

1 SB174
2 195929-1
3 By Senators Givhan, Albritton, Barfoot, Butler, Scofield,
4 Livingston, Allen, Orr and Roberts
5 RFD: Fiscal Responsibility and Economic Development
6 First Read: 02-APR-19

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8 SYNOPSIS: This bill would make changes to the Alabama
9 Business and Nonprofit Entity Code by revising the
10 Alabama Business Corporation Law to reflect the
11 national standards set by the Model Business
12 Corporation Act of 2016 and the Delaware General
13 Corporation Law, and would make conforming changes
14 throughout the Alabama Business and Nonprofit
15 Entity Code in order to effectuate the changes to
16 the Alabama Business Corporation Law and conform
17 with the other entities governed by the Alabama
18 Business and Nonprofit Entity Code .

19
20 A BILL
21 TO BE ENTITLED
22 AN ACT

23
24 Relating to business entities; to add Chapter 2A to
25 Title 10A, consisting of Sections 10A-2A-1.01 to 10A-2A-17.06,
26 inclusive, to the Code of Alabama 1975, substantially revising
27 the Alabama Business Corporation Law to reflect the national

1 standards set by the Model Business Corporation Act of 2016
2 and the Delaware General Corporation Law; to amend Sections
3 10A-1-1.02, 10A-1-1.03, 10A-1-1.08, 10A-1-1.12, 10A-1-3.05,
4 10A-1-3.06, 10A-1-3.32, 10A-1-3.42, 10A-1-4.01, and
5 10A-1-4.02, Code of Alabama 1975, as amended by Act 2018-125;
6 to amend Sections 10A-1-4.04, 10A-1-4.06, 10A-1-4.11,
7 10A-1-4.13, 10A-1-4.15, 10A-1-4.21, 10A-1-4.23, and
8 10A-1-4.24, Code of Alabama 1975; to amend Section 10A-1-4.25,
9 Code of Alabama 1975, as amended by Act 2018-125; to amend
10 Section 10A-1-4.26, Code of Alabama 1975; to amend Sections
11 10A-1-4.31, 10A-1-5.01, and 10A-1-5.08, Code of Alabama 1975,
12 as amended by Act 2018-125; to amend Section 10A-1-6.01, Code
13 of Alabama 1975; to amend Sections 10A-1-6.02, 10A-1-7.01,
14 10A-1-7.04, and 10A-1-7.11, Code of Alabama 1975, as amended
15 by Act 2018-125; to amend Section 10A-1-7.21, Code of Alabama
16 1975; to amend Sections 10A-1-7.31, 10A-1-8.01, and
17 10A-1-8.02, Code of Alabama 1975, as amended by Act 2018-125;
18 to amend Sections 10A-1-8.04, 10A-1-9.01, 10A-4-2.02,
19 10A-4-4.01, 10A-4-4.02, 10A-4-5.01, 10A-4-5.04, 10A-5A-10.01,
20 10A-5A-10.03, 10A-5A-10.04, 10A-5A-10.05, and 10A-5A-10.07,
21 Code of Alabama 1975; to amend Section 10A-5A-10.08, Code of
22 Alabama 1975, as amended by Act 2018-125; to amend Sections
23 10A-8A-9.02, 10A-8A-9.04, 10A-8A-9.05, 10A-8A-9.06,
24 10A-8A-9.08, and 10A-8A-9.09, as added to the Code of Alabama
25 1975 by Act 2018-125; to amend Sections 10A-9A-10.02,
26 10A-9A-10.04, 10A-9A-10.05, 10A-9A-10.06, and 10A-9A-10.08,
27 Code of Alabama 1975; to amend Section 10A-9A-10.09, Code of

1 Alabama 1975, as amended by Act 2018-125; to amend Sections
2 10A-10-1.09, 10A-10-1.12, 10A-10-1.15, 10A-10-1.16,
3 10A-11-1.01, 10A-11-1.03, 10A-11-1.04, 10A-11-1.06,
4 10A-11-1.12, 10A-30-2.01, 10A-30-2.03, 10A-30-2.04,
5 10A-30-2.05, 10A-30-2.06, 10A-30-2.09, 10A-30-2.12, and
6 10A-30-2.13, Code of Alabama 1975, to make conforming changes
7 throughout the Alabama Business and Nonprofit Entity Code in
8 order to effectuate the changes to the Alabama Business
9 Corporation Law and conform with the other entities governed
10 by the Alabama Business and Nonprofit Entity Code; and to
11 repeal Chapter 2 of Title 10, consisting of Sections
12 10A-2-1.01 to 10A-2-17.02, inclusive, Code of Alabama 1975.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. Chapter 2A, commencing with Section
15 10A-2A-1.01, is added to Title 10A of the Code of Alabama
16 1975, as follows:

17 ARTICLE 1. GENERAL PROVISIONS.

18 Division A. SHORT TITLE.

19 §10A-2A-1.01. Short title.

20 (a) This chapter and the provisions of Chapter 1, to
21 the extent applicable to business corporations, shall be known
22 and may be cited as the Alabama Business Corporation Law.

