

1 SB96
2 208922-1
3 By Senator Givhan
4 RFD: Judiciary
5 First Read: 02-FEB-21
6 PFD: 01/27/2021

SYNOPSIS: This bill would make changes to the Alabama Business and Nonprofit Entities Code to clarify the relationship between the general provisions of Chapter 1 and the other chapters contained within the Alabama Business and Nonprofit Entities Code.

A BILL
TO BE ENTITLED
AN ACT

Relating to the Alabama Business and Nonprofit Entities Code; to amend Sections 10A-1-1.02, 10A-1-1.03, and 10A-1-4.02, as amended by Act 2020-73, 2020 Regular Session, Code of Alabama 1975; to add Section 10A-1-5.18 to the Code of Alabama 1975; to amend Sections 10A-2A-1.40 and 10A-2A-1.41, as amended by Act 2020-73, 2020 Regular Session, Section 10A-2A-2.01, as added to the Code of Alabama 1975 by Act 2019-94, 2019 Regular Session, Sections 10A-2A-2.02 and 10A-2A-7.20, as amended by Act 2020-73, 2020 Regular Session, Sections 10A-2A-8.30, 10A-2A-8.31, 10A-2A-8.42, 10A-2A-8.43,

1 10A-2A-8.59, 10A-2A-9.01, 10A-2A-10.06, 10A-2A-10.07,
2 10A-2A-10.08, 10A-2A-11.01, 10A-2A-13.01, and 10A-2A-16.01, as
3 added to the Code of Alabama 1975 by Act 2019-94, 2019 Regular
4 Session, and Section 10A-3-1.02, Code of Alabama 1975; to add
5 Section 10A-3-1.05 to the Code of Alabama 1975; to amend
6 Sections 10A-3-2.02, 10A-3-2.03, 10A-3-2.09, and 10A-3-2.21,
7 Section 10A-5A-1.02, as amended by Act 2018-125, 2018 Regular
8 Session, Sections 10A-5A-2.01, 10A-5A-2.02, and 10A-5A-7.02,
9 as amended by Act 2020-73, 2020 Regular Session, Section
10 10A-5A-7.04, Section 10A-5A-7.05, as amended by Act 2020-73,
11 2020 Regular Session, Sections 10A-5A-7.06, 10A-5A-7.07,
12 10A-5A-11.10, and 10A-5A-11.12, Section 10A-5A-11.13, as
13 amended by Act 2020-73, 2020 Regular Session, Sections
14 10A-5A-11.14 and 10A-5A-11.15, Section 10A-8A-1.02, as amended
15 by Act 2019-304, 2019 Regular Session, Section 10A-8A-4.10, as
16 added to the Code of Alabama 1975 by Act 2018-125, 2018
17 Regular Session, Section 10A-8A-8.02, as amended by Act
18 2020-73, 2020 Regular Session, Section 10A-8A-8.06, as added
19 to the Code of Alabama by Act 2018-125, 2018 Regular Session,
20 Section 10A-8A-8.07, as amended by Act 2020-73, 2020 Regular
21 Session, Sections 10A-8A-8.09, 10A-8A-8.10, and 10A-8A-9.01,
22 as added to the Code of Alabama 1975 by Act 2018-125, 2018
23 Regular Session, Section 10A-9A-1.02, Sections 10A-9A-2.01 and
24 10A-9A-2.02, as amended by Act 2020-73, 2020 Regular Session,
25 Sections 10A-9A-4.06 and 10A-9A-4.07, Section 10A-9A-8.02, as
26 amended by Act 2020-73, 2020 Regular Session, Section
27 10A-9A-8.06, Section 10A-9A-8.07, as amended by Act 2020-73,

1 2020 Regular Session, and Sections 10A-9A-8.09, 10A-9A-8.10,
2 and 10A-9A-10.01, Code of Alabama 1975; to clarify the
3 relationship between the general provisions of Chapter 1 and
4 the other chapters contained within the Alabama Business and
5 Nonprofit Entities Code.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. Sections 10A-1-1.02, 10A-1-1.03, and
8 10A-1-4.02, as amended by Act 2020-73, 2020 Regular Session,
9 of the Code of Alabama 1975, are amended to read as follows:

10 "§10A-1-1.02.

11 "(a) All provisions of this chapter shall apply to
12 all entities formed pursuant to or governed by Chapters 2A to
13 11, inclusive, and Chapter 17, ~~except to the extent, if any,~~
14 ~~that any provision of this chapter is inconsistent with or as~~
15 ~~otherwise provided by the provisions of this title or other~~
16 ~~statutory or constitutional provisions specifically applicable~~
17 ~~to the entity~~ as set forth in this chapter and except as set
18 forth in subsections (c), (d), and (e).

19 "(b) The provisions of this chapter shall apply to
20 entities formed pursuant to or governed by Chapter 16, Chapter
21 20, and Chapter 30 only as provided therein or expressly
22 provided in this chapter.

23 "(c) If a provision of this chapter conflicts with a
24 provision in another chapter of this title, the provision of
25 the other chapter, to the extent of the conflict, supersedes
26 the provision of this chapter.

1 "(d) Provisions in another chapter may provide that
2 the provisions of this chapter do not apply by specifically
3 providing which provisions in this chapter do not apply.

4 "(e) Provisions in another chapter may provide that
5 the governing documents of an entity governed by that other
6 chapter may supersede the provisions of this chapter by
7 specifically providing which provisions in this chapter may be
8 superseded by those governing documents.

9 "§10A-1-1.03.

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

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

17 (1) AFFILIATE. A person who controls, is controlled
18 by, or is under common control with another person. An
19 affiliate of an individual includes the spouse, or a parent or
20 sibling thereof, of the individual, or a child, grandchild,
21 sibling, parent, or spouse of any thereof, of the individual,
22 or an individual having the same home as the individual, or a
23 trust or estate of which an individual specified in this
24 sentence is a substantial beneficiary; a trust, estate,
25 incompetent, conservatee, protected person, or minor of which
26 the individual is a fiduciary; or an entity of which the

1 individual is director, general partner, agent, employee or
2 the governing authority or member of the governing authority.

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

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

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

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

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

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

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

19 "(3) ASSOCIATION. Includes, but is not limited to,
20 an unincorporated nonprofit association as defined in Chapter
21 17 and an unincorporated professional association as defined
22 in Article 1 of Chapter 30.

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

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

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

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

9 "(8) CERTIFICATE OF FORMATION.

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

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

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

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

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

23 "(12) CONTRIBUTION. A tangible or intangible benefit
24 that a person transfers to an entity in consideration for an
25 ownership interest in the entity or otherwise in the person's
26 capacity as an owner or a member. A benefit that may
27 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.

26 "(16) COOPERATIVE. Includes an employee cooperative
27 as defined in Chapter 11.

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

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

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

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

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

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

25 "(21) DESIGNATED COURT. The court or courts that are
26 designated in the (i) certificate of incorporation or bylaws
27 of a corporation as authorized by Chapter 2A, (ii) limited

1 liability company agreement of a limited liability company
2 formed pursuant to or governed by Chapter 5A, (iii)
3 partnership agreement of a partnership formed pursuant to or
4 governed by Chapter 8A, or (iv) limited partnership agreement
5 of a limited partnership formed pursuant to or governed by
6 Chapter 9A.

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

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

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

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

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

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

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

26 "(29) ELECTRONIC TRANSMISSION or ELECTRONICALLY
27 TRANSMITTED. Any form or process of communication not directly

1 involving the physical transfer of paper or another tangible
2 medium, which (i) is suitable for the retention, retrieval,
3 and reproduction of information by the recipient, and (ii) is
4 retrievable in paper form by the recipient through an
5 automated process used in conventional commercial practice.

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

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

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

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

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

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

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

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

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

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

9 "(40) GENERAL PARTNER.

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

11 "(B) a person who is admitted to a limited
12 partnership as a general partner in accordance with the
13 governing documents of the limited partnership.

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

17 "(42) GOVERNING AUTHORITY. A person or group of
18 persons who are entitled to manage and direct the affairs of
19 an entity pursuant to this title and the governing documents
20 of the entity, except that if the governing documents of the
21 entity or this title divide the authority to manage and direct
22 the affairs of the entity among different persons or groups of
23 persons according to different matters, governing authority
24 means the person or group of persons entitled to manage and
25 direct the affairs of the entity with respect to a matter
26 under the governing documents of the entity or this title. The
27 term includes the board of directors of a corporation, by

1 whatever name known, or other persons authorized to perform
2 the functions of the board of directors of a corporation, the
3 general partners of a general partnership or limited
4 partnership, the persons who have direction and oversight of a
5 limited liability company, and the trust managers of a real
6 estate investment trust. The term does not include an officer
7 who is acting in the capacity of an officer.

8 "(43) GOVERNING DOCUMENTS.

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

10 "(i) the certificate of formation for a filing
11 entity or the document or agreement under which a nonfiling
12 entity is formed; and

13 "(ii) the other documents or agreements, including
14 bylaws, partnership agreements of partnerships, limited
15 liability company agreements of limited liability companies,
16 or similar documents, adopted by the entity pursuant to this
17 title to govern the formation or the internal affairs of the
18 entity; or

19 "(B) in the case of a foreign entity, the
20 instruments, documents, or agreements adopted under the law of
21 its jurisdiction of formation to govern the formation or the
22 internal affairs of the entity.

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

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

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

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

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

10 "(49) JURISDICTION OF FORMATION.

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

12 "(B) in the case of a foreign entity, the
13 jurisdiction in which the entity's certificate of formation or
14 similar organizational instrument is filed, or if no
15 certificate of formation or similar organizational instrument
16 is filed, then the laws of the jurisdiction which govern the
17 internal affairs of the foreign entity;

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

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

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

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

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

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

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

17 "(52) LICENSING AUTHORITY. The state court, state
18 regulatory licensing board, or other like agency which has the
19 power to issue a license or other legal authorization to
20 render professional services.

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

23 "(54) LIMITED LIABILITY LIMITED PARTNERSHIP. A
24 limited liability limited partnership as defined in Chapter
25 9A.

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

1 "(56) LIMITED PARTNER. A person who has been
2 admitted to a limited partnership as a limited partner as
3 provided by:

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

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

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

11 "(58) MANAGERIAL OFFICIAL. An officer or a governing
12 person.

13 "(59) MEMBER.

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

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

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

24 "(D) in the case of a nonprofit association, a
25 person who, as provided in Chapter 17, may participate in the
26 selection of persons authorized to manage the affairs of the
27 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.

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

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

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

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

16 "(68) OWNER.

17 "(A) With respect to a foreign or domestic business
18 corporation or real estate investment trust, a stockholder or
19 a shareholder;

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

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

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

26 "(69) OWNERSHIP INTEREST. An owner's interest in an
27 entity. The term includes the owner's share of profits and

1 losses or similar items and the right to receive
2 distributions. The term does not include an owner's right to
3 participate in management or participate in the direction or
4 oversight of the entity. An ownership interest is personal
5 property.

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

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

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

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

12 "(72) PARTNERSHIP. Includes a general partnership, a
13 limited liability partnership, a foreign limited liability
14 partnership, a limited partnership, a foreign limited
15 partnership, a limited liability limited partnership, and a
16 foreign limited liability limited partnership.

17 "(73) PARTNERSHIP AGREEMENT. Any agreement (whether
18 referred to as a partnership agreement or otherwise), written,
19 oral or implied, of the partners as to the activities and
20 affairs of a general partnership or a limited partnership. The
21 partnership agreement includes any amendments to the
22 partnership agreement. In the case of limited partnerships
23 formed prior to October 1, 1998, partnership agreement
24 includes the certificate of partnership.

25 "(74) PARTY TO THE MERGER. A domestic entity or
26 foreign entity that under a plan of merger is combined by a
27 merger. The term does not include a domestic entity or foreign

1 entity that is not to be combined into or with one or more
2 domestic entities or foreign entities, regardless of whether
3 ownership interests of the entity are to be issued under the
4 plan of merger.

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

18 "(76) PRESIDENT.

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

21 "(B) the officer or committee of persons authorized
22 to perform the functions of the principal executive officer of
23 an entity without regard to the designated name of the officer
24 or committee.

25 "(77) PRINCIPAL OFFICE. The office, in or out of
26 this state, where the principal executive office, whether

1 referred to as the principal executive office, chief executive
2 office, or otherwise, of an entity is located.

3 "(78) PROFESSIONAL ASSOCIATION. A professional
4 association as defined in Chapter 30.

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

7 "(80) PROFESSIONAL ENTITY. A professional
8 association and a professional corporation.

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

13 "(82) PROPERTY. Includes all property, whether real,
14 personal, or mixed, or tangible or intangible, or any right or
15 interest therein.

16 "(83) REAL ESTATE INVESTMENT TRUST. An
17 unincorporated trust, association, or other entity as defined
18 in Chapter 10.

19 "(84) SECRETARY.

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

22 "(B) the officer or committee of persons authorized
23 to perform the functions of secretary of an entity without
24 regard to the designated name of the officer or committee.

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

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

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

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

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

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

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

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

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

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

1 "(91) TREASURER.

2 "(A) The individual designated as treasurer 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 treasurer of an entity without
6 regard to the designated name of the officer or committee.

