section 10A-8A-7.04, a statement of dissolution under Section
7 10A-8A-8.02 or under Section 10A-8A-8.03, a certificate of
8 reinstatement under Section 10A-8A-8.11, a statement of
9 limited liability partnership under Section 10A-8A-10.01, a
10 statement of cancellation under Section 10A-8A-10.01, or any
11 other document required or permitted to be delivered to the
12 Secretary of State for filing under this chapter, or an
13 amendment or cancellation of any of the foregoing.

14 "~~(16) "Transfer"~~ TRANSFER means an assignment,
15 conveyance, deed, bill of sale, lease, mortgage, security
16 interest, encumbrance, gift, or transfer by operation of law.

17 "~~(17) "Transferable interest"~~ TRANSFERABLE INTEREST
18 means a partner's right to receive distributions from a
19 partnership.

20 "~~(18) "Transferee"~~ TRANSFeree means a person to
21 which all or part of a transferable interest has been
22 transferred, whether or not the transferor is a partner.

23 "~~§10A-8A-4.10.~~

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

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

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

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

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

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

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

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

3 "(3) it is determined that:

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

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

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

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

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

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

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

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

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

24 "(f) In addition to any restriction or condition
25 stated in its partnership agreement, a partnership, as to a

1 matter within the ordinary course of its business or not for
2 profit activity, may:

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

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

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

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

23 "(h) A partner or person dissociated as a partner
24 may exercise the rights under this section through an attorney
25 or other agent. Any restriction imposed under subsection (f)

1 or by the partnership agreement applies both to the attorney
 2 or other agent and to the partner or person dissociated as a
 3 partner.

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

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

19 "§10A-8A-8.02.

20 ~~"Notwithstanding Section 10A-1-9.12:~~

21 "(a) A dissolved partnership continues its existence
 22 as a partnership but may not carry on any business or not for
 23 profit activity except as is appropriate to wind up and
 24 liquidate its business or not for profit activity, including:

25 "(1) collecting its assets;

1 "(2) disposing of its properties that will not be
2 distributed in kind to persons owning transferable interests;

3 "(3) discharging or making provisions for
4 discharging its liabilities;

5 "(4) distributing its remaining property in
6 accordance with Section 10A-8A-8.09; and

7 "(5) doing every other act necessary to wind up and
8 liquidate its business or not for profit activity.

9 "(b) In winding up its business or not for profit
10 activity, a partnership may:

11 "(1) deliver to the Secretary of State for filing a
12 statement of dissolution setting forth:

13 "(A) The name of the partnership;

14 "(B) If the partnership has filed a statement of
15 partnership, a statement of not for profit partnership, a
16 statement of authority, or a statement of limited liability
17 partnership, the unique identifying number or other
18 designation as assigned by the Secretary of State;

19 "(C) That the partnership has dissolved;

20 "(D) The name, street address, and mailing address
21 of the partner who will be winding up the business or not for
22 profit activity of the partnership pursuant to Section
23 10A-8A-8.03(a), and if none, the name, street address, and
24 mailing address of the person appointed pursuant to Section

1 10A-8A-8.03(b) or (c) to wind up the business or not for
2 profit activity of the partnership;

3 "(E) If the partnership has filed a statement of
4 partnership, a statement of not for profit partnership, or a
5 statement of limited liability partnership, the name, street
6 address, and mailing address of the partnership's registered
7 agent; and

8 "(F) Any other information the partnership deems
9 appropriate;

10 "(2) preserve the partnership's business or not for
11 profit activity as a going concern for a reasonable time;

12 "(3) prosecute, defend, or settle actions or
13 proceedings, whether civil, criminal, or administrative;

14 "(4) transfer the partnership's assets;

15 "(5) resolve disputes by mediation or arbitration;

16 and

17 "(6) merge or convert in accordance with Article 9
18 of this chapter or Article 8 of Chapter 1.

19 "(c) The dissolution of a partnership does not:

20 "(1) transfer title to the partnership's property;

21 "(2) prevent the commencement of a proceeding by or
22 against the partnership in its partnership name;

23 "(3) terminate, abate, or suspend a proceeding
24 pending by or against the partnership on the effective date of
25 dissolution;

1 "(4) terminate the authority of its registered
2 agent; or

3 "(5) abate, suspend, or otherwise alter the
4 application of Section 10A-8A-3.06.

5 "(d) A statement of dissolution is a filing
6 instrument under Chapter 1.

7 "§10A-8A-8.06.

8 ~~"Notwithstanding Sections 10A-1-9.01 and 10A-1-9.21:~~

9 "(a) A dissolved partnership may dispose of any
10 known claims against it by following the procedures described
11 in subsection (b) at any time after the effective date of the
12 dissolution of the partnership.

13 "(b) A dissolved partnership may give notice of the
14 dissolution in writing to the holder of any known claim. The
15 notice must:

16 "(1) identify the dissolved partnership;

17 "(2) describe the information required to be
18 included in a claim;

19 "(3) provide a mailing address to which the claim is
20 to be sent;

21 "(4) state the deadline, which may not be fewer than
22 120 days from the effective date of the notice, by which the
23 dissolved partnership must receive the claim;

24 "(5) state that if not sooner barred, the claim will
25 be barred if not received by the deadline; and

1 "(6) unless the partnership has been throughout its
2 existence a limited liability partnership, state that the
3 barring of a claim against the partnership will also bar any
4 corresponding claim against any partner or person dissociated
5 as a partner which is based on Section 10A-8A-3.06.

6 "(c) Unless sooner barred by any other statute
7 limiting actions, a claim against a dissolved partnership is
8 barred:

9 "(1) if a claimant who was given notice under
10 subsection (b) does not deliver the claim to the dissolved
11 partnership by the deadline; or

12 "(2) if a claimant whose claim was rejected by the
13 dissolved partnership, does not commence a proceeding to
14 enforce the claim within 90 days from the effective date of
15 the rejection notice.

16 "(d) For purposes of this section, "known claim" or
17 "claim" includes unliquidated claims, but does not include a
18 contingent liability that has not matured so that there is no
19 immediate right to bring suit or a claim based on an event
20 occurring after the effective date of dissolution.

21 "(e) Nothing in this section shall be deemed to
22 extend any otherwise applicable statute of limitations.

23 "§10A-8A-8.07.

24 ~~"Notwithstanding Sections 10A-1-9.01 and 10A-1-9.22:~~

1 "(a) A dissolved partnership may publish notice of
2 its dissolution and request that persons with claims against
3 the dissolved partnership present them in accordance with the
4 notice.

5 "(b) The notice authorized by subsection (a) must:

6 "(1) be published at least one time in a newspaper
7 of general circulation in the county in which the dissolved
8 partnership's principal office in this state is located, and
9 if none, was last located;

10 "(2) describe the information that must be included
11 in a claim and provide a mailing address to which the claim is
12 to be sent;

13 "(3) state that if not sooner barred, a claim
14 against the dissolved partnership will be barred unless a
15 proceeding to enforce the claim is commenced within two years
16 after the publication of the notice; and

17 "(4) unless the partnership has been throughout its
18 existence a limited liability partnership, state that the
19 barring of a claim against the partnership will also bar any
20 corresponding claim against any partner or person dissociated
21 as a partner which is based on Section 10A-8A-3.06.