23 (b) This chapter and the provisions of Chapter 1, to
24 the extent applicable to business corporations, apply to a
25 corporation incorporated and existing under this chapter or
26 any predecessor law regarding business corporations, and to a
27 foreign corporation that is transacting business in this

1 state, regardless of whether the foreign corporation is
2 registered to transact business in this state. Without in any
3 way limiting the generality of any provision of this chapter
4 or of any provision of Chapter 1, this chapter and the
5 provisions of Chapter 1, to the extent applicable to
6 corporations, shall apply to banks, trust companies, savings
7 and loan associations, insurance companies, public utilities,
8 and railroad companies, except to the extent, if any, that any
9 provision of this chapter or of Chapter 1 is inconsistent with
10 other statutes of this state specifically applicable to those
11 entities.

12 Division B. FILING DOCUMENTS.

13 §10A-2A-1.20. Requirements for filing instruments;
14 extrinsic facts.

15 (a) Whenever any filing instrument is to be filed
16 with the Secretary of State or in accordance with this
17 chapter, such instrument shall be executed as follows:

18 (1) Except as provided in subsection (3), the
19 certificate of incorporation, and any other instrument to be
20 filed before the election of the initial board of directors if
21 the initial directors were not named in the certificate of
22 incorporation, shall be signed by the incorporator or
23 incorporators or the successors and assigns of the
24 incorporator or incorporators. If any incorporator is not
25 available then any other instrument may be signed, with the
26 same effect as if the incorporator had signed it, by any
27 person for whom or on whose behalf the incorporator, in

1 executing the certificate of incorporation, was acting
2 directly or indirectly as employee or agent, provided that the
3 other instrument shall state that the incorporator is not
4 available and the reason therefor, that the incorporator in
5 executing the certificate of incorporation was acting directly
6 or indirectly as employee or agent for or on behalf of the
7 person, and that the person's signature on the instrument is
8 otherwise authorized and not wrongful.

9 (2) Except as provided in subsection (3), all other
10 filing instruments shall be signed:

11 (i) by any authorized officer of the corporation; or

12 (ii) if it shall appear from the filing instrument
13 that there are no such officers, then by a majority of the
14 directors or by such directors as may be designated by the
15 board of directors; or

16 (iii) if it shall appear from the filing instrument
17 that there are no such officers or directors, then by the
18 holders of record, or such of them as may be designated by the
19 holders of record, of a majority of all outstanding shares of
20 stock; or

21 (iv) by the holders of record of all outstanding
22 shares of stock.

23 (3) If the corporation is in the hands of a
24 receiver, trustee, or other court-appointed fiduciary, by that
25 fiduciary.

26 (b) The person executing the filing instrument shall
27 sign it and state beneath or opposite the person's signature

1 the person's name and the capacity in which the filing
2 instrument is signed. The filing instrument may, but need not,
3 contain a corporate seal, attestation, acknowledgment, or
4 verification.

5 (c) Whenever a provision of this chapter permits any
6 of the terms of a plan or a filing instrument to be dependent
7 on facts objectively ascertainable outside the plan or filing
8 instrument, the following provisions apply:

9 (1) The manner in which the facts will operate upon
10 the terms of the plan or filing instrument must be set forth
11 in the plan or filing instrument.

12 (2) The facts may include:

13 (i) any of the following that are available in a
14 nationally recognized news or information medium either in
15 print or electronically: statistical or market indices, market
16 prices of any security or group of securities, interest rates,
17 currency exchange rates, or similar economic or financial
18 data;

19 (ii) a determination or action by any person or
20 body, including the corporation or any other party to a plan
21 or filing instrument; or

22 (iii) the terms of, or actions taken under, an
23 agreement to which the corporation is a party, or any other
24 agreement or document.

25 (3) As used in this subsection (c), "plan" means a
26 plan of conversion, merger, or share exchange.

1 (4) The following provisions of a plan or filing
2 instrument may not be made dependent on facts outside the plan
3 or filed document:

4 (i) the name and address of any person required in a
5 filing instrument;

6 (ii) the registered office of any entity required in
7 a filing instrument;

8 (iii) the registered agent of any entity required in
9 a filing instrument;

10 (iv) the number of authorized shares of stock and
11 designation of each class or series of stock;

12 (v) the effective date and time of a filing
13 instrument as determined under Article 4 of Chapter 1; and

14 (vi) any required statement in a filing instrument
15 of the date on which the underlying transaction was approved
16 or the manner in which that approval was given.

17 (5) If a provision of a filing instrument is made
18 dependent on a fact ascertainable outside of the filing
19 instrument, and that fact is neither ascertainable by
20 reference to a source described in subsection (c) (2) (i) or a
21 document that is a matter of public record, nor have the
22 affected stockholders received notice of the fact from the
23 corporation, then the corporation shall file with the
24 Secretary of State a certificate of amendment to the filing
25 instrument setting forth the fact promptly after the time when
26 the fact referred to is first ascertainable or thereafter
27 changes. A certificate of amendment under this subsection

1 (c) (5) is deemed to be authorized by the authorization of the
2 original filing instrument to which it relates and may be
3 filed by the corporation without further action by the board
4 of directors or the stockholders.

5 §10A-2A-1.21. Certificate of existence or
6 registration.