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

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

12 "(94) VICE PRESIDENT.

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

15 "(B) the officer or committee of persons authorized
16 to perform the functions of the president of the entity on the
17 death, absence, or resignation of the president or on the
18 inability of the president to perform the functions of office
19 without regard to the designated name of the officer or
20 committee.

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

25 "§10A-1-4.02.

1 "(a) A filing instrument required or allowed by this
2 title to be delivered to the Secretary of State for filing
3 shall be delivered to the Secretary of State for filing.

4 "(b) A filing instrument required or permitted by
5 this title to be delivered to the judge of probate for filing
6 shall be delivered to the judge of probate for filing.

7 "(c) If a provision of this title does not specify
8 which filing officer a filing instrument is to be delivered to
9 for filing, that filing instrument shall be delivered to the
10 Secretary of State for filing.

11 "(d) If the filing officer finds that a filing
12 instrument delivered to the filing officer for filing
13 substantially conforms to the provisions of this title that
14 apply to that filing instrument and that all required fees
15 have been paid, the filing officer shall file it immediately
16 upon delivery by:

17 "(1) recording that filing instrument as "filed,"
18 together with the name and official title of the filing
19 officer and the date and time of receipt on the instrument and
20 all copies required hereunder and on the receipt for the
21 filing fee;

22 "(2) accepting that filing instrument into the
23 filing system adopted by the filing officer and assigning the
24 instrument a date and time of filing; and

25 "(3) delivering a copy of that filing instrument,
26 indicating the date and time of the filing on the copy along

1 with the filing fee receipt to the entity or its
2 representative.

3 "(e) The filing fee to be collected by the filing
4 officer shall be paid or provision for payment shall be made
5 in a manner permitted by the filing officer. The filing
6 officer may accept payment of the correct amount due by check,
7 credit card, charge card, or similar method. If the amount due
8 is tendered by any method other than cash, the liability shall
9 not be finally discharged until the filing officer receives
10 final irrevocable full payment of immediately available funds.
11 If after five consecutive calendar days prior notice by the
12 filing officer to the entity or person who delivered a filing
13 instrument for filing for which the filing fee was not
14 received in final irrevocable full payment of immediately
15 available funds, then the filing officer may declare the
16 filing instrument to be null and void and of no legal effect
17 as if it had never been filed and may remove the filing
18 instrument from the records of the filing officer.

19 "(f) If the filing officer refuses to file a filing
20 instrument, the filing officer shall return it to the entity
21 or its representative within five consecutive calendar days
22 after the filing instrument was delivered to the filing
23 officer for filing, together with a brief, written explanation
24 of the reason for the refusal.

25 "(g) Delivery by a filing officer of an
26 acknowledgement of filing, receipt for the filing fee, an
27 explanation for the reason a filing instrument was not filed,

1 notice that a filing fee was not made in final irrevocable
2 full payment of immediately available funds, or other
3 communication as to a filing instrument delivered for filing
4 to that filing officer may be accomplished by mail, courier,
5 or electronic transmission.

6 "(h) The duty of the filing officer to file filing
7 instruments pursuant to this title is ministerial. Filing or
8 refusing to file a filing instrument by the filing officer
9 does not:

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

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

14 "(3) create a presumption that the filing instrument
15 is valid or invalid or that information contained in the
16 filing instrument is correct or incorrect.

17 "(i) The Secretary of State shall assign a unique
18 identifying number to each domestic entity and each foreign
19 filing entity for which the Secretary of State has filed or
20 files a filing instrument and shall keep:

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

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

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

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

3 "(i) the delivery, acceptance, and filing by
4 electronic transmission of all filing instruments authorized
5 or required by this title to be delivered to the Secretary of
6 State for filing;

7 "(ii) all filing instruments to be in a form that
8 complies with this title but does not require the filing
9 instruments to be in a form adopted by or otherwise required
10 by the Secretary of State;

11 "(iii) the delivery, acceptance, and filing of
12 filing instruments by electronic transmission to occur 24
13 hours a day, seven days a week, each day of the year,
14 including holidays and weekends; and

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

24 "(k) If a filing instrument which is authorized or
25 required to be delivered to the Secretary of State for filing
26 by this title is delivered to the Secretary of State by means
27 other than electronic transmission, and that filing instrument

1 complies with the requirements of this title, then the
2 Secretary of State shall:

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

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

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

20 "(l) Subject to subsection (e), a filing officer who
21 has filed a filing instrument shall maintain that filing
22 instrument in perpetuity."

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

25 §10A-1-5.18.

26 If an entity is listed in the Secretary of State's
27 records as an entity that has been dissolved, then if that

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

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

21 "§10A-2A-1.40.

22 "~~Notwithstanding Section 10A-1-1.03, as~~ As used in
23 this chapter, unless otherwise specified or unless the context
24 otherwise requires, the following terms have the following
25 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
26 foreign corporation, a nonprofit corporation, or a foreign
27 nonprofit corporation, the "certificate of incorporation" of

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

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

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

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

22 "(7) DOCUMENT means a writing as defined in Chapter
23 1.

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

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

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

15 "(11) ELIGIBLE ENTITY means an unincorporated
16 entity, foreign unincorporated entity, nonprofit corporation,
17 or foreign nonprofit corporation.

18 "(12) ELIGIBLE INTERESTS means interests or
19 memberships.

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

23 "(14) ENTITY includes corporation; foreign
24 corporation; nonprofit corporation; foreign nonprofit
25 corporation; estate; trust; unincorporated entity; foreign
26 unincorporated entity; and state, United States, and foreign
27 government.

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

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

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

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

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

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

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

24 "(22) INTEREST means either or both of the following
25 rights under the governing statute governing an unincorporated
26 entity:

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

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

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

9 "(24) KNOWLEDGE is determined as follows:

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

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

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

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

15 "(1) knows of it;

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

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

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

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

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

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

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

5 "(3) conversion, merger, or interest exchange under
6 Article 9 or Article 11, 90 days after a statement of
7 conversion, or statement of merger or interest exchange
8 becomes effective;

9 "(4) conversion or merger under Article 8 of Chapter
10 1, 90 days after a statement of conversion or statement of
11 merger becomes effective; and

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

15 "(e) A stockholder's knowledge, notice, or receipt
16 of a notification of a fact relating to the corporation is not
17 knowledge, notice, or receipt of a notification of a fact by
18 the corporation solely by reason of the stockholder's capacity
19 as a stockholder.

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

23 "(25) MEANS denotes an exhaustive definition.

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

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

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

4 "(29) PRINCIPAL OFFICE means the office (in or out
5 of this state) so designated in the annual report where the
6 principal executive offices of a corporation or foreign
7 corporation are located.

8 "(30) PRIVATE ORGANIZATIONAL DOCUMENTS means (i) the
9 bylaws of a corporation, foreign corporation, nonprofit
10 corporation, or foreign nonprofit corporation, or (ii) the
11 rules, regardless of whether in writing, that govern the
12 internal affairs of an unincorporated entity or foreign
13 unincorporated entity, are binding on all its interest
14 holders, and are not part of its public organic record, if
15 any. Where private organizational documents have been amended
16 or restated, the term means the private organizational
17 documents as last amended or restated.

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

20 "(32) PUBLIC ORGANIC RECORD means (i) the
21 certificate of incorporation of a corporation, foreign
22 corporation, nonprofit corporation, or foreign nonprofit
23 corporation, or (ii) the document, if any, the filing of which
24 is required to create an unincorporated entity or foreign
25 unincorporated entity, or which creates the unincorporated
26 entity or foreign unincorporated entity and is required to be
27 filed. Where a public organic record has been amended or

1 restated, the term means the public organic record as last
2 amended or restated.

3 "(33) RECORD DATE means the date fixed for
4 determining the identity of the corporation's stockholders and
5 their stockholdings for purposes of this chapter. Unless
6 another time is specified when the record date is fixed, the
7 determination shall be made as of the close of business at the
8 principal office of the corporation on the date so fixed.

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

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

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

23 "(37) STOCKHOLDER means a record stockholder.

24 "(38) STOCK means the units into which the
25 proprietary interests in a corporation or foreign corporation
26 are divided.

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

6 "(40) UNINCORPORATED ENTITY means an organization or
7 artificial legal person that either has a separate legal
8 existence or has the power to acquire an estate in real
9 property in its own name and that is not any of the following:
10 a corporation, foreign corporation, nonprofit corporation,
11 foreign nonprofit corporation, a series of a limited liability
12 company or of another type of entity, an estate, a trust, a
13 state, United States, or foreign government. The term includes
14 a general partnership, limited liability company, limited
15 partnership, business trust, joint stock association, and
16 unincorporated nonprofit association.

17 "(41) UNITED STATES includes any district,
18 authority, bureau, commission, department, and any other
19 agency of the United States.

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

25 "(43) VOTING GROUP means all stock of one or more
26 classes or series that under the certificate of incorporation
27 or this chapter are entitled to vote and be counted together

1 collectively on a matter at a meeting of stockholders. All
2 stock entitled by the certificate of incorporation or this
3 chapter to vote generally on the matter is for that purpose a
4 single voting group.

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

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

10 "§10A-2A-1.41.

11 "(a) A notice under this chapter must be in writing
12 unless oral notice is reasonable in the circumstances. Unless
13 otherwise agreed between the sender and the recipient, words
14 in a notice or other communication under this chapter must be
15 in English.

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

1 "(c) A notice or other communication to a
2 corporation or to a foreign corporation registered to ~~do~~
3 transact business in this state may be delivered to the
4 corporation's registered agent at its registered office or to
5 the secretary at the corporation's principal office shown in
6 its most recent annual report or, in the case of a foreign
7 corporation that has not yet delivered an annual report, in
8 its foreign registration under Chapter 1.

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

1 communications by the person who consented by written notice
2 to the person to whom the consent was delivered.

3 " (e) ~~Any consent under subsection (d) may be revoked~~
4 ~~by the person who consented by written or electronic notice to~~
5 ~~the person to whom the consent was delivered. Authority to~~
6 ~~deliver notice or other communications to a stockholder by~~
7 ~~electronic mail or by electronic transmission~~ A notice or
8 other communication may no longer be delivered to an
9 electronic mail address or other electronic transmission
10 address pursuant to subsection (d) shall cease if (i) the
11 corporation ~~is unable to deliver~~ receives notice from the
12 information processing system into which the notice or other
13 communication was entered that two consecutive notices or
14 other communications given by electronic transmissions to that
15 ~~stockholder in accordance with subsection (d)~~ have not been
16 delivered to the electronic mail address or other electronic
17 transmission address to which the notice or other
18 communication was directed, and (ii) the ~~inability~~ notice of
19 non-delivery becomes known to the secretary or an assistant
20 secretary or to the transfer agent, or ~~other~~ another person
21 responsible for the giving of ~~notice~~ notices or other
22 communications for the corporation; provided, however, the
23 inadvertent failure to ~~treat that inability~~ recognize the
24 notice of non-delivery as a cessation of authority to provide
25 a stockholder with notice by electronic mail or other
26 electronic transmission shall not invalidate any meeting or
27 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

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

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

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

8 "(6) if oral, when communicated.

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

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

26 "(l) In the event that any provisions of this
27 chapter are deemed to modify, limit, or supersede the federal

1 Electronic Signatures in Global and National Commerce Act, 15
2 U.S.C. §§7001 et seq., the provisions of this chapter shall
3 control to the maximum extent permitted by Section 102(a)(2)
4 of that federal act.

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

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

19 "(2) all, but not less than two, distributions to
20 stockholders during a 12-month period, or two consecutive
21 distributions to stockholders during a period of more than 12
22 months, have been sent to that stockholder at that
23 stockholder's address included in the record of stockholders
24 maintained pursuant to Section 10A-2A-16.01(d) and have been
25 returned undeliverable or could not be delivered; or

26 "(3) no address has been provided to the corporation
27 by or on behalf of a stockholder and the corporation has not

1 otherwise obtained an address for that stockholder it believes
2 to be reliable.

3 "In addition, if any stockholder to which this
4 subsection (m) applies delivers to the corporation a written
5 notice or communication setting forth that stockholder's
6 then-current address, the requirement that notice and
7 communication be given to that stockholder shall be
8 reinstated.

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

1 receive notice or communication except those persons with whom
2 notice to or communication with is unlawful.

3 "§10A-2A-2.01.

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

9 "§10A-2A-2.02.

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

12 "(a) The certificate of incorporation must set
13 forth:

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

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

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

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

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

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

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

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

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

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

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

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

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

19 "(4) a provision eliminating or limiting the
20 liability of a director to the corporation or its stockholders
21 for money damages for any action taken, or any failure to take
22 any action, as a director, except liability for (i) the amount
23 of a financial benefit received by a director to which the
24 director is not entitled; (ii) an intentional infliction of
25 harm on the corporation or the stockholders; (iii) a violation
26 of Section 10A-2A-8.32; or (iv) an intentional violation of
27 criminal law;

1 "(5) a provision permitting or making obligatory
2 indemnification of a director for liability as defined in
3 Section 10A-2A-8.50 to any person for any action taken, or any
4 failure to take any action, as a director, except liability
5 for (i) receipt of a financial benefit to which the director
6 is not entitled, (ii) an intentional infliction of harm on the
7 corporation or its stockholders, (iii) a violation of Section
8 10A-2A-8.32, or (iv) an intentional violation of criminal law;
9 and

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

22 "(c) The certificate of incorporation need not set
23 forth any of the corporate powers enumerated in Sections
24 10A-1-2.11, 10A-1-2.12, and 10A-1-2.13.