22 "(c) If a dissolved partnership publishes a
23 newspaper notice in accordance with subsection (b), unless
24 sooner barred by any other statute limiting actions, the claim
25 of each of the following claimants is barred unless the

1 claimant commences a proceeding to enforce the claim against
2 the dissolved partnership within two years after the
3 publication date of the newspaper notice:

4 "(1) a claimant who was not given notice under
5 Section 10A-8A-8.06;

6 "(2) a claimant whose claim was timely sent to the
7 dissolved partnership but not acted on by the dissolved
8 partnership; and

9 "(3) a claimant whose claim is contingent at the
10 effective date of the dissolution of the partnership, or is
11 based on an event occurring after the effective date of the
12 dissolution of the partnership.

13 "(d) A claim that is not barred under this section,
14 any other statute limiting actions, or Section 10A-8A-8.06 may
15 be enforced:

16 "(1) against a partnership, to the extent of its
17 undistributed assets;

18 "(2) except as provided in subsection (h), if the
19 assets of a dissolved partnership have been distributed after
20 dissolution, against the person or persons owning the
21 transferable interests to the extent of that person's
22 proportionate share of the claim or of the assets distributed
23 to that person after dissolution, whichever is less, but a
24 person's total liability for all claims under subsection (d)

1 may not exceed the total amount of assets distributed to that
2 person after dissolution of the partnership; or

3 "(3) against any person liable on the claim under
4 Sections 10A-8A-3.06, 10A-8A-7.03, and 10A-8A-8.05.

5 "(e) A dissolved partnership that published a notice
6 under this section may file an application with a court of
7 competent jurisdiction for a determination of the amount and
8 form of security to be provided for payment of claims that are
9 contingent or have not been made known to the dissolved
10 partnership or that are based on an event occurring after the
11 effective date of the dissolution of the partnership but that,
12 based on the facts known to the dissolved partnership, are
13 reasonably estimated to arise after the effective date of the
14 dissolution of the partnership. Provision need not be made for
15 any claim that is or is reasonably anticipated to be barred
16 under subsection (c).

17 "(f) Within 10 days after the filing of the
18 application provided for in subsection (e), notice of the
19 proceeding shall be given by the dissolved partnership to each
20 potential claimant as described in subsection (e).

21 "(g) The court under subsection (e) may appoint a
22 guardian ad litem to represent all claimants whose identities
23 are unknown in any proceeding brought under this section. The
24 reasonable fees and expenses of the guardian, including all

1 reasonable expert witness fees, shall be paid by the dissolved
2 partnership.

3 "(h) Provision by the dissolved partnership for
4 security in the amount and the form ordered by the court under
5 subsection (e) shall satisfy the dissolved partnership's
6 obligation with respect to claims that are contingent, have
7 not been made known to the dissolved partnership, or are based
8 on an event occurring after the effective date of the
9 dissolution of the partnership, and those claims may not be
10 enforced against a person owning a transferable interest to
11 whom assets have been distributed by the dissolved partnership
12 after the effective date of the dissolution of the
13 partnership.

14 "(i) Nothing in this section shall be deemed to
15 extend any otherwise applicable statute of limitations.

16 "(j) If a claim has been satisfied, disposed of, or
17 barred under Section 10A-8A-8.06, this section, or other law,
18 the person or persons designated to wind up the business or
19 not for profit activity of a partnership, and the owners of
20 the transferable interests receiving assets from the
21 partnership, shall not be liable for that claim.

22 "§10A-8A-8.09.

23 ~~"Notwithstanding Section 10A-1-9.12, upon~~ Upon the
24 winding up of a partnership, the assets of the partnership,
25 including any obligation under Sections 10A-8A-4.03,

1 10A-8A-4.04, and 10A-8A-4.09, and any contribution required by
2 this section, shall be applied as follows:

3 "(a) Payment, or adequate provision for payment,
4 shall be made to creditors, including, to the extent permitted
5 by law, partners who are creditors, in satisfaction of
6 liabilities of the partnership.

7 "(b) After a partnership complies with subsection
8 (a), any surplus must be distributed:

9 "(1) first, to each person owning a transferable
10 interest that reflects contributions made on account of the
11 transferable interest and not previously returned, an amount
12 equal to the value of the person's unreturned contributions;
13 and

14 "(2) then to each person owning a transferable
15 interest in the proportions in which the owners of
16 transferable interests share in distributions before
17 dissolution.

18 "(c) If the partnership does not have sufficient
19 surplus to comply with subsection (b)(1), any surplus must be
20 distributed among the owners of transferable interests in
21 proportion to the value of their respective unreturned
22 contributions.

23 "(d) If a partnership's assets are insufficient to
24 satisfy all of its obligations under subsection (a), with
25 respect to each unsatisfied obligation incurred when the

1 partnership was not a limited liability partnership, the
2 following rules apply:

3 "(1) Each person that was a partner when the
4 obligation was incurred and that has not been released from
5 the obligation under Section 10A-8A-7.03(c) and (d) shall
6 contribute to the partnership for the purpose of enabling the
7 partnership to satisfy the obligation. The contribution due
8 from each of those persons is in proportion to the right to
9 receive distributions in the capacity of partner in effect for
10 each of those persons when the obligation was incurred.

11 "(2) If a person does not contribute the full amount
12 required under paragraph (1) with respect to an unsatisfied
13 obligation of the partnership, the other persons required to
14 contribute by paragraph (1) on account of the obligation shall
15 contribute the additional amount necessary to discharge the
16 obligation. The additional contribution due from each of those
17 other persons is in proportion to the right to receive
18 distributions in the capacity of partner in effect for each of
19 those other persons when the obligation was incurred.

20 "(3) If a person does not make the additional
21 contribution required by paragraph (2), further additional
22 contributions are determined and due in the same manner as
23 provided in that paragraph.

24 "(e) A person that makes an additional contribution
25 under subsection (d) (2) or (3) may recover from any person

1 whose failure to contribute under subsection (d)(1) or (2)
2 necessitated the additional contribution. A person may not
3 recover under this subsection more than the amount
4 additionally contributed. A person's liability under this
5 subsection may not exceed the amount the person failed to
6 contribute.

7 "(f) The estate of a deceased individual is liable
8 for the person's obligations under this section.

9 "(g) An assignee for the benefit of creditors of a
10 partnership or a partner, or a person appointed by a court to
11 represent creditors of a partnership or a partner, may enforce
12 a person's obligation to contribute under subsection (d).

13 "§10A-8A-8.10.