7 (a) The Secretary of State, upon request and payment
8 of the requisite fee, shall furnish to any person a
9 certificate of existence for a corporation if the writings
10 filed in the office of the Secretary of State show that the
11 corporation has been incorporated under the laws of this
12 state. A certificate of existence shall reflect only the
13 information on file with the Secretary of State. A certificate
14 of existence must state:

15 (1) the corporation's name;

16 (2) that the corporation was incorporated under the
17 laws of this state, the date of incorporation, and the filing
18 office in which the certificate of incorporation was filed;

19 (3) whether the corporation has delivered to the
20 Secretary of State for filing a certificate of dissolution;

21 (4) whether the corporation has delivered to the
22 Secretary of State for filing a certificate of reinstatement;
23 and

24 (5) other facts of record in the office of the
25 Secretary of State that are specified by the person requesting
26 the certificate.

1 (b) The Secretary of State, upon request and payment
2 of the requisite fee, shall furnish to any person a
3 certificate of registration for a foreign corporation if the
4 writings filed in the office of the Secretary of State show
5 that the Secretary of State has filed an application for
6 registration for authority to transact business in this state
7 and the registration has not been revoked, withdrawn, or
8 terminated. A certificate of registration must state:

9 (1) the foreign corporation's name and any alternate
10 name adopted for use in this state;

11 (2) that the foreign corporation is authorized to
12 transact business in this state;

13 (3) that the Secretary of State has not revoked the
14 foreign corporation's registration;

15 (4) that the foreign corporation has not filed with
16 the Secretary of State a certificate of withdrawal or
17 otherwise terminated its registration; and

18 (5) other facts of record in the office of the
19 Secretary of State that are specified by the person requesting
20 the certificate.

21 (c) Subject to any qualification stated in the
22 certificate, a certificate of existence or certificate of
23 registration issued by the Secretary of State is conclusive
24 evidence that the corporation is in existence or the foreign
25 corporation is authorized to transact business in this state.

26 Division C. DEFINITIONS.

27 §10A-2A-1.40. Chapter definitions.

1 Notwithstanding Section 10A-1-1.03, as used in this
2 chapter, unless otherwise specified or unless the context
3 otherwise requires, the following terms have the following
4 meaning:

5 (1) "Authorized stock" means the stock of all
6 classes and series a corporation or foreign corporation is
7 authorized to issue.

8 (2) "Beneficial stockholder" means a person who owns
9 the beneficial interest in stock, which may be a record
10 stockholder or a person on whose behalf shares of stock are
11 registered in the name of an intermediary or nominee.

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

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

10 (4) "Corporation," except in the phrase "foreign
11 corporation," means an entity incorporated or existing under
12 this chapter.

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

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

26 (7) "Document" means a writing as defined in Chapter
27 1.

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

4 (9) "Eligible entity" means an unincorporated
5 entity, foreign unincorporated entity, nonprofit corporation,
6 or foreign nonprofit corporation.

7 (10) "Eligible interests" means interests or
8 memberships.

9 (11) "Employee" includes an officer, but not a
10 director. A director may accept duties that make the director
11 also an employee.

12 (12) "Entity" includes corporation; foreign
13 corporation; nonprofit corporation; foreign nonprofit
14 corporation; estate; trust; unincorporated entity; foreign
15 unincorporated entity; and state, United States, and foreign
16 government.

17 (13) "Expenses" means reasonable expenses of any
18 kind that are incurred in connection with a matter.

19 (14) "Filing entity" means an unincorporated entity,
20 other than a limited liability partnership, that is of a type
21 that is created by filing a public organic record or is
22 required to file a public organic record that evidences its
23 creation.

24 (15) "Foreign corporation" means a corporation
25 incorporated under a law other than the law of this state
26 which would be a corporation if incorporated under the law of
27 this state.

1 (16) "Foreign nonprofit corporation" means a
2 corporation incorporated under a law other than the law of
3 this state which would be a nonprofit corporation if
4 incorporated under the law of this state.

5 (17) "Governing statute" means the statute governing
6 the internal affairs of a corporation, foreign corporation,
7 nonprofit corporation, foreign nonprofit corporation,
8 unincorporated entity, or foreign unincorporated entity.

9 (18) "Governmental subdivision" includes authority,
10 county, district, and municipality.

11 (19) "Includes" and "including" denote a partial
12 definition or a nonexclusive list.

13 (20) "Interest" means either or both of the
14 following rights under the governing statute governing an
15 unincorporated entity:

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

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

22 (21) "Interest holder" means a person who holds of
23 record an interest.

24 (22) "Knowledge" is determined as follows:

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

26 (1) has actual knowledge of it; or

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

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

4 (1) knows of it;

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

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

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

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

15 (d) A person is deemed to have notice of a
16 corporation's:

17 (1) matters included in the certificate of
18 incorporation upon filing;

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

21 (3) conversion, merger, or interest exchange under
22 Article 9 or Article 11, 90 days after a statement of
23 conversion, or statement of merger or interest exchange
24 becomes effective;

25 (4) conversion or merger under Article 8 of Chapter
26 1, 90 days after a statement of conversion or statement of
27 merger becomes effective; and

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

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

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

12 (23) "Means" denotes an exhaustive definition.

13 (24) "Membership" means the rights of a member in a
14 nonprofit corporation or foreign nonprofit corporation.

15 (25) "Merger" means a transaction pursuant to
16 Section 10A-2A-11.02.