25 "(d) Provisions of the certificate of incorporation
26 may be made dependent upon facts objectively ascertainable

1 outside the certificate of incorporation in accordance with
2 Section 10A-2A-1.20(c).

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

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

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

13 "§10A-2A-7.20.

14 "(a) After fixing a record date for a meeting, a
15 corporation shall prepare an alphabetical list of the names of
16 all its stockholders who are entitled to notice of ~~a~~ the
17 stockholders' meeting. If the board of directors fixes a
18 different record date under Section 10A-2A-7.07(e) to
19 determine the stockholders entitled to vote at the meeting, a
20 corporation also shall prepare an alphabetical list of the
21 names of all its stockholders who are entitled to vote at the
22 meeting. ~~A~~ Each list must be arranged by voting group (and
23 within each voting group by class or series of stock) and ~~show~~
24 contain the address of, and number and class or series of
25 shares of stock held by, each stockholder. ~~If,~~ and if the
26 notice or other communications regarding the meeting have been
27 or will be sent by the corporation ~~has an electronic mail~~

1 ~~address for~~ to a stockholder and ~~the corporation uses that by~~
2 electronic mail ~~address to send notices and other~~
3 ~~communications to that stockholder, then the corporation shall~~
4 ~~include that electronic mail address on the stockholders' list~~
5 or other electronic transmission, the electronic mail or other
6 electronic transmission address of that stockholder.

7 " (b) The ~~stockholders' list for~~ of stockholders
8 entitled to notice shall be available for inspection by any
9 stockholder, beginning two business days after notice of the
10 meeting is given for which the list was prepared and
11 continuing through the meeting, (i) at the corporation's
12 principal office or at a place identified in the meeting
13 notice in the city where the meeting will be held or (ii) on a
14 reasonably accessible electronic network, provided that the
15 information required to gain access to such list is provided
16 with the notice of the meeting. The list of stockholders
17 entitled to vote shall be similarly available for inspection
18 promptly after the record date for voting. In the event that
19 the corporation determines to make ~~the~~ a list of stockholders
20 available on an electronic network, the corporation may take
21 reasonable steps to ensure that such information is available
22 only to stockholders of the corporation. ~~A stockholders' list~~
23 ~~for voting shall be similarly available for inspection~~
24 ~~promptly after the record date for voting.~~ A stockholder, or
25 the stockholder's agent or attorney, is entitled on written
26 demand to inspect and, subject to the requirements of Section
27 10A-2A-16.02(c), to copy a list of stockholders, during

1 regular business hours and at the stockholder's expense,
2 during the period it is available for inspection. A
3 corporation may satisfy the stockholder's right to copy a list
4 of stockholders by furnishing a copy in the manner described
5 in Section 10A-2A-16.03(b). A stockholder and the
6 stockholder's agent or attorney who inspects or is furnished a
7 copy of a list of stockholders under this subsection (b) or
8 under subsection (c) or who copies the list under this
9 subsection (b) may use the information on that list only for
10 purposes related to the meeting and its subject matter and
11 must keep the information on that list confidential.

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

1 "(d) If the corporation refuses to allow a
2 stockholder, or the stockholder's agent or attorney, to
3 inspect a ~~stockholders'~~ list of stockholders before or at the
4 meeting or any adjournment (or copy a list as permitted by
5 subsection (b)), the designated court, and if none, the
6 circuit court for the county in which the corporation's
7 principal office is located in this state, and if none in this
8 state, the circuit court for the county in which the
9 corporation's most recent registered office is located, on
10 application of the stockholder, may summarily order the
11 inspection or copying at the corporation's expense and may
12 postpone the meeting for which the list was prepared until the
13 inspection or copying is complete.

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

17 "(f) The stock transfer records of the corporation
18 shall be prima facie evidence as to who are the stockholders
19 entitled to examine the stockholders' list or transfer records
20 or to vote at any meeting of stockholders.

21 "§10A-2A-8.30.

22 "~~Notwithstanding~~ Division C of Article 3 of Chapter
23 1 shall not apply to this chapter. Instead:

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

1 "(b) The members of the board of directors or a
2 board committee, when becoming informed in connection with
3 their decision-making function or devoting attention to their
4 oversight function, shall discharge their duties with the care
5 that a person in a like position would reasonably believe
6 appropriate under similar circumstances.

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

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

25 "(e) In discharging board of directors or board
26 committee duties, a director who does not have knowledge that
27 makes reliance unwarranted is entitled to rely on information,

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

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

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

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

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

19 "§10A-2A-8.31.

20 "~~Notwithstanding~~ Division C of Article 3 of Chapter
21 1 shall not apply to this chapter. Instead:

22 "(a) A director shall not be liable to the
23 corporation or its stockholders for any decision to take or
24 not to take action, or any failure to take any action, as a
25 director, unless the party asserting liability in a proceeding
26 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
26 that the challenged conduct was reasonably believed by the
27 director to be in the best interests of the corporation; or

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

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

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

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

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

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

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

24 "(3) for other money payment under an equitable
25 remedy, such as profit recovery by or disgorgement to the
26 corporation, shall also have whatever persuasion burden may be

1 called for to establish that the equitable remedy sought is
2 appropriate in the circumstances.

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

13 "§10A-2A-8.42.

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

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

18 "(1) in good faith;

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

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

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

24 "(1) to inform the superior officer to whom, or the
25 board of directors or the board committee to which, the
26 officer reports of information about the affairs of the
27 corporation known to the officer, within the scope of the

1 officer's functions, and known to the officer to be material
2 to that superior officer, board of directors or board
3 committee; and

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

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

14 "(1) the performance of properly delegated
15 responsibilities by one or more employees of the corporation
16 whom the officer reasonably believes to be reliable and
17 competent in performing the responsibilities delegated; or

18 "(2) information, opinions, reports or statements,
19 including financial statements and other financial data,
20 prepared or presented by one or more employees of the
21 corporation whom the officer reasonably believes to be
22 reliable and competent in the matters presented or by legal
23 counsel, public accountants, or other persons retained by the
24 corporation as to matters involving skills or expertise the
25 officer reasonably believes are matters (i) within the
26 particular person's professional or expert competence or (ii)
27 as to which the particular person merits confidence.

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

9 "§10A-2A-8.43.

10 "~~Notwithstanding~~ Division C of Article 3 of Chapter
11 1 shall not apply to this chapter. Instead:

12 "(a) An officer may resign at any time by delivering
13 a written notice to the board of directors, its chair, the
14 appointing officer, the secretary, or the corporation. A
15 resignation is effective as provided in Section 10A-2A-1.41(i)
16 unless the notice provides for a delayed effectiveness,
17 including effectiveness determined upon a future event or
18 events. If effectiveness of a resignation is stated to be
19 delayed and the board of directors or the appointing officer
20 accepts the delay, the board of directors or the appointing
21 officer may fill the pending vacancy before the delayed
22 effectiveness but the new officer may not take office until
23 the vacancy occurs.

24 "(b) An officer may be removed at any time with or
25 without cause by (i) the board of directors; (ii) the
26 appointing officer, unless the certificate of incorporation,
27 bylaws, or the board of directors provide otherwise; or (iii)

1 any other officer if authorized by the certificate of
2 incorporation, bylaws, or the board of directors.

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

6 "§10A-2A-8.59.

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

12 "§10A-2A-9.01.

13 "As used in this Article 9:

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

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

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

22 "(3) ~~"Converting organization"~~ CONVERTING
23 ORGANIZATION means an organization that converts into another
24 organization pursuant to this article.

25 "(4) ~~"Governing statute"~~ GOVERNING STATUTE of an
26 organization means the statute that governs the organization's
27 internal affairs.

1 "~~Organization~~" ORGANIZATION means a general
2 partnership, including a limited liability partnership;
3 limited 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 "~~Organizational documents~~" ORGANIZATIONAL
10 DOCUMENTS means:

11 "(A) for a general partnership or foreign general
12 partnership, its partnership agreement and if applicable, its
13 registration as a limited liability partnership or a foreign
14 limited liability partnership;

15 "(B) for a limited partnership or foreign limited
16 partnership, its certificate of formation and partnership
17 agreement, or comparable writings as provided in its governing
18 statute;

19 "(C) for a limited liability company or foreign
20 limited liability company, its certificate of formation and
21 limited liability company agreement, or comparable writings as
22 provided in its governing statute;

23 "(D) for a business or statutory trust or foreign
24 business or statutory trust, its agreement of trust and
25 declaration of trust, or comparable writings as provided in
26 its governing statute;

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

11 "(G) for a professional corporation or foreign
12 professional corporation, its certificate of incorporation,
13 bylaws, and other agreements among its stockholders 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 "§10A-2A-10.06.

21 "~~Notwithstanding~~ Division B of Article 3 of Chapter
22 1 shall not apply to this chapter. Instead:

23 "(a) After an amendment to the certificate of
24 incorporation has been adopted and approved in the manner
25 required by this chapter and by the certificate of
26 incorporation, the corporation shall deliver to the Secretary

1 of State for filing a certificate of amendment, which must set
2 forth:

3 "(1) the name of the corporation;

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

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

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

13 "(5) if an amendment:

14 "(i) was adopted by the incorporators or board of
15 directors without stockholder approval, a statement that the
16 amendment was duly adopted by the incorporators or by the
17 board of directors, as the case may be, and that stockholder
18 approval was not required;

19 "(ii) required approval by the stockholders, a
20 statement that the amendment was duly approved by the
21 stockholders in the manner required by this chapter and by the
22 certificate of incorporation; or

23 "(iii) is being filed pursuant to Section
24 10A-2A-1.20(c)(5), a statement to that effect; ~~and~~

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

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

4 "§10A-2A-10.07.

5 "~~Notwithstanding~~ Division B of Article 3 of Chapter
6 1 shall not apply to this chapter. Instead:

7 "(a) A corporation's board of directors may restate
8 its certificate of incorporation at any time, without
9 stockholder approval, to consolidate all amendments into a
10 single document.

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

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

18 "(1) the name of the corporation;

19 "(2) the text of the restated certificate of
20 incorporation;

21 "(3) a statement that the restated certificate of
22 incorporation consolidates all amendments into a single
23 document; ~~and~~

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

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

3 "(d) The duly adopted restated certificate of
4 incorporation supersedes the original certificate of
5 incorporation and all amendments to the certificate of
6 incorporation.

7 "(e) The Secretary of State may certify the restated
8 certificate of incorporation as the certificate of
9 incorporation currently in effect, without including the
10 statements required by subsection (c) (4).

11 "§10A-2A-10.08.

12 "~~Notwithstanding~~ Division B of Article 3 of Chapter
13 1 shall not apply to this chapter. Instead:

14 "(a) A corporation's certificate of incorporation
15 may be amended without action by the board of directors or
16 stockholders to carry out a plan of reorganization ordered or
17 decreed by a court of competent jurisdiction under the
18 authority of a law of the United States if the certificate of
19 incorporation after the amendment only contains provisions
20 required or permitted by Section 10A-2A-2.02.

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

24 "(1) the name of the corporation;

25 "(2) the text of each amendment approved by the
26 court;

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

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

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

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

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

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

16 "§10A-2A-11.01.

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

20 "(1) ~~"Acquired entity"~~ ACQUIRED ENTITY means the
21 corporation or foreign corporation that will have all of one
22 or more classes or series of its stock acquired in a stock
23 exchange.

24 "(2) ~~"Acquiring entity"~~ ACQUIRING ENTITY means the
25 corporation or foreign corporation that will acquire all of
26 one or more classes or series of stock of the acquired entity
27 in a stock exchange.

1 "~~Constituent corporation~~" CONSTITUENT
2 CORPORATION means a constituent organization that is a
3 corporation.

4 "~~Constituent organization~~" CONSTITUENT
5 ORGANIZATION means an organization that is party to a merger
6 under this article.

7 "~~Governing statute~~" GOVERNING STATUTE of an
8 organization means the statute that governs the organization's
9 internal affairs.

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

18 "~~Organizational documents~~" ORGANIZATIONAL
19 DOCUMENTS means:

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

24 "(B) for a limited partnership or foreign limited
25 partnership, its certificate of formation and partnership
26 agreement, or comparable writings as provided in its governing
27 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
26 governance and the relations among the persons that own it,
27 have an interest in it, or are members of it.

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

24 "~~(9) "Surviving organization"~~ SURVIVING ORGANIZATION
25 means an organization into which one or more other
26 organizations are merged under this article, whether the

1 organization pre-existed the merger or was created pursuant to
2 the merger.

3 "§10A-2A-13.01.

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

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

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

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

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

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

23 "(iii) without discounting for lack of marketability
24 or minority status.

25 "(4) ~~"Interest"~~ INTEREST means interest from the
26 date the corporate action becomes effective until the date of
27 payment, and shall be compounded quarterly and shall accrue at

1 five percent over the Federal Reserve discount rate (including
2 any surcharge) as established from time to time during the
3 period between the effective date of the corporate action and
4 the date of payment.