14 ~~"Notwithstanding Sections 10A-1-9.31 and 10A-1-9.32,~~
15 ~~¶~~ A partnership that has been dissolved may be reinstated upon
16 compliance with the following conditions:

17 "(a) the consent shall have been obtained from the
18 partners or other persons entitled to consent at the time that
19 is:

20 "(1) required for reinstatement under the
21 partnership agreement; or

22 "(2) if the partnership agreement does not state the
23 consent required for reinstatement, sufficient for dissolution
24 under the partnership agreement; or

1 "(3) if the partnership agreement neither states the
2 consent required for reinstatement nor for dissolution,
3 sufficient for dissolution under this chapter;

4 "(b) in the case of a written objection to
5 reinstatement having been delivered to the partnership before
6 or at the time of the consent required by subsection (a) by
7 the partners or other persons having authority under the
8 partnership agreement to bring about or prevent dissolution of
9 the partnership, those partners or persons withdrawing that
10 written objection effective at the time of the consent
11 required by subsection (a);

12 "(c) in the case of a partnership dissolved in a
13 judicial proceeding initiated by one or more of the partners
14 pursuant to Section 10A-8A-8.01(4), the consent of each of
15 those partners shall have been obtained and shall be included
16 in the consent required by subsection (a);

17 "(d) in the case of a partnership dissolved in a
18 judicial proceeding initiated by one or more of transferees
19 pursuant to Section 10A-8A-8.01(5), the consent of each of
20 those transferees shall have been obtained and shall be
21 included in the consent required by subsection (a); and

22 "(e) in the case of a partnership that has filed a
23 statement of dissolution, the filing of a certificate of
24 reinstatement in accordance with Section 10A-8A-8.11.

25 "§10A-8A-9.01.

1 ~~"Notwithstanding Section 10A-1-1.03, as~~ As used in
2 this article, unless the context otherwise requires, the
3 following terms mean:

4 ~~"(1) "Constituent organization"~~ CONSTITUENT
5 ORGANIZATION means an organization that is party to a merger
6 under this article.

7 ~~"(2) "Constituent partnership"~~ CONSTITUENT
8 PARTNERSHIP means a constituent organization that is a
9 partnership.

10 ~~"(3) "Converted organization"~~ CONVERTED ORGANIZATION
11 means the organization into which a converting organization
12 converts pursuant to this article.

13 ~~"(4) "Converting organization"~~ CONVERTING
14 ORGANIZATION means an organization that converts into another
15 organization pursuant to this article.

16 ~~"(5) "Converting partnership"~~ CONVERTING PARTNERSHIP
17 means a converting organization that is a partnership.

18 ~~"(6) "Governing statute"~~ GOVERNING STATUTE of an
19 organization means the statute that governs the organization's
20 internal affairs.

21 ~~"(7) "Organization"~~ ORGANIZATION means a
22 partnership, including a limited liability partnership;
23 limited partnership, including a limited liability limited
24 partnership; limited liability company; business trust;
25 corporation; nonprofit corporation; professional corporation;

1 or any other person having a governing statute. The term
2 includes domestic and foreign organizations whether or not
3 organized for profit.

4 "(8) ~~"Organizational documents"~~ ORGANIZATIONAL
5 DOCUMENTS means:

6 "(A) (i) for a partnership, its partnership agreement
7 and, if applicable, its statement of partnership, statement of
8 not for profit partnership, or statement of limited liability
9 partnership; and (ii) for a foreign partnership, its
10 partnership agreement and, if applicable, its statement of
11 foreign limited liability partnership;

12 "(B) for a limited partnership or foreign limited
13 partnership, its certificate of formation and partnership
14 agreement, or comparable writings as provided in its governing
15 statute;

16 "(C) for a limited liability company or foreign
17 limited liability company, its certificate of formation and
18 limited liability company agreement, or comparable writings as
19 provided in its governing statute;

20 "(D) for a business or statutory trust or foreign
21 business or statutory trust its agreement of trust and
22 declaration of trust, or comparable writings as provided in
23 its governing statute;

24 "(E) for a corporation for profit or foreign
25 corporation for profit, its certificate of formation, bylaws,

1 and other agreements among its shareholders that are
2 authorized by its governing statute, or comparable writings as
3 provided in its governing statute;

4 "(F) for a nonprofit corporation or foreign
5 nonprofit corporation, its certificate of formation, bylaws,
6 and other agreements that are authorized by its governing
7 statute, or comparable writings as provided in its governing
8 statute;

9 "(G) for a professional corporation or foreign
10 professional corporation, its certificate of formation,
11 bylaws, and other agreements among its shareholders that are
12 authorized by its governing statute, or comparable writings as
13 provided in its governing statute; and

14 "(H) for any other organization, the basic writings
15 that create the organization and determine its internal
16 governance and the relations among the persons that own it,
17 have an interest in it, or are members of it.

18 "(9) ~~"Surviving organization"~~ SURVIVING ORGANIZATION
19 means an organization into which one or more other
20 organizations are merged under this article, whether the
21 organization pre-existed the merger or was created pursuant to
22 the merger.

23 "§10A-9A-1.02.

1 ~~"Notwithstanding Section 10A-1-1.03, as~~ As used in
2 this chapter, unless the context otherwise requires, the
3 following terms mean:

4 "(1) "CERTIFICATE OF FORMATION" with respect to a
5 limited partnership means the certificate of formation
6 required by Section 10A-9A-2.01, and the certificate of
7 formation as amended or restated.

8 "(2) "DISTRIBUTION" except as otherwise provided in
9 Section 10A-9A-5.08(f), means a transfer of money or other
10 property from a limited partnership to another person on
11 account of a transferable interest.

12 "(3) "FOREIGN LIMITED LIABILITY LIMITED PARTNERSHIP"
13 means a foreign limited partnership whose general partners
14 have limited liability for the obligations of the foreign
15 limited partnership under a provision similar to Section
16 10A-9A-4.04(c).

17 "(4) "FOREIGN LIMITED PARTNERSHIP" means a
18 partnership formed under the laws of a jurisdiction other than
19 this state and required by those laws to have one or more
20 general partners and one or more limited partners. The term
21 includes a foreign limited liability limited partnership.

22 "(5) "GENERAL PARTNER" means:

23 "(A) with respect to a limited partnership, a person
24 that:

1 "(i) is admitted as a general partner under Section
2 10A-9A-4.01;

3 "or

4 "(ii) was a general partner in a limited partnership
5 when the limited partnership became subject to this chapter
6 under Section 10A-9A-11.01(a); and

7 "(B) with respect to a foreign limited partnership,
8 a person that has rights, powers, and obligations similar to
9 those of a general partner in a limited partnership.

10 "(6) "LIMITED LIABILITY LIMITED PARTNERSHIP," except
11 in the phrase "foreign limited liability limited partnership,"
12 means a limited partnership whose certificate of formation
13 states that the limited partnership is a limited liability
14 limited partnership.

15 "(7) "LIMITED PARTNER" means:

16 "(A) with respect to a limited partnership, a person
17 that:

18 "(i) is admitted as a limited partner under Section
19 10A-9A-3.01; or

20 "(ii) was a limited partner in a limited partnership
21 when the limited partnership became subject to this chapter
22 under Section 10A-9A-11.01(a); and

23 "(B) with respect to a foreign limited partnership,
24 a person that has rights, powers, and obligations similar to
25 those of a limited partner in a limited partnership.

1 "(8) "LIMITED PARTNERSHIP," except in the phrases
2 "foreign limited partnership" and "foreign limited liability
3 limited partnership," means an entity, having one or more
4 general partners and one or more limited partners, which is
5 formed under this chapter by two or more persons or becomes
6 subject to this chapter under Article 10 or Section
7 10A-9A-11.01(a). The term includes a limited liability limited
8 partnership.