17 (26) "Organizational documents" means the public
18 organic record and private organizational documents of a
19 corporation, foreign corporation, or eligible entity.

20 (27) "Principal office" means the office (in or out
21 of this state) so designated in the annual report where the
22 principal executive offices of a corporation or foreign
23 corporation are located.

24 (28) "Private organizational documents" means (i)
25 the bylaws of a corporation, foreign corporation, nonprofit
26 corporation, or foreign nonprofit corporation or (ii) the
27 rules, regardless of whether in writing, that govern the

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

7 (29) "Proceeding" includes any civil suit and
8 criminal, administrative, and investigatory action.

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

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

25 (32) "Record stockholder" means (i) the person in
26 whose name shares of stock are registered in the records of
27 the corporation or (ii) the person identified as the

1 beneficial owner of stock in a beneficial ownership
2 certificate pursuant to Section 10A-2A-7.23 on file with the
3 corporation to the extent of the rights granted by such
4 certificate.

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

10 (34) "Stock exchange" means a transaction pursuant
11 to Section 10A-2A-11.03.

12 (35) "Stockholder" means a record stockholder.

13 (36) "Stock" means the units into which the
14 proprietary interests in a corporation or foreign corporation
15 are divided.

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

21 (38) "Unincorporated entity" means an organization
22 or artificial legal person that either has a separate legal
23 existence or has the power to acquire an estate in real
24 property in its own name and that is not any of the following:
25 a corporation, foreign corporation, nonprofit corporation,
26 foreign nonprofit corporation, a series of a limited liability
27 company or of another type of entity, an estate, a trust, a

1 state, United States, or foreign government. The term includes
2 a general partnership, limited liability company, limited
3 partnership, business trust, joint stock association, and
4 unincorporated nonprofit association.

5 (39) "United States" includes any district,
6 authority, bureau, commission, department, and any other
7 agency of the United States.

8 (40) "Unrestricted voting trust beneficial owner"
9 means, with respect to any stockholder rights, a voting trust
10 beneficial owner whose entitlement to exercise the stockholder
11 right in question is not inconsistent with the voting trust
12 agreement.

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

20 (42) "Voting power" means the current power to vote
21 in the election of directors.

22 (43) "Voting trust beneficial owner" means an owner
23 of a beneficial interest in stock of the corporation held in a
24 voting trust established pursuant to Section 10A-2A-7.30(a).

25 §10A-2A-1.41. Notice and other communications.

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

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

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

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

22 (d) A notice or other communications may be
23 delivered by electronic transmission if consented to by the
24 recipient or if authorized by subsection (j).

25 (e) Any consent under subsection (d) may be revoked
26 by the person who consented by written or electronic notice to
27 the person to whom the consent was delivered. Any consent is

1 deemed revoked if (i) the corporation is unable to deliver two
2 consecutive electronic transmissions given by the corporation
3 in accordance with that consent, and (ii) the inability
4 becomes known to the secretary or an assistant secretary or to
5 the transfer agent, or other person responsible for the giving
6 of notice or other communications; provided, however, the
7 inadvertent failure to treat that inability as a revocation
8 shall not invalidate any meeting or other action.

9 (f) Unless otherwise agreed between the sender and
10 the recipient, an electronic transmission is received when:

11 (1) it enters an information processing system that
12 the recipient has designated or uses for the purposes of
13 receiving electronic transmissions or information of the type
14 sent, and from which the recipient is able to retrieve the
15 electronic transmission; and

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

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

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

25 (i) A notice or other communication, if in a
26 comprehensible form or manner, is effective at the earliest of
27 the following:

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

3 (i) a stockholder's address shown on the
4 corporation's record of stockholders maintained by the
5 corporation under Section 10A-2A-16.01(d);

6 (ii) a director's residence or usual place of
7 business; or

8 (iii) the corporation's principal office;

9 (2) if mailed postage prepaid and correctly
10 addressed to a stockholder, upon deposit in the United States
11 mail;

12 (3) if mailed by United States mail postage prepaid
13 and correctly addressed to a recipient other than a
14 stockholder, the earliest of when it is actually received, or:

15 (i) if sent by registered or certified mail, return
16 receipt requested, the date shown on the return receipt signed
17 by or on behalf of the addressee; or

18 (ii) five days after it is deposited in the United
19 States mail;

20 (4) if an electronic transmission, when it is
21 received as provided in subsection (f); and

22 (5) if oral, when communicated.

23 (j) A notice or other communication may be in the
24 form of an electronic transmission that cannot be directly
25 reproduced in paper form by the recipient through an automated
26 process used in conventional commercial practice only if (i)
27 the electronic transmission is otherwise retrievable in

1 perceivable form, and (ii) the sender and the recipient have
2 consented in writing to the use of such form of electronic
3 transmission.

4 (k) If this chapter prescribes requirements for
5 notices or other communications in particular circumstances,
6 those requirements govern. If the certificate of incorporation
7 or bylaws prescribe requirements for notices or other
8 communications, not inconsistent with this section or other
9 provisions of this chapter, those requirements govern. The
10 certificate of incorporation or bylaws may authorize or
11 require delivery of notices of meetings of directors by
12 electronic transmission.

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

19 §10A-2A-1.42. Number of stockholders.