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

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

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

18 "(B) had the power, contractually or otherwise,
19 other than as owner of excluded stock, to cause the
20 appointment or election of 25 percent or more of the directors
21 to the board of directors of the corporation; or

22 "(C) was a senior executive or director of the
23 corporation or a senior executive of any affiliate of the
24 corporation, and that senior executive or director will
25 receive, as a result of the corporate action, a financial
26 benefit not generally available to other stockholders as such,
27 other than:

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

4 "(II) employment, consulting, retirement, or similar
5 benefits established in contemplation of, or as part of, the
6 corporate action that are not more favorable than those
7 existing before the corporate action or, if more favorable,
8 that have been approved on behalf of the corporation in the
9 same manner as is provided in Section 10A-2A-8.60; or

10 "(III) in the case of a director of the corporation
11 who will, in the corporate action, become a director or
12 governing person of the acquiror or any of its affiliates,
13 rights and benefits as a director or governing person that are
14 provided on the same basis as those afforded by the acquiror
15 generally to other directors or governing persons of the
16 acquiror or its affiliate.

17 "(ii) "Beneficial owner" means any person who,
18 directly or indirectly, through any contract, arrangement, or
19 understanding, other than a revocable proxy, has or shares the
20 power to vote, or to direct the voting of, stock; except that
21 a member of a national securities exchange is not deemed to be
22 a beneficial owner of securities held directly or indirectly
23 by it on behalf of another person if the member is precluded
24 by the rules of the exchange from voting without instruction
25 on contested matters or matters that may affect substantially
26 the rights or privileges of the holders of the securities to
27 be voted. When two or more persons agree to act together for

1 the purpose of voting their stock of the corporation, each
2 member of the group formed thereby is deemed to have acquired
3 beneficial ownership, as of the date of the agreement, of all
4 stock having voting power of the corporation beneficially
5 owned by any member of the group.

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

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

14 "(7) ~~"Senior executive"~~ SENIOR EXECUTIVE means the
15 chief executive officer, chief operating officer, chief
16 financial officer, and any individual in charge of a principal
17 business unit or function.

18 "(8) ~~"Stockholder"~~ STOCKHOLDER means a record
19 stockholder, a beneficial stockholder, and a voting trust
20 beneficial owner.

21 "§10A-2A-16.01.

22 "(a) A corporation shall maintain the following
23 records:

24 "(1) its certificate of incorporation as currently
25 in effect;

26 "(2) any notices to stockholders referred to in
27 Section 10A-2A-1.20(c) (5) specifying facts on which a filed

1 document is dependent if those facts are not included in the
2 certificate of incorporation or otherwise available as
3 specified in Section 10A-2A-1.20(c) (5);

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

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

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

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

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

15 "(b) A corporation shall maintain all annual
16 financial statements prepared for the corporation for its last
17 three fiscal years (or any shorter period of existence) and
18 any audit or other reports with respect to those financial
19 statements.

20 "(c) A corporation shall maintain accounting records
21 in a form that permits preparation of its financial
22 statements.

23 "(d) A corporation shall maintain a record of its
24 current stockholders in alphabetical order by class or series
25 of stock showing the address of each stockholder to which
26 notices and other communications from the corporation are to
27 be sent, and which shall include the number and class or

1 series of stock held by⁷ each stockholder. ~~Nothing contained~~
2 ~~in this subsection shall require the corporation to include in~~
3 ~~that record the electronic mail address or other electronic~~
4 ~~contact information of a stockholder.~~ In addition if a
5 stockholder has provided an electronic mail address to the
6 corporation or has consented to receive notices or other
7 communications by electronic mail or other electronic
8 transmission, the record of stockholders shall include the
9 electronic mail or other electronic transmission address of
10 the stockholder if notices or other communications are being
11 delivered by the corporation to the stockholder at that
12 electronic mail or other electronic transmission address
13 pursuant to Section 10A-2A-1.41(d). An electronic mail address
14 of a stockholder shall be deemed to be provided by a
15 stockholder if it is contained in a communication to the
16 corporation by or on behalf of the stockholder, unless the
17 communication expressly indicates that the electronic mail
18 address may not be used to deliver notices or other
19 communications.

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

23 "§10A-3-1.02.

24 "As used in this chapter, the following terms shall
25 have the following meanings, respectively, unless the context
26 otherwise requires:

1 "(1) ARTICLES OF INCORPORATION. The original or
2 restated articles of incorporation or articles of
3 consolidation and all amendments thereto, including articles
4 of merger, of a domestic or foreign nonprofit corporation. The
5 term articles of incorporation of a nonprofit corporation
6 constitutes its certificate of formation as defined in ~~Section~~
7 ~~10A-1-1.03(7)~~ Chapter 1. The terms may be used
8 interchangeably. The articles of incorporation or certificate
9 of formation of a nonprofit corporation, together with its
10 bylaws, constitute its governing documents ~~within the meaning~~
11 ~~of Section 10A-1-1.03(40)~~ as described in Chapter 1.

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

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

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

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

10 "~~(4)~~(6) FOREIGN NONPROFIT CORPORATION. A nonprofit
11 corporation organized under laws other than the laws of
12 Alabama.

13 "~~(5)~~(7) MEMBER. One having membership rights in a
14 corporation in accordance with the provisions of its governing
15 documents. A member may be a natural person, a partnership, a
16 professional association or professional corporation, a
17 corporation for profit or a nonprofit corporation.

18 "~~(6)~~(8) NONPROFIT CORPORATION. A nonprofit
19 corporation no part of the income or profit of which is
20 distributable to its members, directors, or officers.

21 "~~(7)~~(9) NONPROFIT CORPORATION or DOMESTIC NONPROFIT
22 CORPORATION. A nonprofit corporation subject to the provisions
23 of this chapter, except a foreign nonprofit corporation.

24 "~~(8)~~(10) VERIFIED. Supported by an affidavit or oath
25 confirming the correctness, truth, or authenticity of the
26 matter set forth therein."

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

3 §10A-3-1.05.

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

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

21 (c) A notice or other communication to a nonprofit
22 corporation or to a foreign nonprofit corporation registered
23 to transact business in this state may be delivered to the
24 nonprofit corporation's registered agent at its registered
25 office or to the secretary at the nonprofit corporation's
26 principal office shown in its most recent annual report or, in
27 the case of a foreign nonprofit corporation that has not yet

1 delivered an annual report, in its foreign registration under
2 Chapter 1.

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

20 (e) A notice or other communication may no longer be
21 delivered to an electronic mail address or other electronic
22 transmission address pursuant to subsection (d) if (i) the
23 nonprofit corporation receives notice from the information
24 processing system into which the notice or other communication
25 was entered that two consecutive notices or other
26 communications given by electronic transmission have not been
27 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.

25 (g) Receipt of an electronic acknowledgement from an
26 information processing system described in subsection (f)(1)
27 establishes that an electronic transmission was received but,

1 by itself, does not establish that the content sent
2 corresponds to the content received.

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

5 (i) A notice or other communication, if in a
6 comprehensible form or manner, is effective at the earliest of
7 the following:

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

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

12 (ii) a director's residence or usual place of
13 business; or

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

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

19 (3) if mailed by United States mail postage prepaid
20 and addressed to a recipient other than a member, at the
21 address of the recipient reflected in the books and records of
22 the nonprofit corporation, the earliest of when it is actually
23 received, or:

24 (i) if sent by registered or certified mail, return
25 receipt requested, the date shown on the return receipt signed
26 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 that 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
26 require delivery of notices of meetings of directors by
27 electronic transmission.

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

7 (m) Whenever a notice or communication would
8 otherwise be required to be given under any provision of this
9 chapter to a member, the notice or communication need not be
10 given if the nonprofit corporation is not permitted to deliver
11 the notice or communication by electronic transmission
12 pursuant to subsections (d) and (e) and:

13 (1) notices and communications to members of two
14 consecutive annual meetings, and all notices and
15 communications of meetings during the period between those two
16 consecutive annual meetings, have been sent to that member at
17 that member's address as reflected in the books and records of
18 the nonprofit corporation and have been returned undeliverable
19 or could not be delivered; or

20 (2) no address has been provided to the nonprofit
21 corporation by or on behalf of a member and the nonprofit
22 corporation has not otherwise obtained an address for that
23 member it believes to be reliable.

24 In addition if any member to which this subsection
25 (m) applies delivers to the nonprofit corporation a written
26 notice or communication setting forth that member's

1 then-current address, the requirement that notice and
2 communication be given to that member shall be reinstated.

3 (n) Whenever a notice or communication is required
4 to be given, under any provision of this chapter or of the
5 certificate of incorporation or bylaws of any nonprofit
6 corporation, to any person with whom notice to or
7 communication with is unlawful, the giving of the notice or
8 communication to that person shall not be required and there
9 shall be no duty to apply to any governmental authority or
10 agency for a license or permit to give the notice or
11 communication to that person. Any action or meeting which
12 shall be taken or held without notice or communication to the
13 person with whom notice to or communication with is unlawful
14 shall have the same force and effect as if the notice or
15 communication had been duly given. In the event that the
16 action taken by the nonprofit corporation is such as to
17 require the filing of a certificate or other filing instrument
18 under any of the other sections of this chapter, the
19 certificate or other filing instrument shall state, if that is
20 the fact and if notice or communication is required, that
21 notice or communication was given to all persons entitled to
22 receive notice or communication except those persons with whom
23 notice to or communication with is unlawful.

24 Section 5. Sections 10A-3-2.02, 10A-3-2.03,
25 10A-3-2.09, and 10A-3-2.21, Section 10A-5A-1.02, as amended by
26 Act 2018-125, 2018 Regular Session, Sections 10A-5A-2.01,
27 10A-5A-2.02, and 10A-5A-7.02, as amended by Act 2020-73, 2020

1 Regular Session, Section 10A-5A-7.04, Section 10A-5A-7.05, as
2 amended by Act 2020-73, 2020 Regular Session, Sections
3 10A-5A-7.06, 10A-5A-7.07, 10A-5A-11.10, and 10A-5A-11.12,
4 Section 10A-5A-11.13, as amended by Act 2020-73, 2020 Regular
5 Session, Sections 10A-5A-11.14 and 10A-5A-11.15, Section
6 10A-8A-1.02, as amended by Act 2019-304, 2019 Regular Session,
7 Section 10A-8A-4.10, as added to the Code of Alabama 1975 by
8 Act 2018-125, 2018 Regular Session, Section 10A-8A-8.02, as
9 amended by Act 2020-73, 2020 Regular Session, Section
10 10A-8A-8.06, as added to the Code of Alabama by Act 2018-125,
11 2018 Regular Session, Section 10A-8A-8.07, as amended by Act
12 2020-73, 2020 Regular Session, Sections 10A-8A-8.09,
13 10A-8A-8.10, and 10A-8A-9.01, as added to the Code of Alabama
14 1975 by Act 2018-125, 2018 Regular Session, Section
15 10A-9A-1.02, Sections 10A-9A-2.01 and 10A-9A-2.02, as amended
16 by Act 2020-73, 2020 Regular Session, Sections 10A-9A-4.06 and
17 10A-9A-4.07, Section 10A-9A-8.02, as amended by Act 2020-73,
18 2020 Regular Session, Section 10A-9A-8.06, Section
19 10A-9A-8.07, as amended by Act 2020-73, 2020 Regular Session,
20 and Sections 10A-9A-8.09, 10A-9A-8.10, and 10A-9A-10.01, of
21 the Code of Alabama 1975, are amended to read as follows:

22 "§10A-3-2.02.

23 "(a) ~~Meetings~~ Unless the board of directors
24 determines to hold the meeting of the members solely by means
25 of remote communication in accordance with subsections (d),
26 (e), and (f), meetings of members may be held at the place,
27 either within or without Alabama, as may be provided in the

1 bylaws. ~~In~~ and, in the absence of any provision, all meetings
2 shall be held at the registered office of the corporation in
3 Alabama.

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

8 "(c) Special meetings of the members may be called
9 by the president or by the board of directors. Special
10 meetings of the members may also be called by other officers
11 or persons or number or proportion of members as may be
12 provided in the governing documents. In the absence of a
13 provision fixing the number or proportion of members entitled
14 to call a meeting, a special meeting of members may be called
15 by members having one-twentieth of the votes entitled to be
16 cast at the meeting.

17 "(d) Members may participate in any meeting of the
18 members by means of remote communication to the extent the
19 governing authority authorizes participation for that meeting.
20 Participation as a member by means of remote communication
21 shall be subject to guidelines and procedures as the governing
22 authority adopts, and shall be in conformity with this
23 subsection.

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

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

3 "(2) to provide members participating remotely a
4 reasonable opportunity to participate in the meeting and to
5 vote on matters submitted to the members, including an
6 opportunity to communicate, and to read or hear the
7 proceedings of the meeting, substantially concurrently with
8 the proceedings.

9 "(f) Unless the certificate of incorporation or
10 bylaws require the meeting of members to be held at a place,
11 the governing authority may determine that any meeting of the
12 members shall not be held at any place and shall instead be
13 held solely by means of remote communication, but only if the
14 corporation implements the measures specified in subsection
15 (e).