9 "(9) "PARTNER" means a limited partner or general
10 partner.

11 "(10) "PARTNERSHIP AGREEMENT" means any agreement
12 (whether referred to as a partnership agreement or otherwise),
13 written, oral or implied, of the partners as to the activities
14 and affairs of a limited partnership. The partnership
15 agreement includes any amendments to the partnership
16 agreement.

17 "(11) "PERSON DISSOCIATED AS A GENERAL PARTNER"
18 means a person dissociated as a general partner of a limited
19 partnership.

20 "(12) "REQUIRED INFORMATION" means the information
21 that a limited partnership is required to maintain under
22 Section 10A-9A-1.11.

23 "(13) "TRANSFER" means an assignment, conveyance,
24 deed, bill of sale, lease, mortgage, security interest,
25 encumbrance, gift, or transfer by operation of law.

1 "(14) "TRANSFERABLE INTEREST" means a partner's
2 right to receive distributions from a limited partnership.

3 "(15) "TRANSFeree" means a person to which all or
4 part of a transferable interest has been transferred, whether
5 or not the transferor is a partner.

6 "§10A-9A-2.01.

7 "(a) In order to form a limited partnership, a
8 person must deliver a certificate of formation for filing to
9 the Secretary of State. ~~Notwithstanding~~ Section 10A-1-3.05
10 shall not apply to this chapter. Instead, the certificate of
11 formation shall set forth:

12 "(1) the name of the limited partnership, which must
13 comply with Article 5 of Chapter 1;

14 "(2) the address of the registered office required
15 by Article 5 of Chapter 1;

16 "(3) the name of the registered agent at the
17 registered office as required by Article 5 of Chapter 1;

18 "(4) the name and the street and mailing address of
19 each general partner;

20 "(5) whether the limited partnership is a limited
21 liability limited partnership;

22 "(6) any additional information required by Article
23 8 of Chapter 1 or by Article 10 of this chapter; and

24 "(7) any other matters the partners determine to
25 include therein which comply with Section 10A-9A-1.08.

1 "(b) A limited partnership is formed when the
2 certificate of formation becomes effective in accordance with
3 Article 4 of Chapter 1.

4 "(c) The fact that a certificate of formation has
5 been filed and is effective in accordance with Article 4 of
6 Chapter 1 is notice of the matters required to be included by
7 subsections (a) (1), (a) (2), (a) (3), (a) (4), if applicable,
8 (a) (5), and (a) (6), but is not notice of any other fact.

9 "(d) A partnership agreement shall be entered into
10 either before, after, or at the time of filing the certificate
11 of formation and, whether entered into before, after, or at
12 the time of filing, may be made effective as of the filing of
13 the certificate of formation or at any other time or date
14 provided in the partnership agreement.

15 "§10A-9A-2.02.

16 "~~Notwithstanding~~ Division B of Article 3 of Chapter
17 1 shall not apply to this chapter. Instead:

18 "(a) A certificate of formation may be amended at
19 any time.

20 "(b) A certificate of formation may be restated with
21 or without amendment at any time.

22 "(c) To amend its certificate of formation, a
23 limited partnership must deliver a certificate of amendment
24 for filing to the Secretary of State which certificate of
25 amendment shall state:

1 "(1) the name of the limited partnership;

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

4 "(3) the changes the amendment makes to the
5 certificate of formation as most recently amended or restated.

6 "(d) Prior to a statement of dissolution being
7 delivered to the Secretary of State for filing, a limited
8 partnership shall promptly deliver a certificate of amendment
9 for filing with the Secretary of State to reflect:

10 "(1) the admission of a new general partner; or

11 "(2) the dissociation of a person as a general
12 partner.

13 "(e) Prior to a statement of dissolution being
14 delivered to the Secretary of State for filing, if a general
15 partner knows that any information in a filed certificate of
16 formation was inaccurate when the certificate of formation was
17 filed or has become inaccurate due to changed circumstances
18 and if such information is required to be set forth in a newly
19 filed certificate of formation under this chapter, the general
20 partner shall promptly:

21 "(1) cause the certificate of formation to be
22 amended; or

23 "(2) if appropriate, deliver for filing with the
24 Secretary of State a certificate of correction in accordance
25 with Chapter 1.

1 "(f) A certificate of formation may be amended at
2 any time pursuant to this section for any other proper purpose
3 as determined by the limited partnership. A certificate of
4 formation may also be amended in a statement of merger
5 pursuant to Article 8 of Chapter 1 or Article 10 of this
6 chapter.

7 "(g) In order to restate its certificate of
8 formation, a limited partnership must deliver a restated
9 certificate of formation for filing with the Secretary of
10 State. A restated certificate of formation must:

11 "(1) be designated as such in the heading;

12 "(2) state the name of the limited partnership;

13 "(3) state the unique identifying number or other
14 designation as assigned by the Secretary of State;

15 "(4) set forth any amendment or change effected in
16 connection with the restatement of the certificate of
17 formation. Any such restatement that effects an amendment
18 shall be subject to any other provision of this chapter not
19 inconsistent with this section, which would apply if a
20 separate certificate of amendment were filed to effect the
21 amendment or change;

22 "(5) set forth the text of the restated certificate
23 of formation; and

24 "(6) state that the restated certificate of
25 formation consolidates all amendments into a single document.

1 "(h) The original certificate of formation, as
2 theretofore amended, shall be superseded by the restated
3 certificate of formation and thenceforth, the restated
4 certificate of formation, including any further amendment or
5 changes made thereby, shall be the certificate of formation of
6 the limited partnership, but the original effective date of
7 formation shall remain unchanged.

8 "(i) An amended or restated certificate of formation
9 may contain only the provisions that would be permitted at the
10 time of the amendment if the amended or restated certificate
11 of formation were a newly filed original certificate of
12 formation.

13 "(j) The filing of a certificate of amendment to the
14 certificate of formation shall have the effect, and shall take
15 effect, as provided in Section 10A-1-3.14.

16 "(k) The filing of a restated certificate of
17 formation shall have the effect, and shall take effect, as
18 provided in Section 10A-1-3.18.

19 "§10A-9A-4.06.

20 "(a) Each general partner has equal rights in the
21 management and conduct of the limited partnership's activities
22 and affairs. Except as expressly provided in this chapter, any
23 matter relating to the activities and affairs of the limited
24 partnership is decided exclusively by the general partner or,

1 if there is more than one general partner, by a majority of
2 the general partners.

3 "(b) The consent of all of the partners is necessary
4 to:

5 "(1) amend the partnership agreement;

6 "(2) amend the certificate of formation to add or
7 delete a statement that the limited partnership is a limited
8 liability limited partnership; and

9 "(3) sell, lease, exchange, or otherwise dispose of
10 all, or substantially all, of the limited partnership's
11 property, with or without the good will, other than in the
12 usual and regular course of the limited partnership's
13 activities and affairs.