20 (a) For purposes of this chapter, the following
21 identified as a stockholder in a corporation's current record
22 of stockholders constitutes one stockholder:

23 (1) three or fewer co-owners;

24 (2) a corporation, partnership, trust, estate, or
25 other entity; and

26 (3) the trustees, guardians, custodians, or other
27 fiduciaries of a single trust, estate, or account.

1 (b) For purposes of this chapter, stockholdings
2 registered in substantially similar names constitute one
3 stockholder if it is reasonable to believe that the names
4 represent the same person.

5 §10A-2A-1.43. Qualified director.

6 (a) A "qualified director" is a director who, at the
7 time action is to be taken under:

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

14 (2) Section 10A-2A-7.44, does not have (i) a
15 material interest in the outcome of the proceeding, or (ii) a
16 material relationship with a person who has such an interest;

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

25 (4) Section 10A-2A-8.60, is not a director (i) as to
26 whom the contract or transaction is a director's conflicting
27 interest transaction, (ii) who has a material relationship

1 with another director as to whom the transaction is a
2 director's conflicting interest transaction, (iii) pursues or
3 takes advantage of the business opportunity, directly, or
4 indirectly through or on behalf of another person, or (iv) has
5 a material relationship with a director or officer who pursues
6 or takes advantage of the business opportunity, directly, or
7 indirectly through or on behalf of another person.

8 (b) For purposes of this section:

9 (1) "material relationship" means a familial,
10 financial, professional, employment, or other relationship
11 that would reasonably be expected to impair the objectivity of
12 the director's judgment when participating in the action to be
13 taken; and

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

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

23 (1) nomination or election of the director to the
24 current board of directors by any director who is not a
25 qualified director with respect to the matter (or by any
26 person that has a material relationship with that director),
27 acting alone or participating with others;

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

6 (3) with respect to action to be taken under Section
7 10A-2A-7.44, status as a named defendant, as a director
8 against whom action is demanded, or as a director who approved
9 the conduct being challenged.

10 §10A-2A-1.44. Householding.

11 (a) A corporation has delivered written notice or
12 any other report or statement under this chapter, the
13 certificate of incorporation, or the bylaws to all
14 stockholders who share a common address if:

15 (1) the corporation delivers one copy of the notice,
16 report, or statement to the common address;

17 (2) the corporation addresses the notice, report, or
18 statement to those stockholders either as a group or to each
19 of those stockholders individually or to the stockholders in a
20 form to which each of those stockholders has consented; and

21 (3) each of those stockholders consents to delivery
22 of a single copy of such notice, report, or statement to the
23 stockholders' common address.

24 (b) Any such consent described in subsection (a)(2)
25 or (a)(3) shall be revocable by any stockholders who deliver
26 written notice of revocation to the corporation. If a written
27 notice of revocation is delivered, the corporation shall begin

1 providing individual notices, reports, or other statements to
2 the revoking stockholder no later than 30 days after delivery
3 of the written notice of revocation.

4 (c) Any stockholder who fails to object by written
5 notice to the corporation, within 60 days of written notice by
6 the corporation of its intention to deliver single copies of
7 notices, reports, or statements to stockholders who share a
8 common address as permitted by subsection (a), shall be deemed
9 to have consented to receiving such single copy at the common
10 address; provided that the notice of intention explains that
11 consent may be revoked and the method for revoking.

12 Division D. RATIFICATION OF DEFECTIVE CORPORATE
13 ACTIONS.

14 §10A-2A-1.45. Definitions.

15 In this article:

16 (1) "Corporate action" means any action taken by or
17 on behalf of the corporation, including any action taken by
18 the incorporator, the board of directors, a committee of the
19 board of directors, an officer or agent of the corporation or
20 the stockholders.

21 (2) "Date of the defective corporate action" means
22 the date (or the approximate date, if the exact date is
23 unknown) the defective corporate action was purported to have
24 been taken.

25 (3) "Defective corporate action" means (i) any
26 corporate action purportedly taken that is, and at the time
27 such corporate action was purportedly taken would have been,

1 within the power of the corporation, but is void or voidable
2 due to a failure of authorization, and (ii) an overissue.

3 (4) "Failure of authorization" means the failure to
4 authorize, approve, or otherwise effect a corporate action in
5 compliance with the provisions of this chapter, the
6 certificate of incorporation or bylaws, a corporate
7 resolution, or any plan or agreement to which the corporation
8 is a party, if and to the extent such failure would render
9 such corporate action void or voidable.

10 (5) "Overissue" means the purported issuance of:

11 (i) stock of a class or series in excess of the
12 number of shares of stock of a class or series the corporation
13 has the power to issue under Section 10A-2A-6.01 at the time
14 of such issuance; or

15 (ii) stock of any class or series that is not then
16 authorized for issuance by the certificate of incorporation.

17 (6) "Putative stock" means the stock of any class or
18 series (including stock issued upon exercise of rights,
19 options, warrants, or other securities convertible into stock
20 of the corporation, or interests with respect to such stock)
21 that was created or issued as a result of a defective
22 corporate action, that (i) but for any failure of
23 authorization would constitute valid stock, or (ii) cannot be
24 determined by the board of directors to be valid stock.

25 (7) "Valid stock" means the stock of any class or
26 series that has been duly authorized and validly issued in

1 accordance with this chapter, including as a result of
2 ratification or validation under this article.