16 "§10A-3-2.03.

17 "Unless otherwise provided in the nonprofit
18 corporation's governing documents, ~~written~~ notice stating the
19 place, if any, day, and hour of the meeting and, in case of a
20 special meeting, the purpose or purposes for which the meeting
21 is called, shall be delivered not less than 10 nor more than
22 ~~50~~ 60 days before the date of the meeting, ~~either personally~~
23 ~~or by mail,~~ by or at the direction of the president, or the
24 secretary, or the officers or persons calling the meeting, to
25 each member entitled to vote at the meeting. ~~If mailed, the~~
26 ~~notice shall be deemed to be delivered when deposited in the~~
27 ~~United States mail addressed to the member at his or her~~

1 ~~address as it appears on the records of the nonprofit~~
2 ~~corporation, with postage thereon prepaid. If the board of~~
3 ~~directors has authorized participation by means of remote~~
4 ~~communication pursuant to Section 10A-3A-2.02(d), (e), and~~
5 ~~(f), the notice to the members must describe the means of~~
6 ~~remote communication to be used.~~

7 "§10A-3-2.09.

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

26 "(b) The directors constituting the first initial
27 board of directors shall be named in the certificate of

1 formation and shall hold office until the first annual
2 election of directors or for any other period as may be
3 specified in the governing documents. Thereafter, directors
4 shall be elected or appointed in the manner and for the terms
5 provided in the governing documents of the nonprofit
6 corporation. In the absence of a provision fixing the term of
7 office, the term of office of a director shall be one year.

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

13 "(d) A director may be removed from office pursuant
14 to any procedure therefor provided in the certificate of
15 formation.

16 "§10A-3-2.21.

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

1 elected or appointed. If the bylaws so provide, any two or
2 more offices may be held by the same person, ~~except the~~
3 ~~offices of president and secretary.~~

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

8 "(c) The officers of a corporation may be designated
9 by additional titles as may be provided in the governing
10 documents of the nonprofit corporation.

11 "(d) The officers and employees of the nonprofit
12 corporation shall not be liable for obligations of the
13 corporation.

14 "§10A-5A-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 "(a) ~~"Certificate of formation,"~~ CERTIFICATE OF
19 FORMATION, with respect to a limited liability company, means
20 the certificate provided for by Section 10A-5A-2.01, and the
21 certificate as amended or restated.

22 "(b) ~~"Constituent limited liability company"~~
23 CONSTITUENT LIMITED LIABILITY COMPANY means a constituent
24 organization that is a limited liability company.

25 "(c) ~~"Constituent organization"~~ CONSTITUENT
26 ORGANIZATION means an organization that is party to a merger
27 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
26 company," means an entity formed or existing under this
27 chapter.

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

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

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

24 "(o) ~~Organizational documents~~" ORGANIZATIONAL
25 DOCUMENTS means:

26 "(1) for a general partnership or foreign general
27 partnership, its partnership agreement and if applicable, its

1 registration as a limited liability partnership or a foreign
2 limited liability partnership;

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

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

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

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

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

25 "(7) for a professional corporation or foreign
26 professional corporation, its certificate of formation,
27 bylaws, and other agreements among its shareholders that are

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

3 "(8) 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 "(p) ~~"Qualified person,"~~ QUALIFIED PERSON, with
8 respect to a limited liability company rendering professional
9 services in this state, means a person authorized by this
10 state or a regulatory authority of this state to own a
11 transferable interest in that limited liability company.

12 "(q) ~~"Surviving organization"~~ SURVIVING ORGANIZATION
13 means an organization into which one or more other
14 organizations are merged under Article 10, whether the
15 organization pre-existed the merger or was created pursuant to
16 the merger.

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

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

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

26 "§10A-5A-2.01.

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

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

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

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

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

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

17 "(6) any other matters the members determine to
18 include therein.

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

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

1 "(d) A limited liability company agreement shall be
2 entered into either before, after, or at the time of the
3 filing of the certificate of formation and, whether entered
4 into before, after, or at the time of the filing, may be made
5 effective as of the filing of the certificate of formation or
6 at any other time or date provided in the limited liability
7 company agreement.

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

10 "§10A-5A-2.02.

11 "~~Notwithstanding~~ Division B of Article 3 of Chapter
12 1 shall not apply to this chapter. Instead:

13 "(a) A certificate of formation may be amended at
14 any time.

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

17 "(c) To amend its certificate of formation, a
18 limited liability company must deliver a certificate of
19 amendment for filing to the Secretary of State which
20 certificate of amendment shall state:

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

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

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

26 "(d) To restate its certificate of formation, a
27 limited liability company must deliver a restated certificate

1 of formation for filing to the Secretary of State. A restated
2 certificate of formation must:

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

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

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

7 "(4) set forth any amendment or change effected in
8 connection with the restatement of the certificate of
9 formation.

10 Any such restatement that effects an amendment shall
11 be subject to any other provision of this chapter, not
12 inconsistent with this section, which would apply if a
13 separate certificate of amendment were filed to effect the
14 amendment or change.

15 "(e) The original certificate of formation, as
16 theretofore amended, shall be superseded by the restated
17 certificate of formation and thenceforth, the restated
18 certificate of formation, including any further amendment or
19 changes made thereby, shall be the certificate of formation of
20 the limited liability company, but the original effective date
21 of formation shall remain unchanged.

22 "(f) An amended or restated certificate of formation
23 may contain only provisions that would be permitted at the
24 time of the amendment if the amended or restated certificate
25 of formation were a newly filed original certificate of
26 formation.

27 "§10A-5A-7.02.

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

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

6 "(1) collecting its assets;

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

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

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

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

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

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

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

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

22 "(C) That the limited liability company has
23 dissolved.

24 "(D) Any other information the limited liability
25 company deems appropriate.

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

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

6 "(4) transfer the limited liability company's
7 assets;

8 "(5) resolve disputes by mediation or arbitration;
9 and

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

12 "(c) The dissolution of a limited liability company
13 does not:

14 "(1) transfer title to the limited liability
15 company's property;

16 "(2) prevent the commencement of a proceeding by or
17 against the limited liability company in its limited liability
18 company name;

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

22 "(4) terminate the authority of its registered
23 agent; or

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

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

1 "§10A-5A-7.04.

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

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

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

11 "(1) identify the dissolved limited liability
12 company;

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

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

17 "(4) state the deadline, which may not be fewer than
18 120 days from the effective date of the notice, by which the
19 dissolved limited liability company must receive the claim;
20 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 limited
25 liability company is barred:

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

4 "(2) if a claimant whose claim was rejected by the
5 dissolved limited liability company does not commence a
6 proceeding to enforce the claim within 90 days from the
7 effective date of the rejection 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-7.05.

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

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

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

22 "(1) be published at least one time in a newspaper
23 of general circulation in the county in which the dissolved
24 limited liability company's principal office is located or, if
25 it has none in this state, in the county in which the
26 dissolved limited liability company's most recent registered
27 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 limited liability company will be barred
6 unless a proceeding to enforce the claim is commenced within
7 two years after the publication of the notice.

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

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

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

21 "(3) a claimant whose claim is contingent at the
22 effective date of the dissolution of the limited liability
23 company, or is based on an event occurring after the effective
24 date of the dissolution of the limited liability company.

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

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

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

13 "(e) A dissolved limited liability company that
14 published a notice under this section may file an application
15 with the circuit court for the county in which the dissolved
16 limited liability company's principal office is located in
17 this state, and if the limited liability company does not have
18 a principal office within this state, with the circuit court
19 for the county in which the dissolved limited liability
20 company's most recent registered office is located, for a
21 determination of the amount and form of security to be
22 provided for payment of claims that are contingent or have not
23 been made known to the dissolved limited liability company or
24 that are based on an event occurring after the effective date
25 of the dissolution of the limited liability company but that,
26 based on the facts known to the dissolved limited liability
27 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
25 company after the effective date of the dissolution of the
26 limited liability company.

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

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

9 "§10A-5A-7.06.

10 ~~"Notwithstanding Section 10A-1-9.12, upon~~ Upon the
11 winding up of a limited liability company, the assets shall be
12 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, members who are creditors, in satisfaction of
16 liabilities of the limited liability company.

17 "(b) After a limited liability company 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
26 transferable interests share in distributions before
27 dissolution.

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

6 "§10A-5A-7.07.

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

10 "(a) the consent shall have been obtained from the
11 members or other persons entitled to consent at the time that
12 is:

13 "(1) required for reinstatement under the limited
14 liability company agreement; or

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

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

22 "(b) in the case of a written objection to
23 reinstatement having been delivered to the limited liability
24 company before or at the time of the consent required by
25 subsection (a) by the members or other persons having
26 authority under the limited liability company agreement to
27 bring about or prevent dissolution of the limited liability

1 company, those members or persons withdrawing that written
2 objection effective at the time of the consent required by
3 subsection (a);

4 "(c) in the case of a limited liability company
5 dissolved in a judicial proceeding initiated by one or more of
6 the members, the consent of each of those members shall have
7 been obtained and shall be included in the consent required by
8 subsection (a); and

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

11 "§10A-5A-11.10.

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

13 "(a) A dissolved series continues its existence as a
14 series but may not carry on any activities and affairs except
15 as is appropriate to wind up and liquidate its activities and
16 affairs, including:

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

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

21 "(3) discharging or making provisions for
22 discharging the liabilities of the series;

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

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

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

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

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

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

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

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

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

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

13 "(3) terminate, abate, or suspend a proceeding
14 pending by or against the series on the effective date of
15 dissolution; or

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

18 "§10A-5A-11.12.

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

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

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

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

3 "(2) describe the information required to be
4 included in a claim;

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

7 "(4) state the deadline, which may not be fewer than
8 120 days from the effective date of the notice, by which the
9 dissolved series must receive the claim; and

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

12 "(c) Unless sooner barred by any other statute
13 limiting actions, a claim against a dissolved series is
14 barred:

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

18 "(2) If a claimant whose claim was rejected by the
19 dissolved series does not commence a proceeding to enforce the
20 claim within 90 days from the effective date of the rejected
21 notice.

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

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

3 "§10A-5A-11.13.

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

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

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

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

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

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

21 "(c) If a dissolved series publishes a newspaper
22 notice in accordance with subsection (b), unless sooner barred
23 by any other statute limiting actions, the claim of each of
24 the following claimants is barred unless the claimant
25 commences a proceeding to enforce the claim against the
26 dissolved series within two years after the publication date
27 of the newspaper notice:

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

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

5 "(3) a claimant whose claim is contingent at the
6 effective date of the dissolution of the series, or is based
7 on an event occurring after the effective date of the
8 dissolution of the series.

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

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

14 "(2) except as provided in subsection (h), if the
15 assets of a dissolved series have been distributed after
16 dissolution, against the person or persons owning the
17 transferable interests associated with the series to the
18 extent of that person's proportionate share of the claim or of
19 the assets of the series distributed to that person after
20 dissolution, whichever is less, but a person's total liability
21 for all claims under this subsection may not exceed the total
22 amount of assets of the series distributed to that person
23 after dissolution of the series.

24 "(e) A dissolved series that published a notice
25 under this section may file an application with the circuit
26 court for the county in which the limited liability company's
27 principal office is located in this state and if the limited

1 liability company does not have a principal office within this
2 state then the circuit court for the county in which the
3 limited liability company's most recent registered office is
4 located, for a determination of the amount and form of
5 security to be provided for payment of claims that are
6 contingent or have not been made known to the dissolved series
7 or that are based on an event occurring after the effective
8 date of the dissolution of the series but that, based on the
9 facts known to the dissolved series, are reasonably estimated
10 to arise after the effective date of the dissolution of the
11 series. Provision need not be made for any claim that is or is
12 reasonably anticipated to be barred under subsection (c).

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

17 "(g) The circuit court under subsection (e) may
18 appoint a guardian ad litem to represent all claimants whose
19 identities are unknown in any proceeding brought under this
20 section. The reasonable fees and expenses of the guardian,
21 including all reasonable expert witness fees, shall be paid by
22 the dissolved series.

23 "(h) Provision by the dissolved series for security
24 in the amount and the form ordered by the circuit court under
25 subsection (e) shall satisfy the dissolved series' obligation
26 with respect to claims that are contingent, have not been made
27 known to the dissolved series, or are based on an event

1 occurring after the effective date of the dissolution of the
2 series, and those claims may not be enforced against a person
3 owning a transferable interest to whom assets have been
4 distributed by the dissolved series after the effective date
5 of the dissolution of the series.

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

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

14 "§10A-5A-11.14.

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

18 "(a) Payment, or adequate provision for payment,
19 shall be made to creditors of the series, including, to the
20 extent permitted by law, members who are associated with the
21 series and who are also creditors of the series, in
22 satisfaction of liabilities of the series.

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

25 "(1) first, to each person owning a transferable
26 interest associated with that series that reflects
27 contributions made on account of that transferable interest

1 and not previously returned, an amount equal to the value of
2 the unreturned contributions; and

3 "(2) then to each person owning a transferable
4 interest associated with that series in the proportions in
5 which the owners of transferable interests associated with
6 that series share in distributions prior to the dissolution of
7 the series.