14 "(c) A limited partnership shall reimburse a general
15 partner for payments made and indemnify a general partner for
16 liabilities incurred by the general partner in the ordinary
17 course of the activities and affairs of the limited
18 partnership or for the preservation of its activities and
19 affairs or its property.

20 "(d) A limited partnership shall reimburse a general
21 partner for an advance to the limited partnership beyond the
22 amount of capital the general partner agreed to contribute.

23 "(e) A payment or advance made by a general partner
24 which gives rise to an obligation of the limited partnership
25 under subsection (c) or (d) constitutes a loan to the limited

1 partnership which accrues interest from the date of the
2 payment or advance.

3 "(f) A general partner is not entitled to
4 remuneration for services performed for the partnership.

5 ~~"(g) Notwithstanding the provisions of Article 6 of~~
6 ~~Chapter 1, a~~ A limited partnership may indemnify and hold
7 harmless a partner or other person, pay in advance or
8 reimburse expenses incurred by a partner or other person, and
9 purchase and maintain insurance on behalf of a partner or
10 other person.

11 "§10A-9A-4.07.

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

13 "(a) Subject to subsection (f), a general partner,
14 without having any particular purpose for seeking the
15 information, may inspect and copy during regular business
16 hours at a reasonable location specified by the limited
17 partnership, required information and any other records
18 maintained by the limited partnership regarding the limited
19 partnership's activities and affairs and financial condition.

20 "(b) Subject to subsection (f), each general partner
21 and the limited partnership shall furnish to a general
22 partner:

23 "(1) without demand, any information concerning the
24 limited partnership's activities and affairs and activities
25 and affairs reasonably required for the proper exercise of the

1 general partner's rights and duties under the partnership
2 agreement or this chapter; and

3 "(2) on demand, any other information concerning the
4 limited partnership's activities and affairs, except to the
5 extent the demand or the information demanded is unreasonable
6 or otherwise improper under the circumstances.

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

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

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

16 "(3) the person satisfies the requirements imposed
17 on a limited partner by Section 10A-9A-3.04(b).

18 "(d) The limited partnership shall respond to a
19 demand made pursuant to subsection (c) in the same manner as
20 provided in Section 10A-9A-3.04(c).

21 "(e) If a general partner dies, Section 10A-9A-7.04
22 applies.

23 "(f) In addition to any restriction or condition
24 stated in its limited partnership agreement, a limited

1 partnership, as to a matter within the ordinary course of its
2 activities and affairs, may:

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

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

18 "In any dispute concerning the reasonableness of a
19 restriction under this subsection, the limited partnership has
20 the burden of proving reasonableness.

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

24 "(h) A general partner or person dissociated as a
25 general partner may exercise the rights under this section

1 through an attorney or other agent. Any restriction imposed
2 under subsection (f) or by the partnership agreement applies
3 both to the attorney or other agent and to the general partner
4 or person dissociated as a general partner.

5 "(i) The rights under this section do not extend to
6 a person as transferee, but the rights under subsection (c) of
7 a person dissociated as a general partner may be exercised by
8 the legal representative of an individual who dissociated as a
9 general partner under Section 10A-9A-6.03(6).

10 "(j) Any general partner who, without reasonable
11 cause, refuses to allow any general partner or person
12 dissociated as a general partner, or their agent or attorney
13 to inspect or copy any records of the limited partnership to
14 which such general partner or person disassociated as a
15 general partner is entitled under this section, shall be
16 personally liable to the general partner or person dissociated
17 as a general partner for a penalty in an amount not to exceed
18 10 percent of the fair market value of the partnership
19 interest of the general partner or person dissociated as a
20 general partner, in addition to any other damages or remedy.

21 "§10A-9A-8.02.

22 ~~"Notwithstanding Section 10A-1-9.12:~~

23 "(a) A dissolved limited partnership continues its
24 existence as a limited partnership but may not carry on any

1 activities and affairs except as is appropriate to wind up and
2 liquidate its activities and affairs, including:

3 "(1) collecting its assets;

4 "(2) disposing of its properties that will not be
5 distributed in kind to persons owning transferable interests;

6 "(3) discharging or making provisions for
7 discharging its liabilities;

8 "(4) distributing its remaining property in
9 accordance with Section 10A-9A-8.09; and

10 "(5) doing every other act necessary to wind up and
11 liquidate its activities and affairs.

12 "(b) In winding up its activities and affairs, a
13 limited partnership may:

14 "(1) deliver for filing a statement of dissolution
15 to the Secretary of State setting forth:

16 "(A) The name of the limited partnership;

17 "(B) The unique identifying number or other
18 designation as assigned by the Secretary of State;

19 "(C) That the limited partnership has dissolved;

20 "(D) The name and street mailing address of the
21 general partner who will be winding up the affairs of the
22 limited partnership pursuant to Section 10A-9A-8.03(a), and if
23 none, the name and street address of the person appointed
24 pursuant to Section 10A-9A-8.03(b) or (c) to wind up the
25 activities and affairs of the limited partnership; and

1 "(E) Any other information the limited partnership
2 deems appropriate;

3 "(2) preserve the limited partnership's activities
4 and affairs and property as a going concern for a reasonable
5 time;

6 "(3) prosecute, defend, or settle actions or
7 proceedings, whether civil, criminal, or administrative;

8 "(4) transfer the limited partnership's assets;

9 "(5) resolve disputes by mediation or arbitration;
10 and

11 "(6) merge or convert in accordance with Article 10
12 of this chapter or Article 8 of Chapter 1.

13 "(c) The dissolution of a limited partnership does
14 not:

15 "(1) transfer title to the limited partnership's
16 property;

17 "(2) prevent the commencement of a proceeding by or
18 against the limited partnership in its limited partnership
19 name;

20 "(3) terminate, abate, or suspend a proceeding
21 pending by or against the limited partnership on the effective
22 date of dissolution;

23 "(4) terminate the authority of its registered
24 agent; or

1 "(5) abate, suspend, or otherwise alter the
2 application of Sections 10A-9A-3.03 and 10A-9A-4.04(b) and
3 (c).

4 "(d) A statement of dissolution shall be deemed to
5 be a filing instrument under Chapter 1.

6 "§10A-9A-8.06.

7 ~~"Notwithstanding Sections 10A-1-9.01 and 10A-1-9.21:~~

8 "(a) A dissolved limited partnership may dispose of
9 any known claims against it by following the procedures
10 described in subsection (b) at any time after the effective
11 date of the dissolution of the limited partnership.

12 "(b) A dissolved limited partnership may give notice
13 of the dissolution in a record to the holder of any known
14 claim. The notice must:

15 "(1) identify the dissolved limited partnership;

16 "(2) describe the information required to be
17 included in a claim;

18 "(3) provide a mailing address to which the claim is
19 to be sent;

20 "(4) state the deadline, which may not be fewer than
21 120 days from the effective date of the notice, by which the
22 dissolved partnership must receive the claim;

23 "(5) state that if not sooner barred, the claim will
24 be barred if not received by the deadline; and

1 "(6) unless the limited partnership has been
2 throughout its existence a limited liability limited
3 partnership, state that the barring of a claim against the
4 limited partnership will also bar any corresponding claim
5 against any general partner or person dissociated as a general
6 partner which is based on Section 10A-9A-4.04.