3 (8) "Validation effective time" with respect to any
4 defective corporate action ratified under this article means
5 the later of:

6 (i) the time at which the ratification of the
7 defective corporate action is approved by the stockholders, or
8 if approval of stockholders is not required, the time at which
9 the notice required by Section 10A-2A-1.49 becomes effective
10 in accordance with Section 10A-2A-1.41; and

11 (ii) the time at which any certificate of validation
12 filed in accordance with Section 10A-2A-1.51 becomes
13 effective.

14 The validation effective time shall not be affected
15 by the filing or pendency of a judicial proceeding under
16 Section 10A-2A-1.52 or otherwise, unless otherwise ordered by
17 the court.

18 §10A-2A-1.46. Defective corporate actions.

19 (a) A defective corporate action shall not be void
20 or voidable if ratified in accordance with Section 10A-2A-1.47
21 or validated in accordance with Section 10A-2A-1.52.

22 (b) Ratification under Section 10A-2A-1.47 or
23 validation under Section 10A-2A-1.52 shall not be deemed to be
24 the exclusive means of ratifying or validating any defective
25 corporate action, and the absence or failure of ratification
26 in accordance with this article shall not, of itself, affect
27 the validity or effectiveness of any corporate action properly

1 ratified under common law or otherwise, nor shall it create a
2 presumption that any such corporate action is or was a
3 defective corporate action or void or voidable.

4 (c) In the case of an overissue, putative stock
5 shall be valid stock effective as of the date originally
6 issued or purportedly issued upon:

7 (1) the effectiveness under this article and under
8 Article 10 of an amendment to the certificate of incorporation
9 authorizing, designating, or creating such stock; or

10 (2) the effectiveness of any other corporate action
11 under this article ratifying the authorization, designation,
12 or creation of such stock.

13 §10A-2A-1.47. Ratification of defective corporate
14 actions.

15 (a) To ratify a defective corporate action under
16 this section (other than the ratification of an election of
17 the initial board of directors under subsection (b)), the
18 board of directors shall take action ratifying the action in
19 accordance with Section 10A-2A-1.48, stating:

20 (1) the defective corporate action to be ratified
21 and, if the defective corporate action involved the issuance
22 of putative stock, the number and type of shares of putative
23 stock purportedly issued;

24 (2) the date of the defective corporate action;

25 (3) the nature of the failure of authorization with
26 respect to the defective corporate action to be ratified; and

1 (4) that the board of directors approves the
2 ratification of the defective corporate action.

3 (b) In the event that a defective corporate action
4 to be ratified relates to the election of the initial board of
5 directors of the corporation under Section 10A-2A-2.04(a)(2),
6 a majority of the persons who, at the time of the
7 ratification, are exercising the powers of directors may take
8 an action stating:

9 (1) the name of the person or persons who first took
10 action in the name of the corporation as the initial board of
11 directors of the corporation;

12 (2) the earlier of the date on which such persons
13 first took such action or were purported to have been elected
14 as the initial board of directors; and

15 (3) that the ratification of the election of such
16 person or persons as the initial board of directors is
17 approved.

18 (c) If any provision of this chapter, the
19 certificate of incorporation or bylaws, any corporate
20 resolution, or any plan or agreement to which the corporation
21 is a party in effect at the time action under subsection (a)
22 is taken requires stockholder approval or would have required
23 stockholder approval at the date of the occurrence of the
24 defective corporate action, the ratification of the defective
25 corporate action approved in the action taken by the directors
26 under subsection (a) shall be submitted to the stockholders
27 for approval in accordance with Section 10A-2A-1.48.

1 (d) Unless otherwise provided in the action taken by
2 the board of directors under subsection (a), after the action
3 by the board of directors has been taken and, if required,
4 approved by the stockholders, the board of directors may
5 abandon the ratification at any time before the validation
6 effective time without further action of the stockholders.

7 §10A-2A-1.48. Action on ratification.

8 (a) The quorum and voting requirements applicable to
9 a ratifying action by the board of directors under Section
10 10A-2A-1.47(a) shall be the quorum and voting requirements
11 applicable to the corporate action proposed to be ratified at
12 the time such ratifying action is taken.

13 (b) If the ratification of the defective corporate
14 action requires approval by the stockholders under Section
15 10A-2A-1.47(c), and if the approval is to be given at a
16 meeting, the corporation shall notify each holder of valid and
17 putative stock, regardless of whether entitled to vote, as of
18 the record date for notice of the meeting and as of the date
19 of the occurrence of defective corporate action, provided that
20 notice shall not be required to be given to holders of valid
21 or putative stock whose identities or addresses for notice
22 cannot be determined from the records of the corporation. The
23 notice must state that the purpose, or one of the purposes, of
24 the meeting, is to consider ratification of a defective
25 corporate action and must be accompanied by (i) either a copy
26 of the action taken by the board of directors in accordance
27 with Section 10A-2A-1.47(a) or the information required by

1 Section 10A-2A-1.47(a) (1) through (a) (4), and (ii) a statement
2 that any claim that the ratification of such defective
3 corporate action and any putative stock issued as a result of
4 such defective corporate action should not be effective, or
5 should be effective only on certain conditions, shall be
6 brought within 120 days from the applicable validation
7 effective time.