8 "(c) If the series does not have sufficient surplus
9 to comply with subsection (b) (1), any surplus must be
10 distributed among the owners of transferable interests
11 associated with that series in proportion to the value of
12 their respective unreturned contributions.

13 "§10A-5A-11.15.

14 ~~"Notwithstanding Sections 10A-1-9.31 and 10A-1-9.32,~~
15 ~~a~~ A series 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 members or other persons associated with the series entitled
19 to consent at the time that is:

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

22 "(2) if the limited liability company agreement does
23 not state the consent required for reinstatement, sufficient
24 for dissolution of the series under the limited liability
25 company agreement; or

26 "(3) if the limited liability company agreement
27 neither states the consent required for reinstatement nor for

1 dissolution, sufficient for dissolution of the series under
2 this chapter;

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

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

16 "§10A-8A-1.02.

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

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

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

24 "(3) ~~"Distribution"~~ DISTRIBUTION except as otherwise
25 provided in Section 10A-8A-4.09(f), means a transfer of money
26 or other property from a partnership to another person on
27 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.

25 "~~Partnership~~" PARTNERSHIP means an entity that
26 is formed under this chapter or that is governed by this

1 chapter. The term includes, for all purposes of the laws of
2 this state, a limited liability partnership.

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

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

13 "(12) ~~"Person dissociated as a partner"~~ PERSON
14 DISSOCIATED AS A PARTNER means a person dissociated as a
15 partner of a partnership.

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

21 "(14) ~~"Required information"~~ REQUIRED INFORMATION
22 means the information that a partnership is required to
23 maintain under Section 10A-8A-1.11.

24 "(15) ~~"Statement"~~ STATEMENT means a statement of
25 partnership under Section 10A-8A-2.02, a statement of not for
26 profit partnership under Section 10A-8A-2.02, a statement of
27 authority under Section 10A-8A-3.03, a statement of denial

1 under Section 10A-8A-3.04, a statement of dissociation under
2 Section 10A-8A-7.04, a statement of dissolution under Section
3 10A-8A-8.02 or under Section 10A-8A-8.03, a certificate of
4 reinstatement under Section 10A-8A-8.11, a statement of
5 limited liability partnership under Section 10A-8A-10.01, a
6 statement of cancellation under Section 10A-8A-10.01, or any
7 other document required or permitted to be delivered to the
8 Secretary of State for filing under this chapter, or an
9 amendment or cancellation of any of the foregoing.

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

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

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

19 "§10A-8A-4.10.

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

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

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

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

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

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

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

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

20 "(3) it is determined that:

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

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

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

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

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

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

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

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

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

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

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

23 "(2) keep confidential from the partners and any
24 other person, for such period of time as the partnership deems
25 reasonable, any information that the partnership reasonably
26 believes to be in the nature of trade secrets or other
27 information the disclosure of which the partnership in good

1 faith believes is not in the best interest of the partnership
2 or could damage the partnership or its business or not for
3 profit activity, or that the partnership is required by law or
4 by agreement with a third party to keep confidential.

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

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

11 "(h) A partner or person dissociated as a partner
12 may exercise the rights under this section through an attorney
13 or other agent. Any restriction imposed under subsection (f)
14 or by the partnership agreement applies both to the attorney
15 or other agent and to the partner or person dissociated as a
16 partner.

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

22 "(j) Any partner who, without reasonable cause,
23 refuses to allow any partner or person dissociated as a
24 partner, or his or her agent or attorney to inspect or copy
25 any records of the partnership to which such partner or person
26 dissociated as a partner is entitled under this section, shall
27 be personally liable to the partner or person dissociated as a

1 partner for a penalty in an amount not to exceed 10 percent of
2 the fair market value of the transferable interest of the
3 partner or person dissociated as a partner, in addition to any
4 other damages or remedy.

5 "§10A-8A-8.02.

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

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

11 "(1) collecting its assets;

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

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

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

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

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

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

24 "(A) The name of the partnership;

25 "(B) If the partnership has filed a statement of
26 partnership, a statement of not for profit partnership, a
27 statement of authority, or a statement of limited liability

1 partnership, the unique identifying number or other
2 designation as assigned by the Secretary of State;

3 "(C) That the partnership has dissolved;

4 "(D) The name, street address, and mailing address
5 of the partner who will be winding up the business or not for
6 profit activity of the partnership pursuant to Section
7 10A-8A-8.03(a), and if none, the name, street address, and
8 mailing address of the person appointed pursuant to Section
9 10A-8A-8.03(b) or (c) to wind up the business or not for
10 profit activity of the partnership;

11 "(E) If the partnership has filed a statement of
12 partnership, a statement of not for profit partnership, or a
13 statement of limited liability partnership, the name, street
14 address, and mailing address of the partnership's registered
15 agent; and

16 "(F) Any other information the partnership deems
17 appropriate;

18 "(2) preserve the partnership's business or not for
19 profit activity as a going concern for a reasonable time;

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

22 "(4) transfer the partnership's assets;

23 "(5) resolve disputes by mediation or arbitration;

24 and

25 "(6) merge or convert in accordance with Article 9
26 of this chapter or Article 8 of Chapter 1.

27 "(c) The dissolution of a partnership does not:

1 "(1) transfer title to the partnership's property;

2 "(2) prevent the commencement of a proceeding by or
3 against the partnership in its partnership name;

4 "(3) terminate, abate, or suspend a proceeding
5 pending by or against the partnership on the effective date of
6 dissolution;

7 "(4) terminate the authority of its registered
8 agent; or

9 "(5) abate, suspend, or otherwise alter the
10 application of Section 10A-8A-3.06.

11 "(d) A statement of dissolution is a filing
12 instrument under Chapter 1.

13 "§10A-8A-8.06.

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

15 "(a) A dissolved partnership may dispose of any
16 known claims against it by following the procedures described
17 in subsection (b) at any time after the effective date of the
18 dissolution of the partnership.

19 "(b) A dissolved partnership may give notice of the
20 dissolution in writing to the holder of any known claim. The
21 notice must:

22 "(1) identify the dissolved partnership;

23 "(2) describe the information required to be
24 included in a claim;

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

1 "(4) state the deadline, which may not be fewer than
2 120 days from the effective date of the notice, by which the
3 dissolved partnership must receive the claim;

4 "(5) state that if not sooner barred, the claim will
5 be barred if not received by the deadline; and

6 "(6) unless the partnership has been throughout its
7 existence a limited liability partnership, state that the
8 barring of a claim against the partnership will also bar any
9 corresponding claim against any partner or person dissociated
10 as a partner which is based on Section 10A-8A-3.06.

11 "(c) Unless sooner barred by any other statute
12 limiting actions, a claim against a dissolved partnership is
13 barred:

14 "(1) if a claimant who was given notice under
15 subsection (b) does not deliver the claim to the dissolved
16 partnership by the deadline; or

17 "(2) if a claimant whose claim was rejected by the
18 dissolved partnership, does not commence a proceeding to
19 enforce the claim within 90 days from the effective date of
20 the rejection notice.

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

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

1 "§10A-8A-8.07.

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

3 "(a) A dissolved partnership may publish notice of
4 its dissolution and request that persons with claims against
5 the dissolved partnership present them in accordance with the
6 notice.

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

8 "(1) be published at least one time in a newspaper
9 of general circulation in the county in which the dissolved
10 partnership's principal office in this state is located, and
11 if none, was last 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 partnership will be barred unless a
17 proceeding to enforce the claim is commenced within two years
18 after the publication of the notice; and

19 "(4) unless the partnership has been throughout its
20 existence a limited liability partnership, state that the
21 barring of a claim against the partnership will also bar any
22 corresponding claim against any partner or person dissociated
23 as a partner which is based on Section 10A-8A-3.06.

24 "(c) If a dissolved partnership publishes a
25 newspaper notice in accordance with subsection (b), unless
26 sooner barred by any other statute limiting actions, the claim
27 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)
25 may not exceed the total amount of assets distributed to that
26 person after dissolution of the partnership; or

1 "(3) against any person liable on the claim under
2 Sections 10A-8A-3.06, 10A-8A-7.03, and 10A-8A-8.05.

3 "(e) A dissolved partnership that published a notice
4 under this section may file an application with a court of
5 competent jurisdiction for a determination of the amount and
6 form of security to be provided for payment of claims that are
7 contingent or have not been made known to the dissolved
8 partnership or that are based on an event occurring after the
9 effective date of the dissolution of the partnership but that,
10 based on the facts known to the dissolved partnership, are
11 reasonably estimated to arise after the effective date of the
12 dissolution of the partnership. Provision need not be made for
13 any claim that is or is reasonably anticipated to be barred
14 under subsection (c).

15 "(f) Within 10 days after the filing of the
16 application provided for in subsection (e), notice of the
17 proceeding shall be given by the dissolved partnership to each
18 potential claimant as described in subsection (e).

19 "(g) The court under subsection (e) may appoint a
20 guardian ad litem to represent all claimants whose identities
21 are unknown in any proceeding brought under this section. The
22 reasonable fees and expenses of the guardian, including all
23 reasonable expert witness fees, shall be paid by the dissolved
24 partnership.

25 "(h) Provision by the dissolved partnership for
26 security in the amount and the form ordered by the court under
27 subsection (e) shall satisfy the dissolved partnership's

1 obligation with respect to claims that are contingent, have
2 not been made known to the dissolved partnership, or are based
3 on an event occurring after the effective date of the
4 dissolution of the partnership, and those claims may not be
5 enforced against a person owning a transferable interest to
6 whom assets have been distributed by the dissolved partnership
7 after the effective date of the dissolution of the
8 partnership.

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

11 "(j) If a claim has been satisfied, disposed of, or
12 barred under Section 10A-8A-8.06, this section, or other law,
13 the person or persons designated to wind up the business or
14 not for profit activity of a partnership, and the owners of
15 the transferable interests receiving assets from the
16 partnership, shall not be liable for that claim.

17 "§10A-8A-8.09.

18 ~~"Notwithstanding Section 10A-1-9.12, upon~~ Upon the
19 winding up of a partnership, the assets of the partnership,
20 including any obligation under Sections 10A-8A-4.03,
21 10A-8A-4.04, and 10A-8A-4.09, and any contribution required by
22 this section, shall be applied as follows:

23 "(a) Payment, or adequate provision for payment,
24 shall be made to creditors, including, to the extent permitted
25 by law, partners who are creditors, in satisfaction of
26 liabilities of the partnership.

1 "(b) After a partnership complies with subsection
2 (a), any surplus must be distributed:

3 "(1) first, to each person owning a transferable
4 interest that reflects contributions made on account of the
5 transferable interest and not previously returned, an amount
6 equal to the value of the person's unreturned contributions;
7 and

8 "(2) then to each person owning a transferable
9 interest in the proportions in which the owners of
10 transferable interests share in distributions before
11 dissolution.

12 "(c) If the partnership does not have sufficient
13 surplus to comply with subsection (b) (1), any surplus must be
14 distributed among the owners of transferable interests in
15 proportion to the value of their respective unreturned
16 contributions.

17 "(d) If a partnership's assets are insufficient to
18 satisfy all of its obligations under subsection (a), with
19 respect to each unsatisfied obligation incurred when the
20 partnership was not a limited liability partnership, the
21 following rules apply:

22 "(1) Each person that was a partner when the
23 obligation was incurred and that has not been released from
24 the obligation under Section 10A-8A-7.03(c) and (d) shall
25 contribute to the partnership for the purpose of enabling the
26 partnership to satisfy the obligation. The contribution due
27 from each of those persons is in proportion to the right to

1 receive distributions in the capacity of partner in effect for
2 each of those persons when the obligation was incurred.

3 "(2) If a person does not contribute the full amount
4 required under paragraph (1) with respect to an unsatisfied
5 obligation of the partnership, the other persons required to
6 contribute by paragraph (1) on account of the obligation shall
7 contribute the additional amount necessary to discharge the
8 obligation. The additional contribution due from each of those
9 other persons is in proportion to the right to receive
10 distributions in the capacity of partner in effect for each of
11 those other persons when the obligation was incurred.

12 "(3) If a person does not make the additional
13 contribution required by paragraph (2), further additional
14 contributions are determined and due in the same manner as
15 provided in that paragraph.

16 "(e) A person that makes an additional contribution
17 under subsection (d)(2) or (3) may recover from any person
18 whose failure to contribute under subsection (d)(1) or (2)
19 necessitated the additional contribution. A person may not
20 recover under this subsection more than the amount
21 additionally contributed. A person's liability under this
22 subsection may not exceed the amount the person failed to
23 contribute.

24 "(f) The estate of a deceased individual is liable
25 for the person's obligations under this section.

26 "(g) An assignee for the benefit of creditors of a
27 partnership or a partner, or a person appointed by a court to

1 represent creditors of a partnership or a partner, may enforce
2 a person's obligation to contribute under subsection (d).

3 "§10A-8A-8.10.