7 "(c) Unless sooner barred by any other statute
8 limiting actions, a claim against a dissolved limited
9 partnership is barred:

10 "(1) if a claimant who was given notice under
11 subsection (b) does not deliver the claim to the dissolved
12 limited partnership by the deadline; or

13 "(2) if a claimant whose claim was rejected by the
14 dissolved limited partnership, does not commence a proceeding
15 to enforce the claim within 90 days from the effective date of
16 the rejection notice.

17 "(d) For purposes of this section, "known claim" or
18 "claim" includes unliquidated claims, but does not include a
19 contingent liability that has not matured so that there is no
20 immediate right to bring suit or a claim based on an event
21 occurring after the effective date of dissolution.

22 "(e) Nothing in this section shall be deemed to
23 extend any otherwise applicable statute of limitations.

24 "§10A-9A-8.07.

25 ~~"Notwithstanding Sections 10A-1-9.01 and 10A-1-9.22:~~

1 "(a) A dissolved limited partnership may publish
2 notice of its dissolution and request that persons with claims
3 against the dissolved limited partnership present them in
4 accordance with the notice.

5 "(b) The notice authorized by subsection (a) must:

6 "(1) be published at least one time in a newspaper
7 of general circulation in the county in which the dissolved
8 limited partnership's principal office is located in this
9 state, and if none in this state, in the county in which the
10 limited partnership's most recent registered office is
11 located;

12 "(2) describe the information that must be included
13 in a claim and provide a mailing address to which the claim is
14 to be sent;

15 "(3) state that if not sooner barred, a claim
16 against the dissolved limited partnership will be barred
17 unless a proceeding to enforce the claim is commenced within
18 two years after the publication of the notice; and

19 "(4) unless the limited partnership has been
20 throughout its existence a limited liability limited
21 partnership, state that the barring of a claim against the
22 limited partnership will also bar any corresponding claim
23 against any general partner or person dissociated as a general
24 partner which is based on Section 10A-9A-4.04.

1 "(c) If a dissolved limited partnership publishes a
2 newspaper notice in accordance with subsection (b), unless
3 sooner barred by any other statute limiting actions, the claim
4 of each of the following claimants is barred unless the
5 claimant commences a proceeding to enforce the claim against
6 the dissolved limited partnership within two years after the
7 publication date of the newspaper notice:

8 "(1) a claimant who was not given notice under
9 Section 10A-9A-8.06;

10 "(2) a claimant whose claim was timely sent to the
11 dissolved limited partnership but not acted on by the
12 dissolved limited partnership; and

13 "(3) a claimant whose claim is contingent at the
14 effective date of the dissolution of the limited partnership,
15 or is based on an event occurring after the effective date of
16 the dissolution of the limited partnership.

17 "(d) A claim that is not barred under this section,
18 any other statute limiting actions, or Section 10A-9A-8.06 may
19 be enforced:

20 "(1) against a dissolved limited partnership, to the
21 extent of its undistributed assets;

22 "(2) except as provided in subsection (h), if the
23 assets of a dissolved limited partnership have been
24 distributed after dissolution, against the person or persons
25 owning the transferable interests to the extent of that

1 person's proportionate share of the claim or of the assets
2 distributed to that person after dissolution, whichever is
3 less, but a person's total liability for all claims under
4 subsection (d) may not exceed the total amount of assets
5 distributed to that person after dissolution of the limited
6 partnership; or

7 "(3) against any person liable on the claim under
8 Section 10A-9A-4.04 and 10A-9A-6.07.

9 "(e) A dissolved limited partnership that published
10 a notice under this section may file an application with the
11 designated court, and if none the circuit court for the county
12 in which the dissolved limited partnership's principal office
13 is located in this state and if the dissolved limited
14 partnership does not have a principal office within this
15 state, in the circuit court for the county in which the
16 dissolved limited partnership's most recent registered office
17 is located, for a determination of the amount and form of
18 security to be provided for payment of claims that are
19 contingent or have not been made known to the dissolved
20 limited partnership or that are based on an event occurring
21 after the effective date of the dissolution of the limited
22 partnership but that, based on the facts known to the
23 dissolved limited partnership, are reasonably estimated to
24 arise after the effective date of the dissolution of the
25 limited partnership. Provision need not be made for any claim

1 that is or is reasonably anticipated to be barred under
2 subsection (c).

3 "(f) Within 10 days after the filing of the
4 application provided for in subsection (e), notice of the
5 proceeding shall be given by the dissolved limited partnership
6 to each potential claimant as described in subsection (e).

7 "(g) The circuit court under subsection (e) may
8 appoint a guardian ad litem to represent all claimants whose
9 identities are unknown in any proceeding brought under this
10 section. The reasonable fees and expenses of the guardian,
11 including all reasonable expert witness fees, shall be paid by
12 the dissolved limited partnership.

13 "(h) Provision by the dissolved limited partnership
14 for security in the amount and the form ordered by the circuit
15 court under subsection (e) shall satisfy the dissolved limited
16 partnership's obligation with respect to claims that are
17 contingent, have not been made known to the dissolved limited
18 partnership, or are based on an event occurring after the
19 effective date of the dissolution of the limited partnership,
20 and those claims may not be enforced against a person owning a
21 transferable interest to whom assets have been distributed by
22 the dissolved limited partnership after the effective date of
23 the dissolution of the limited partnership.

24 "(i) Nothing in this section shall be deemed to
25 extend any otherwise applicable statute of limitations.

1 "(j) If a claim has been satisfied, disposed of, or
2 barred under Section 10A-9A-8.06, this section, or other law,
3 the person or persons designated to wind up the affairs of a
4 limited partnership, and the owners of the transferable
5 interests receiving assets from the limited partnership, shall
6 not be liable for that claim.

7 "§10A-9A-8.09.

8 "~~Notwithstanding Section 10A-1-9.12, upon~~ Upon the
9 winding up of a limited partnership, the assets of the limited
10 partnership, including any obligation under Article 5 of this
11 chapter, and any contribution required by this section, shall
12 be applied as follows:

13 "(a) Payment, or adequate provision for payment,
14 shall be made to creditors, including, to the extent permitted
15 by law, partners who are creditors, in satisfaction of
16 liabilities of the limited partnership.

17 "(b) After a limited partnership complies with
18 subsection (a), any surplus must be distributed:

19 "(1) first, to each person owning a transferable
20 interest that reflects contributions made on account of the
21 transferable interest and not previously returned, an amount
22 equal to the value of the person's unreturned contributions;
23 and

24 "(2) then to each person owning a transferable
25 interest in the proportions in which the owners of

1 transferable interests share in distributions before
2 dissolution.

3 "(c) If the limited partnership does not have
4 sufficient surplus to comply with subsection (b)(1), any
5 surplus must be distributed among the owners of transferable
6 interests in proportion to the value of their respective
7 unreturned contributions.