8 (c) Except as provided in subsection (d) with
9 respect to the voting requirements to ratify the election of a
10 director, the quorum and voting requirements applicable to the
11 approval by the stockholders required by Section
12 10A-2A-1.47(c) shall be the quorum and voting requirements
13 applicable to the corporate action proposed to be ratified at
14 the time of such stockholder approval.

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

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

1 (f) If the approval under this section of putative
2 stock would result in an overissue, in addition to the
3 approval required by Section 10A-2A-1.47, approval of an
4 amendment to the certificate of incorporation under Article 10
5 to increase the number of shares of stock of an authorized
6 class or series or to authorize the creation of a class or
7 series of stock so there would be no overissue shall also be
8 required.

9 §10A-2A-1.49. Notice requirements.

10 (a) Unless stockholder approval is required under
11 Section 10A-2A-1.47(c), prompt notice of an action taken under
12 Section 10A-2A-1.47 shall be given to each holder of valid and
13 putative stock, regardless of whether entitled to vote, as of
14 (i) the date of such action by the board of directors and (ii)
15 the date of the defective corporate action ratified, provided
16 that notice shall not be required to be given to holders of
17 valid and putative stock whose identities or addresses for
18 notice cannot be determined from the records of the
19 corporation.

20 (b) The notice must contain (i) either a copy of the
21 action taken by the board of directors in accordance with
22 Section 10A-2A-1.47(a) or (b) or the information required by
23 Section 10A-2A-1.47(a) (1) through (a) (4) or Section
24 10A-2A-1.47(b) (1) through (b) (3), as applicable, and (ii) a
25 statement that any claim that the ratification of the
26 defective corporate action and any putative stock issued as a
27 result of such defective corporate action should not be

1 effective, or should be effective only on certain conditions,
2 shall be brought within 120 days from the applicable
3 validation effective time.

4 (c) No notice under this section is required with
5 respect to any action required to be submitted to stockholders
6 for approval under Section 10A-2A-1.47(c) if notice is given
7 in accordance with Section 10A-2A-1.48(b).

8 (d) A notice required by this section may be given
9 in any manner permitted by Section 10A-2A-1.41 and, for any
10 corporation subject to the reporting requirements of Section
11 13 or 15(d) of the Securities Exchange Act of 1934, may be
12 given by means of a filing or furnishing of such notice with
13 the United States Securities and Exchange Commission.

14 §10A-2A-1.50. Effect of ratification.

15 From and after the validation effective time, and
16 without regard to the 120-day period during which a claim may
17 be brought under Section 10A-2A-1.52:

18 (a) Each defective corporate action ratified in
19 accordance with Section 10A-2A-1.47 shall not be void or
20 voidable as a result of the failure of authorization
21 identified in the action taken under Section 10A-2A-1.47(a) or
22 (b) and shall be deemed a valid corporate action effective as
23 of the date of the defective corporate action;

24 (b) The issuance of each share of putative stock or
25 fraction of a share of putative stock purportedly issued
26 pursuant to a defective corporate action identified in the
27 action taken under Section 10A-2A-1.47 shall not be void or

1 voidable, and each such share of putative stock or fraction of
2 a share of putative stock shall be deemed to be an identical
3 share of stock or fraction of a valid share of stock as of the
4 time it was purportedly issued; and

5 (c) Any corporate action taken subsequent to the
6 defective corporate action ratified in accordance with this
7 Division D of Article 1 in reliance on such defective
8 corporate action having been validly effected and any
9 subsequent defective corporate action resulting directly or
10 indirectly from such original defective corporate action shall
11 be valid as of the time taken.

12 §10A-2A-1.51. Filings.

13 (a) If the defective corporate action ratified under
14 this Division D of Article 1 would have required under any
15 other section of this chapter a filing in accordance with this
16 chapter, then, regardless of whether a filing was previously
17 made in respect of such defective corporate action and in lieu
18 of a filing otherwise required by this chapter, the
19 corporation shall file a certificate of validation in
20 accordance with this section, and that certificate of
21 validation shall serve to amend or substitute for any other
22 filing with respect to such defective corporate action
23 required by this chapter.

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

25 (1) the defective corporate action that is the
26 subject of the certificate of validation (including, in the
27 case of any defective corporate action involving the issuance

1 of putative stock, the number and type of shares of putative
2 stock issued and the date or dates upon which that putative
3 stock was purported to have been issued);

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

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

7 (4) a statement that the defective corporate action
8 was ratified in accordance with Section 10A-2A-1.47, including
9 the date on which the board of directors ratified that
10 defective corporate action and the date, if any, on which the
11 stockholders approved the ratification of that defective
12 corporate action; and

13 (5) the information required by subsection (c).