4 ~~"Notwithstanding Sections 10A-1-9.31 and 10A-1-9.32,~~
5 ~~a~~ A partnership that has been dissolved may be reinstated upon
6 compliance with the following conditions:

7 "(a) the consent shall have been obtained from the
8 partners or other persons entitled to consent at the time that
9 is:

10 "(1) required for reinstatement under the
11 partnership agreement; or

12 "(2) if the partnership agreement does not state the
13 consent required for reinstatement, sufficient for dissolution
14 under the partnership agreement; or

15 "(3) if the partnership agreement neither states the
16 consent required for reinstatement nor for dissolution,
17 sufficient for dissolution under this chapter;

18 "(b) in the case of a written objection to
19 reinstatement having been delivered to the partnership before
20 or at the time of the consent required by subsection (a) by
21 the partners or other persons having authority under the
22 partnership agreement to bring about or prevent dissolution of
23 the partnership, those partners or persons withdrawing that
24 written objection effective at the time of the consent
25 required by subsection (a);

26 "(c) in the case of a partnership dissolved in a
27 judicial proceeding initiated by one or more of the partners

1 pursuant to Section 10A-8A-8.01(4), the consent of each of
2 those partners shall have been obtained and shall be included
3 in the consent required by subsection (a);

4 "(d) in the case of a partnership dissolved in a
5 judicial proceeding initiated by one or more of transferees
6 pursuant to Section 10A-8A-8.01(5), the consent of each of
7 those transferees shall have been obtained and shall be
8 included in the consent required by subsection (a); and

9 "(e) in the case of a partnership that has filed a
10 statement of dissolution, the filing of a certificate of
11 reinstatement in accordance with Section 10A-8A-8.11.

12 "§10A-8A-9.01.

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

16 "(1) ~~"Constituent organization"~~ CONSTITUENT
17 ORGANIZATION means an organization that is party to a merger
18 under this article.

19 "(2) ~~"Constituent partnership"~~ CONSTITUENT
20 PARTNERSHIP means a constituent organization that is a
21 partnership.

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

25 "(4) ~~"Converting organization"~~ CONVERTING
26 ORGANIZATION means an organization that converts into another
27 organization pursuant to this article.

1 "~~5) "Converting partnership"~~ CONVERTING PARTNERSHIP
2 means a converting organization that is a partnership.

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

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

14 "~~8) "Organizational documents"~~ ORGANIZATIONAL
15 DOCUMENTS means:

16 "(A) (i) for a partnership, its partnership agreement
17 and, if applicable, its statement of partnership, statement of
18 not for profit partnership, or statement of limited liability
19 partnership; and (ii) for a foreign partnership, its
20 partnership agreement and, if applicable, its statement of
21 foreign limited liability partnership;

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

26 "(C) for a limited liability company or foreign
27 limited liability company, its certificate of formation and

1 limited liability company agreement, or comparable writings as
2 provided in its governing statute;

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

7 "(E) for a corporation for profit or foreign
8 corporation for profit, its certificate of formation, bylaws,
9 and other agreements among its shareholders that are
10 authorized by its governing statute, or comparable writings as
11 provided in its governing statute;

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

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

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

26 "(9) ~~"Surviving organization"~~ SURVIVING ORGANIZATION
27 means an organization into which one or more other

1 organizations are merged under this article, whether the
2 organization pre-existed the merger or was created pursuant to
3 the merger.

4 "§10A-9A-1.02.

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

8 "(1) "CERTIFICATE OF FORMATION" with respect to a
9 limited partnership means the certificate of formation
10 required by Section 10A-9A-2.01, and the certificate of
11 formation as amended or restated.

12 "(2) "DISTRIBUTION" except as otherwise provided in
13 Section 10A-9A-5.08(f), means a transfer of money or other
14 property from a limited partnership to another person on
15 account of a transferable interest.

16 "(3) "FOREIGN LIMITED LIABILITY LIMITED PARTNERSHIP"
17 means a foreign limited partnership whose general partners
18 have limited liability for the obligations of the foreign
19 limited partnership under a provision similar to Section
20 10A-9A-4.04(c).

21 "(4) "FOREIGN LIMITED PARTNERSHIP" means a
22 partnership formed under the laws of a jurisdiction other than
23 this state and required by those laws to have one or more
24 general partners and one or more limited partners. The term
25 includes a foreign limited liability limited partnership.

26 "(5) "GENERAL PARTNER" means:

1 "(A) with respect to a limited partnership, a person
2 that:

3 "(i) is admitted as a general partner under Section
4 10A-9A-4.01;

5 "or

6 "(ii) was a general partner in a limited partnership
7 when the limited partnership became subject to this chapter
8 under Section 10A-9A-11.01(a); and

9 "(B) with respect to a foreign limited partnership,
10 a person that has rights, powers, and obligations similar to
11 those of a general partner in a limited partnership.

12 "(6) "LIMITED LIABILITY LIMITED PARTNERSHIP," except
13 in the phrase "foreign limited liability limited partnership,"
14 means a limited partnership whose certificate of formation
15 states that the limited partnership is a limited liability
16 limited partnership.

17 "(7) "LIMITED PARTNER" means:

18 "(A) with respect to a limited partnership, a person
19 that:

20 "(i) is admitted as a limited partner under Section
21 10A-9A-3.01; or

22 "(ii) was a limited partner in a limited partnership
23 when the limited partnership became subject to this chapter
24 under Section 10A-9A-11.01(a); and

25 "(B) with respect to a foreign limited partnership,
26 a person that has rights, powers, and obligations similar to
27 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.

26 "(14) "TRANSFERABLE INTEREST" means a partner's
27 right to receive distributions from a limited partnership.

1 "(15) "TRANSFEE" means a person to which all or
2 part of a transferable interest has been transferred, whether
3 or not the transferor is a partner.

4 "§10A-9A-2.01.

5 "(a) In order to form a limited partnership, a
6 person must deliver a certificate of formation for filing to
7 the Secretary of State. ~~Notwithstanding~~ Section 10A-1-3.05
8 shall not apply to this chapter. Instead, the certificate of
9 formation shall set forth:

10 "(1) the name of the limited partnership, which must
11 comply with Article 5 of Chapter 1;

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

14 "(3) the name of the registered agent at the
15 registered office as required by Article 5 of Chapter 1;

16 "(4) the name and the street and mailing address of
17 each general partner;

18 "(5) whether the limited partnership is a limited
19 liability limited partnership;

20 "(6) any additional information required by Article
21 8 of Chapter 1 or by Article 10 of this chapter; and

22 "(7) any other matters the partners determine to
23 include therein which comply with Section 10A-9A-1.08.

24 "(b) A limited partnership is formed when the
25 certificate of formation becomes effective in accordance with
26 Article 4 of Chapter 1.

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

6 "(d) A partnership agreement shall be entered into
7 either before, after, or at the time of filing the certificate
8 of formation and, whether entered into before, after, or at
9 the time of filing, may be made effective as of the filing of
10 the certificate of formation or at any other time or date
11 provided in the partnership agreement.

12 "§10A-9A-2.02.

13 "~~Notwithstanding~~ Division B of Article 3 of Chapter
14 1 shall not apply to this chapter. Instead:

15 "(a) A certificate of formation may be amended at
16 any time.

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

19 "(c) To amend its certificate of formation, a
20 limited partnership must deliver a certificate of amendment
21 for filing to the Secretary of State which certificate of
22 amendment shall state:

23 "(1) the name of the limited partnership;

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

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

1 "(d) Prior to a statement of dissolution being
2 delivered to the Secretary of State for filing, a limited
3 partnership shall promptly deliver a certificate of amendment
4 for filing with the Secretary of State to reflect:

5 "(1) the admission of a new general partner; or

6 "(2) the dissociation of a person as a general
7 partner.

8 "(e) Prior to a statement of dissolution being
9 delivered to the Secretary of State for filing, if a general
10 partner knows that any information in a filed certificate of
11 formation was inaccurate when the certificate of formation was
12 filed or has become inaccurate due to changed circumstances
13 and if such information is required to be set forth in a newly
14 filed certificate of formation under this chapter, the general
15 partner shall promptly:

16 "(1) cause the certificate of formation to be
17 amended; or

18 "(2) if appropriate, deliver for filing with the
19 Secretary of State a certificate of correction in accordance
20 with Chapter 1.

21 "(f) A certificate of formation may be amended at
22 any time pursuant to this section for any other proper purpose
23 as determined by the limited partnership. A certificate of
24 formation may also be amended in a statement of merger
25 pursuant to Article 8 of Chapter 1 or Article 10 of this
26 chapter.

1 "(g) In order to restate its certificate of
2 formation, a limited partnership must deliver a restated
3 certificate of formation for filing with the Secretary of
4 State. A restated certificate of formation must:

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

6 "(2) state the name of the limited partnership;

7 "(3) state the unique identifying number or other
8 designation as assigned by the Secretary of State;

9 "(4) set forth any amendment or change effected in
10 connection with the restatement of the certificate of
11 formation. Any such restatement that effects an amendment
12 shall be subject to any other provision of this chapter not
13 inconsistent with this section, which would apply if a
14 separate certificate of amendment were filed to effect the
15 amendment or change;

16 "(5) set forth the text of the restated certificate
17 of formation; and

18 "(6) state that the restated certificate of
19 formation consolidates all amendments into a single document.

20 "(h) The original certificate of formation, as
21 theretofore amended, shall be superseded by the restated
22 certificate of formation and thenceforth, the restated
23 certificate of formation, including any further amendment or
24 changes made thereby, shall be the certificate of formation of
25 the limited partnership, but the original effective date of
26 formation shall remain unchanged.

1 "(i) An amended or restated certificate of formation
2 may contain only the provisions that would be permitted at the
3 time of the amendment if the amended or restated certificate
4 of formation were a newly filed original certificate of
5 formation.

6 "(j) The filing of a certificate of amendment to the
7 certificate of formation shall have the effect, and shall take
8 effect, as provided in Section 10A-1-3.14.

9 "(k) The filing of a restated certificate of
10 formation shall have the effect, and shall take effect, as
11 provided in Section 10A-1-3.18.

12 "§10A-9A-4.06.

13 "(a) Each general partner has equal rights in the
14 management and conduct of the limited partnership's activities
15 and affairs. Except as expressly provided in this chapter, any
16 matter relating to the activities and affairs of the limited
17 partnership is decided exclusively by the general partner or,
18 if there is more than one general partner, by a majority of
19 the general partners.

20 "(b) The consent of all of the partners is necessary
21 to:

22 "(1) amend the partnership agreement;

23 "(2) amend the certificate of formation to add or
24 delete a statement that the limited partnership is a limited
25 liability limited partnership; and

26 "(3) sell, lease, exchange, or otherwise dispose of
27 all, or substantially all, of the limited partnership's

1 property, with or without the good will, other than in the
2 usual and regular course of the limited partnership's
3 activities and affairs.

4 "(c) A limited partnership shall reimburse a general
5 partner for payments made and indemnify a general partner for
6 liabilities incurred by the general partner in the ordinary
7 course of the activities and affairs of the limited
8 partnership or for the preservation of its activities and
9 affairs or its property.

10 "(d) A limited partnership shall reimburse a general
11 partner for an advance to the limited partnership beyond the
12 amount of capital the general partner agreed to contribute.

13 "(e) A payment or advance made by a general partner
14 which gives rise to an obligation of the limited partnership
15 under subsection (c) or (d) constitutes a loan to the limited
16 partnership which accrues interest from the date of the
17 payment or advance.

18 "(f) A general partner is not entitled to
19 remuneration for services performed for the partnership.

20 ~~"(g) Notwithstanding the provisions of Article 6 of~~
21 ~~Chapter 1, a~~ A limited partnership may indemnify and hold
22 harmless a partner or other person, pay in advance or
23 reimburse expenses incurred by a partner or other person, and
24 purchase and maintain insurance on behalf of a partner or
25 other person.

26 "§10A-9A-4.07.

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

1 "(a) Subject to subsection (f), a general partner,
2 without having any particular purpose for seeking the
3 information, may inspect and copy during regular business
4 hours at a reasonable location specified by the limited
5 partnership, required information and any other records
6 maintained by the limited partnership regarding the limited
7 partnership's activities and affairs and financial condition.

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

11 "(1) without demand, any information concerning the
12 limited partnership's activities and affairs and activities
13 and affairs reasonably required for the proper exercise of the
14 general partner's rights and duties under the partnership
15 agreement or this chapter; and

16 "(2) on demand, any other information concerning the
17 limited partnership's activities and affairs, except to the
18 extent the demand or the information demanded is unreasonable
19 or otherwise improper under the circumstances.

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

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

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

3 "(3) the person satisfies the requirements imposed
4 on a limited partner by Section 10A-9A-3.04(b).

5 "(d) The limited partnership shall respond to a
6 demand made pursuant to subsection (c) in the same manner as
7 provided in Section 10A-9A-3.04(c).

8 "(e) If a general partner dies, Section 10A-9A-7.04
9 applies.

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

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

19 "(2) keep confidential from the partners and any
20 other person, for such period of time as the limited
21 partnership deems reasonable, any information that the limited
22 partnership reasonably believes to be in the nature of trade
23 secrets or other information the disclosure of which the
24 limited partnership in good faith believes is not in the best
25 interest of the limited partnership or could damage the
26 limited partnership or its activities and affairs, or that the

1 limited partnership is required by law or by agreement with a
2 third party to keep confidential.

3 "In any dispute concerning the reasonableness of a
4 restriction under this subsection, the limited partnership has
5 the burden of proving reasonableness.