8 "(d) If a limited partnership's assets are
9 insufficient to satisfy all of its obligations under
10 subsection (a), with respect to each unsatisfied obligation
11 incurred when the limited partnership was not a limited
12 liability limited partnership, the following rules apply:

13 "(1) Each person that was a general partner when the
14 obligation was incurred and that has not been released from
15 the obligation under Section 10A-9A-6.07 shall contribute to
16 the limited partnership for the purpose of enabling the
17 limited partnership to satisfy the obligation. The
18 contribution due from each of those persons is in proportion
19 to the right to receive distributions in the capacity of
20 general partner in effect for each of those persons when the
21 obligation was incurred.

22 "(2) If a person does not contribute the full amount
23 required under paragraph (1) with respect to an unsatisfied
24 obligation of the limited partnership, the other persons
25 required to contribute by paragraph (1) on account of the

1 obligation shall contribute the additional amount necessary to
2 discharge the obligation. The additional contribution due from
3 each of those other persons is in proportion to the right to
4 receive distributions in the capacity of general partner in
5 effect for each of those other persons when the obligation was
6 incurred.

7 "(3) If a person does not make the additional
8 contribution required by paragraph (2), further additional
9 contributions are determined and due in the same manner as
10 provided in that paragraph.

11 "(e) A person that makes an additional contribution
12 under subsection (d) (2) or (3) may recover from any person
13 whose failure to contribute under subsection (d) (1) or (2)
14 necessitated the additional contribution. A person may not
15 recover under this subsection more than the amount
16 additionally contributed. A person's liability under this
17 subsection may not exceed the amount the person failed to
18 contribute.

19 "(f) The estate of a deceased individual is liable
20 for the person's obligations under this section.

21 "(g) An assignee for the benefit of creditors of a
22 limited partnership or a partner, or a person appointed by a
23 court to represent creditors of a limited partnership or a
24 partner, may enforce a person's obligation to contribute under
25 subsection (d).

1 "§10A-9A-8.10.

2 ~~"Notwithstanding Sections 10A-1-9.31 and 10A-1-9.32,~~

3 a A limited partnership that has been dissolved may be
4 reinstated upon compliance with the following conditions:

5 "(a) the consent shall have been obtained from the
6 partners or other persons entitled to consent at the time that
7 is:

8 "(1) required for reinstatement under the
9 partnership agreement; or

10 "(2) if the partnership agreement does not state the
11 consent required for reinstatement, sufficient for dissolution
12 under the partnership agreement; or

13 "(3) if the partnership agreement neither states the
14 consent required for reinstatement nor for dissolution,
15 sufficient for dissolution under this chapter;

16 "(b) in the case of a written objection to
17 reinstatement having been delivered to the limited partnership
18 before or at the time of the consent required by subsection
19 (a) by the partners or other persons having authority under
20 the partnership agreement to bring about or prevent
21 dissolution of the limited partnership, those partners or
22 persons withdrawing that written objection effective at the
23 time of the consent required by subsection (a);

24 "(c) in the case of a limited partnership dissolved
25 in a judicial proceeding initiated by one or more of the

1 partners, the consent of each of those partners shall have
2 been obtained and shall be included in the consent required by
3 subsection (a); and

4 "(d) the filing of a certificate of reinstatement in
5 accordance with Section 10A-9A-8.11.

6 "§10A-9A-10.01.

7 ~~"Notwithstanding Section 10A-1-1.03, as As used in~~
8 this article, unless the context otherwise requires, the
9 following terms mean:

10 "(1) "CONSTITUENT LIMITED PARTNERSHIP" means a
11 constituent organization that is a limited partnership.

12 "(2) "CONSTITUENT ORGANIZATION" means an
13 organization that is party to a merger under this article.

14 "(3) "CONVERTED ORGANIZATION" means the organization
15 into which a converting organization converts pursuant to this
16 article.

17 "(4) "CONVERTING LIMITED PARTNERSHIP" means a
18 converting organization that is a limited partnership.

19 "(5) "CONVERTING ORGANIZATION" means an organization
20 that converts into another organization pursuant to this
21 article.

22 "(6) "GENERAL PARTNER" means a general partner of a
23 limited partnership.

24 "(7) "GOVERNING STATUTE" of an organization means
25 the statute that governs the organization's internal affairs.

1 "(8) "ORGANIZATION" means a general partnership,
2 including a limited liability partnership; limited
3 partnership, including a limited liability limited
4 partnership; limited liability company; business trust;
5 corporation; nonprofit corporation; professional corporation;
6 or any other person having a governing statute. The term
7 includes domestic and foreign organizations whether or not
8 organized for profit.

9 "(9) "ORGANIZATIONAL DOCUMENTS" means:

10 "(A) for a general partnership or foreign general
11 partnership, its partnership agreement and if applicable, its
12 registration as a limited liability partnership or a foreign
13 limited liability partnership;

14 "(B) for a limited partnership or foreign limited
15 partnership, its certificate of formation and partnership
16 agreement, or comparable writings as provided in its governing
17 statute;

18 "(C) for a limited liability company or foreign
19 limited liability company, its certificate of formation and
20 limited liability company agreement, or comparable writings as
21 provided in its governing statute;

22 "(D) for a business or statutory trust or foreign
23 business or statutory trust its agreement of trust and
24 declaration of trust, or comparable writings as provided in
25 its governing statute;

1 "(E) for a corporation for profit or foreign
2 corporation for profit, its certificate of formation, bylaws,
3 and other agreements among its shareholders that are
4 authorized by its governing statute, or comparable writings as
5 provided in its governing statute;

6 "(F) for a nonprofit corporation or foreign
7 nonprofit corporation, its certificate of formation, bylaws,
8 and other agreements that are authorized by its governing
9 statute, or comparable writings as provided in its governing
10 statute;

11 "(G) for a professional corporation or foreign
12 professional corporation, its certificate of formation,
13 bylaws, and other agreements among its shareholders that are
14 authorized by its governing statute, or comparable writings as
15 provided in its governing statute; and

16 "(H) for any other organization, the basic writings
17 that create the organization and determine its internal
18 governance and the relations among the persons that own it,
19 have an interest in it, or are members of it.

20 "(10) **"SURVIVING ORGANIZATION"** means an organization
21 into which one or more other organizations are merged under
22 this article, whether the organization pre-existed the merger
23 or was created pursuant to the merger."

24 Section 6. Section 40-9-12, Code of Alabama 1975, is
25 amended to read as follows:

1 "§40-9-12.