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

9 "(h) A general partner or person dissociated as a
10 general partner may exercise the rights under this section
11 through an attorney or other agent. Any restriction imposed
12 under subsection (f) or by the partnership agreement applies
13 both to the attorney or other agent and to the general partner
14 or person dissociated as a general partner.

15 "(i) The rights under this section do not extend to
16 a person as transferee, but the rights under subsection (c) of
17 a person dissociated as a general partner may be exercised by
18 the legal representative of an individual who dissociated as a
19 general partner under Section 10A-9A-6.03(6).

20 "(j) Any general partner who, without reasonable
21 cause, refuses to allow any general partner or person
22 dissociated as a general partner, or their agent or attorney
23 to inspect or copy any records of the limited partnership to
24 which such general partner or person disassociated as a
25 general partner is entitled under this section, shall be
26 personally liable to the general partner or person dissociated
27 as a general partner for a penalty in an amount not to exceed

1 10 percent of the fair market value of the partnership
2 interest of the general partner or person dissociated as a
3 general partner, in addition to any other damages or remedy.

4 "§10A-9A-8.02.

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

6 "(a) A dissolved limited partnership continues its
7 existence as a limited partnership but may not carry on any
8 activities and affairs except as is appropriate to wind up and
9 liquidate its activities and affairs, including:

10 "(1) collecting its assets;

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

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

15 "(4) distributing its remaining property in
16 accordance with Section 10A-9A-8.09; and

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

19 "(b) In winding up its activities and affairs, a
20 limited partnership may:

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

23 "(A) The name of the limited partnership;

24 "(B) The unique identifying number or other
25 designation as assigned by the Secretary of State;

26 "(C) That the limited partnership has dissolved;

1 "(D) The name and street mailing address of the
2 general partner who will be winding up the affairs of the
3 limited partnership pursuant to Section 10A-9A-8.03(a), and if
4 none, the name and street address of the person appointed
5 pursuant to Section 10A-9A-8.03(b) or (c) to wind up the
6 activities and affairs of the limited partnership; and

7 "(E) Any other information the limited partnership
8 deems appropriate;

9 "(2) preserve the limited partnership's activities
10 and affairs and property as a going concern for a reasonable
11 time;

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

14 "(4) transfer the limited partnership's assets;

15 "(5) resolve disputes by mediation or arbitration;

16 and

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

19 "(c) The dissolution of a limited partnership does
20 not:

21 "(1) transfer title to the limited partnership's
22 property;

23 "(2) prevent the commencement of a proceeding by or
24 against the limited partnership in its limited partnership
25 name;

1 "(3) terminate, abate, or suspend a proceeding
2 pending by or against the limited partnership on the effective
3 date of dissolution;

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

6 "(5) abate, suspend, or otherwise alter the
7 application of Sections 10A-9A-3.03 and 10A-9A-4.04(b) and
8 (c).

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

11 "§10A-9A-8.06.

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

13 "(a) A dissolved limited partnership may dispose of
14 any known claims against it by following the procedures
15 described in subsection (b) at any time after the effective
16 date of the dissolution of the limited partnership.

17 "(b) A dissolved limited partnership may give notice
18 of the dissolution in a record to the holder of any known
19 claim. The notice must:

20 "(1) identify the dissolved limited partnership;

21 "(2) describe the information required to be
22 included in a claim;

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

25 "(4) state the deadline, which may not be fewer than
26 120 days from the effective date of the notice, by which the
27 dissolved partnership must receive the claim;

1 "(5) state that if not sooner barred, the claim will
2 be barred if not received by the deadline; and

3 "(6) unless the limited partnership has been
4 throughout its existence a limited liability limited
5 partnership, state that the barring of a claim against the
6 limited partnership will also bar any corresponding claim
7 against any general partner or person dissociated as a general
8 partner which is based on Section 10A-9A-4.04.

9 "(c) Unless sooner barred by any other statute
10 limiting actions, a claim against a dissolved limited
11 partnership is barred:

12 "(1) if a claimant who was given notice under
13 subsection (b) does not deliver the claim to the dissolved
14 limited partnership by the deadline; or

15 "(2) if a claimant whose claim was rejected by the
16 dissolved limited partnership, does not commence a proceeding
17 to enforce the claim within 90 days from the effective date of
18 the rejection notice.

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

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

26 "§10A-9A-8.07.

27 ~~"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.

25 "(c) If a dissolved limited partnership publishes a
26 newspaper notice in accordance with subsection (b), unless
27 sooner barred by any other statute limiting actions, the claim

1 of each of the following claimants is barred unless the
2 claimant commences a proceeding to enforce the claim against
3 the dissolved limited partnership within two years after the
4 publication date of the newspaper notice:

5 "(1) a claimant who was not given notice under
6 Section 10A-9A-8.06;

7 "(2) a claimant whose claim was timely sent to the
8 dissolved limited partnership but not acted on by the
9 dissolved limited partnership; and

10 "(3) a claimant whose claim is contingent at the
11 effective date of the dissolution of the limited partnership,
12 or is based on an event occurring after the effective date of
13 the dissolution of the limited partnership.

14 "(d) A claim that is not barred under this section,
15 any other statute limiting actions, or Section 10A-9A-8.06 may
16 be enforced:

17 "(1) against a dissolved limited partnership, to the
18 extent of its undistributed assets;

19 "(2) except as provided in subsection (h), if the
20 assets of a dissolved limited partnership have been
21 distributed after dissolution, against the person or persons
22 owning the transferable interests to the extent of that
23 person's proportionate share of the claim or of the assets
24 distributed to that person after dissolution, whichever is
25 less, but a person's total liability for all claims under
26 subsection (d) may not exceed the total amount of assets

1 distributed to that person after dissolution of the limited
2 partnership; or

3 "(3) against any person liable on the claim under
4 Section 10A-9A-4.04 and 10A-9A-6.07.

5 "(e) A dissolved limited partnership that published
6 a notice under this section may file an application with the
7 designated court, and if none the circuit court for the county
8 in which the dissolved limited partnership's principal office
9 is located in this state and if the dissolved limited
10 partnership does not have a principal office within this
11 state, in the circuit court for the county in which the
12 dissolved limited partnership's most recent registered office
13 is located, for a determination of the amount and form of
14 security to be provided for payment of claims that are
15 contingent or have not been made known to the dissolved
16 limited partnership or that are based on an event occurring
17 after the effective date of the dissolution of the limited
18 partnership but that, based on the facts known to the
19 dissolved limited partnership, are reasonably estimated to
20 arise after the effective date of the dissolution of the
21 limited partnership. Provision need not be made for any claim
22 that is or is reasonably anticipated to be barred under
23 subsection (c).

24 "(f) Within 10 days after the filing of the
25 application provided for in subsection (e), notice of the
26 proceeding shall be given by the dissolved limited partnership
27 to each potential claimant as described in subsection (e).

1 "(g) The circuit court under subsection (e) may
2 appoint a guardian ad litem to represent all claimants whose
3 identities are unknown in any proceeding brought under this
4 section. The reasonable fees and expenses of the guardian,
5 including all reasonable expert witness fees, shall be paid by
6 the dissolved limited partnership.

7 "(h) Provision by the dissolved limited partnership
8 for security in the amount and the form ordered by the circuit
9 court under subsection (e) shall satisfy the dissolved limited
10 partnership's obligation with respect to claims that are
11 contingent, have not been made known to the dissolved limited
12 partnership, or are based on an event occurring after the
13 effective date of the dissolution of the limited partnership,
14 and those claims may not be enforced against a person owning a
15 transferable interest to whom assets have been distributed by
16 the dissolved limited partnership after the effective date of
17 the dissolution of the limited partnership.

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

20 "(j) If a claim has been satisfied, disposed of, or
21 barred under Section 10A-9A-8.06, this section, or other law,
22 the person or persons designated to wind up the affairs of a
23 limited partnership, and the owners of the transferable
24 interests receiving assets from the limited partnership, shall
25 not be liable for that claim.

26 "§10A-9A-8.09.

1 ~~"Notwithstanding Section 10A-1-9.12, upon~~ Upon the
2 winding up of a limited partnership, the assets of the limited
3 partnership, including any obligation under Article 5 of this
4 chapter, and any contribution required by this section, shall
5 be applied as follows:

6 "(a) Payment, or adequate provision for payment,
7 shall be made to creditors, including, to the extent permitted
8 by law, partners who are creditors, in satisfaction of
9 liabilities of the limited partnership.

10 "(b) After a limited partnership complies with
11 subsection (a), any surplus must be distributed:

12 "(1) first, to each person owning a transferable
13 interest that reflects contributions made on account of the
14 transferable interest and not previously returned, an amount
15 equal to the value of the person's unreturned contributions;
16 and

17 "(2) then to each person owning a transferable
18 interest in the proportions in which the owners of
19 transferable interests share in distributions before
20 dissolution.

21 "(c) If the limited partnership does not have
22 sufficient surplus to comply with subsection (b)(1), any
23 surplus must be distributed among the owners of transferable
24 interests in proportion to the value of their respective
25 unreturned contributions.

26 "(d) If a limited partnership's assets are
27 insufficient to satisfy all of its obligations under

1 subsection (a), with respect to each unsatisfied obligation
2 incurred when the limited partnership was not a limited
3 liability limited partnership, the following rules apply:

4 "(1) Each person that was a general partner when the
5 obligation was incurred and that has not been released from
6 the obligation under Section 10A-9A-6.07 shall contribute to
7 the limited partnership for the purpose of enabling the
8 limited partnership to satisfy the obligation. The
9 contribution due from each of those persons is in proportion
10 to the right to receive distributions in the capacity of
11 general partner in effect for each of those persons when the
12 obligation was incurred.

13 "(2) If a person does not contribute the full amount
14 required under paragraph (1) with respect to an unsatisfied
15 obligation of the limited partnership, the other persons
16 required to contribute by paragraph (1) on account of the
17 obligation shall contribute the additional amount necessary to
18 discharge the obligation. The additional contribution due from
19 each of those other persons is in proportion to the right to
20 receive distributions in the capacity of general partner in
21 effect for each of those other persons when the obligation was
22 incurred.

23 "(3) If a person does not make the additional
24 contribution required by paragraph (2), further additional
25 contributions are determined and due in the same manner as
26 provided in that paragraph.

1 "(e) A person that makes an additional contribution
2 under subsection (d)(2) or (3) may recover from any person
3 whose failure to contribute under subsection (d)(1) or (2)
4 necessitated the additional contribution. A person may not
5 recover under this subsection more than the amount
6 additionally contributed. A person's liability under this
7 subsection may not exceed the amount the person failed to
8 contribute.

9 "(f) The estate of a deceased individual is liable
10 for the person's obligations under this section.

11 "(g) An assignee for the benefit of creditors of a
12 limited partnership or a partner, or a person appointed by a
13 court to represent creditors of a limited partnership or a
14 partner, may enforce a person's obligation to contribute under
15 subsection (d).

16 "§10A-9A-8.10.

17 ~~"Notwithstanding Sections 10A-1-9.31 and 10A-1-9.32,~~
18 ~~a~~ A limited partnership that has been dissolved may be
19 reinstated upon compliance with the following conditions:

20 "(a) the consent shall have been obtained from the
21 partners or other persons entitled to consent at the time that
22 is:

23 "(1) required for reinstatement under the
24 partnership agreement; or

25 "(2) if the partnership agreement does not state the
26 consent required for reinstatement, sufficient for dissolution
27 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 limited partnership
6 before or at the time of the consent required by subsection
7 (a) by the partners or other persons having authority under
8 the partnership agreement to bring about or prevent
9 dissolution of the limited partnership, those partners or
10 persons withdrawing that written objection effective at the
11 time of the consent required by subsection (a);

12 "(c) in the case of a limited partnership dissolved
13 in a judicial proceeding initiated by one or more of the
14 partners, the consent of each of those partners shall have
15 been obtained and shall be included in the consent required by
16 subsection (a); and

17 "(d) the filing of a certificate of reinstatement in
18 accordance with Section 10A-9A-8.11.

19 "§10A-9A-10.01.

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

23 "(1) "CONSTITUENT LIMITED PARTNERSHIP" means a
24 constituent organization that is a limited partnership.

25 "(2) "CONSTITUENT ORGANIZATION" means an
26 organization that is party to a merger under this article.

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

4 "(4) "CONVERTING LIMITED PARTNERSHIP" means a
5 converting organization that is a limited partnership.

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

9 "(6) "GENERAL PARTNER" means a general partner of a
10 limited partnership.

11 "(7) "GOVERNING STATUTE" of an organization means
12 the statute that governs the organization's internal affairs.

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

21 "(9) "ORGANIZATIONAL 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;

26 "(B) for a limited partnership or foreign limited
27 partnership, its certificate of formation and partnership

1 agreement, or comparable writings as provided in its governing
2 statute;

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

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

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

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

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

26 "(H) for any other organization, the basic writings
27 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 "(10) "SURVIVING ORGANIZATION" means an organization
4 into which one or more other organizations are merged under
5 this article, whether the organization pre-existed the merger
6 or was created pursuant to the merger."

7 Section 6. This act shall become effective on
8 January 1, 2022, following its passage and approval by the
9 Governor, or its otherwise becoming law.