2 "(a) The National Foundation's Alabama Field
3 Offices, all Young Men's Hebrew Associations (Y.M.H.A.) also
4 known as Jewish Community Centers (J.C.C.), and all real and
5 personal property of all Young Men's Hebrew Associations
6 (Y.M.H.A.) also known as Jewish Community Centers (J.C.C.),
7 the Seamen's Home of Mobile, incorporated under Act No. 145,
8 Acts of Alabama 1844-45, the Girl Scouts of America and the
9 Boy Scouts of America, and any council, troop or other
10 subdivision thereof now existing or hereafter created and all
11 real and personal property of the Girl Scouts of America and
12 the Boy Scouts of America, and any council, troop or other
13 subdivision thereof now existing or hereafter created, the
14 Catholic Maritime Club of Mobile, Inc., the Knights of Pythias
15 Lodges, the Salvation Army, Inc., the Elks Memorial Center,
16 and all real and personal property of the Salvation Army,
17 Inc., and the Elks Memorial Center, all United Way
18 organizations and United Way member agencies in Alabama, other
19 qualifying united appeal funds and their recipients as
20 provided in subsection (d), and the real and personal property
21 of all United Way organizations and United Way member agencies
22 in Alabama, other qualifying united appeal funds and their
23 recipients as provided in subsection (d), and the Alabama
24 Masonic Home, the American Cancer Society, and all real and
25 personal property of American Cancer Society, the New Hope

1 Industries of Dothan, and all real and personal property of
2 the New Hope Industries of Dothan, the Helping Hand Club of
3 Anniston, and all real and personal property of the Helping
4 Hand Club of Anniston, Childhaven, Inc., and all real and
5 personal property of Childhaven, Inc., Presbyterian Home for
6 Children and all real and personal property of Presbyterian
7 Home for Children, Freewill Baptist Children's Home and all
8 real and personal property of Freewill Baptist Children's
9 Home, Methodist Homes for the Aging and all real and personal
10 property of Methodist Homes for the Aging, and United
11 Methodist Children's Home and all real and personal property
12 of United Methodist Children's Home, Birmingham Building
13 Trades Towers of Birmingham, Alabama, a nonprofit corporation,
14 the Holy Comforter House, Inc., of Gadsden, Alabama, a
15 nonprofit corporation, the University of Alabama Huntsville
16 Foundation and all real and personal property of the
17 University of Alabama Huntsville Foundation, the Birmingham
18 Football Foundation, Inc., a nonprofit corporation, and all
19 real and personal property of the Birmingham Football
20 Foundation, Inc., and of any branch or department of any of
21 same heretofore or hereafter organized and existing in good
22 faith in the State of Alabama, for other than pecuniary gain
23 and not for individual profit, when such real or personal
24 property shall be used by such associations or nonprofit
25 corporations, their branches or departments in and about the

1 conducting, maintaining, operating and carrying out of the
2 program, work, principles, objectives, and policies of such
3 associations or nonprofit corporations, their branches or
4 departments, in any city or county of the State of Alabama,
5 are exempt from the payment of any and all state, county, and
6 municipal taxes, licenses, fees, and charges of any nature
7 whatsoever, including any privilege or excise tax heretofore
8 or hereafter levied by the State of Alabama or any county or
9 municipality thereof. The receipt, assessment or collection of
10 any fee, admission, service charge, rent, dues, or any other
11 item or charge by any such association or nonprofit
12 corporation, its branches or departments from any person,
13 firm, or corporation for any services rendered by any such
14 association or nonprofit corporation, its branches or
15 departments or for the use or occupancy of any real or
16 personal property of any such association or nonprofit
17 corporation, its branches or departments in or about the
18 conducting, maintaining, operating, and carrying out of the
19 program, work, principles, objectives, and policies of any
20 such association or nonprofit corporation, its branches, or
21 departments shall not be held or construed by any court,
22 agency, officer, or commission of the State of Alabama, or any
23 county or municipality thereof, to constitute pecuniary gain
24 or individual profit by any such association or nonprofit
25 corporation, its branches or departments, or the doing of

1 business in such a manner as to prejudice or defeat, in any
2 manner, the right and privilege of any such association or
3 nonprofit corporation, its branches or departments to claim or
4 rely upon or receive the exemption of such association or
5 nonprofit corporation, its branches or departments and of all
6 real and personal property thereof from taxation, as herein
7 provided.

8 "(b) With respect to gasoline, tobacco, playing card
9 tax or any other tax required by law to be prepaid by the
10 retailer, the associations, nonprofit corporations, or
11 organizations exempt under this section shall pay the
12 appropriate tax at the time purchases are made, and the amount
13 of such tax shall be refunded to such associations, nonprofit
14 corporations, or organizations by the Department of Revenue
15 pursuant to the procedures for refunds provided in Chapter 2A
16 of this title.

17 "(c) For purposes of this section, the following
18 words and phrases shall have the following meanings:

19 "(1) SUPPORTED CHARITY. Any charitable, civic, or
20 eleemosynary institution for which a united appeal fund
21 solicits funds.

22 "(2) UNITED APPEAL FUND. Any nonprofit entity that
23 demonstrates to the reasonable satisfaction of the Department
24 of Revenue that it has all of the following characteristics:

1 "a. Is an Alabama nonprofit corporation, or another
2 type of legal entity, whether formed in Alabama or in another
3 jurisdiction, which is required by its principal governing
4 documents to be operated as a charity.

5 "b. Is one of a class, donations to which are
6 deductible for federal and Alabama income tax purposes under
7 Section 170(c) of the Internal Revenue Code.

8 "c. Has as its principal purpose, as stated by its
9 principal governing documents, the raising of funds or the
10 aggregation or consolidation of fund raising efforts, to
11 support other charities which are not themselves united appeal
12 funds, known as supported charities.

13 "d. Has been issued a Certificate of Exemption from
14 Alabama sales, use, and lodgings tax prior to July 1, 2017,
15 and has continually maintained the Certificate of Exemption as
16 required by Section 40-9-60.

17 "e. With respect to the distribution of funds raised
18 by the united appeal fund, the entity's principle governing
19 documents must require that no supported charity, as defined
20 in this subsection, will receive de minimis support.

21 "(3) UNITED WAY MEMBER AGENCY. Any nonprofit
22 organization that receives ~~more than a de minimis amount of~~
23 funding through the approval of the board of a United Way
24 organization, but only if the nonprofit organization is:

1 "a. Accountable to the granting United Way
2 organization for the expenditure of any funds received from
3 such United Way organization.

4 "b. Included on a list of such nonprofit
5 organizations to be submitted to the Department of Revenue
6 under subsection (e) by all United Way organizations on or
7 before a date provided for in a rule of the Department of
8 Revenue.

9 "(4) UNITED WAY ORGANIZATION. Any nonprofit
10 corporation legally authorized and licensed to operate under
11 the name United Way and use the name United Way and the
12 associated logo and trademarks.

13 "(d) (1) Each supported charity must be separately
14 identified by name in the principal governing documents of the
15 united appeal fund entity, and by name and federal employer
16 identification number at the request of the Department of
17 Revenue. Each supported charity must agree, in its own
18 principal governing documents, to become or remain a member of
19 the united appeal fund that funded the supported charity.

20 "(2) The special rules provided in this subsection
21 shall not apply to any United Way organization or any United
22 Way member agency.

23 "(e) (1) Each United Way organization shall provide
24 the Department of Revenue with a list of its constituent
25 United Way member agencies on an annual basis.

1 "(2) The Department of Revenue, by rule, shall
2 provide the date on which United Way organizations shall
3 submit the list required by this subsection."

4 Section 7. This act shall become effective on
5 January 1, 2022, following its passage and approval by the
6 Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB96
Senate 02-MAR-21
I hereby certify that the within Act originated in and passed
the Senate.

Patrick Harris,
Secretary.

House of Representatives
Amended and passed 15-APR-21

Senate concurred in House amendment 20-APR-21

By: Senator Givhan