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

16 (1) if a filing was previously made in respect of
17 the defective corporate action and no changes to that filing
18 are required to give effect to the ratification of that
19 defective corporate action in accordance with Section
20 10A-2A-1.47, the certificate of validation must set forth (i)
21 the name, title, and filing date of the filing previously made
22 and any certificate of correction to that filing and (ii) a
23 statement that a copy of the filing previously made, together
24 with any certificate of correction to that filing, is attached
25 as an exhibit to the certificate of validation;

26 (2) if a filing was previously made in respect of
27 the defective corporate action and that filing requires any

1 change to give effect to the ratification of that defective
2 corporate action in accordance with Section 10A-2A-1.47, the
3 certificate of validation must set forth (i) the name, title,
4 and filing date of the filing previously made and any
5 certificate of correction to that filing and (ii) a statement
6 that a filing containing all of the information required to be
7 included under the applicable section or sections of this
8 chapter to give effect to that defective corporate action is
9 attached as an exhibit to the certificate of validation, and
10 (iii) the date and time that filing is deemed to have become
11 effective; or

12 (3) if a filing was not previously made in respect
13 of the defective corporate action and the defective corporate
14 action ratified under Section 10A-2A-1.47 would have required
15 a filing under any other section of this chapter, the
16 certificate of validation must set forth (i) a statement that
17 a filing containing all of the information required to be
18 included under the applicable section or sections of this
19 chapter to give effect to that defective corporate action is
20 attached as an exhibit to the certificate of validation, and
21 (ii) the date and time that filing is deemed to have become
22 effective.

23 §10A-2A-1.52. Judicial proceedings regarding
24 validity of corporate actions.

25 (a) Upon application by the corporation, any
26 successor entity to the corporation, a director of the
27 corporation, any stockholder, beneficial stockholder or

1 unrestricted voting trust beneficial owner of the corporation,
2 including any stockholder, beneficial stockholder or
3 unrestricted voting trust beneficial owner as of the date of
4 the defective corporate action ratified under Section
5 10A-2A-1.47, or any other person claiming to be substantially
6 and adversely affected by a ratification under Section
7 10A-2A-1.47, the circuit court of the county where a
8 corporation's principal office, or, if none in this state, its
9 registered office, is located, may:

10 (1) determine the validity and effectiveness of any
11 corporate action or defective corporate action;

12 (2) determine the validity and effectiveness of any
13 ratification under Section 10A-2A-1.47;

14 (3) determine the validity of any putative stock;
15 and

16 (4) modify or waive any of the procedures specified
17 in Section 10A-2A-1.47 or Section 10A-2A-1.48 to ratify a
18 defective corporate action.

19 (b) In connection with an action under this section,
20 the court may make such findings or orders, and take into
21 account any factors or considerations, regarding such matters
22 as it deems proper under the circumstances.

23 (c) Service of process of the application under
24 subsection (a) on the corporation may be made in any manner
25 provided by statute of this state or by rule of the applicable
26 court for service on the corporation, and no other party need
27 be joined in order for the court to adjudicate the matter. In

1 an action filed by the corporation, the court may require
2 notice of the action be provided to other persons specified by
3 the court and permit such other persons to intervene in the
4 action.

5 (d) Notwithstanding any other provision of this
6 section or otherwise under applicable law, any action
7 asserting that the ratification of any defective corporate
8 action and any putative stock issued as a result of a
9 defective corporate action should not be effective, or should
10 be effective only on certain conditions, shall be brought
11 within 120 days of the validation effective time.

12 ARTICLE 2. INCORPORATION.

13 §10A-2A-2.01. Incorporators; filing of certificate
14 of incorporation.

15 Notwithstanding Section 10A-1-3.04, in order to
16 incorporate a corporation, one or more incorporators must
17 execute a certificate of incorporation and deliver it for
18 filing to the Secretary of State.

19 §10A-2A-2.02. Certificate of incorporation.

20 Notwithstanding Section 10A-1-3.05:

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

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

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

26 (3) the street and mailing addresses of the
27 corporation's initial registered office, the county within

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

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

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

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

8 (2) provisions not inconsistent with law regarding:

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

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

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

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

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

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

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

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

19 (6) a provision limiting or eliminating any duty of
20 a director or any other person to offer the corporation the
21 right to have or participate in any, or one or more classes or
22 categories of, business opportunities, before the pursuit or
23 taking of the opportunity by the director or other person;
24 provided that any application of that provision to an officer
25 or a related person of that officer (i) also requires approval
26 of that application by the board of directors, subsequent to
27 the effective date of the provision, by action of qualified

1 directors taken in compliance with the same procedures as are
2 set forth in Section 10A-2A-8.60, and (ii) may be limited by
3 the authorizing action of the board of directors.

4 (c) The certificate of incorporation need not set
5 forth any of the corporate powers enumerated in Sections
6 10A-1-2.11, 10A-1-2.12, and 10A-1-2.13.

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

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

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

18 §10A-2A-2.03. Liability for preincorporation
19 transactions.

20 All persons purporting to act as or on behalf of a
21 corporation, knowing there was no incorporation under this
22 chapter, are jointly and severally liable for all liabilities
23 created while so acting.

24 §10A-2A-2.04. Organization of corporation.

25 (a) After incorporation:

26 (1) if initial directors are named in the
27 certificate of incorporation, the initial directors shall hold

1 an organizational meeting, at the call of a majority of the
2 directors, to complete the organization of the corporation by
3 appointing officers, adopting bylaws, and carrying on any
4 other business brought before the meeting; or

5 (2) if initial directors are not named in the
6 certificate of incorporation, the incorporator or
7 incorporators shall hold an organizational meeting at the call
8 of a majority of the incorporators:

9 (i) to elect initial directors and complete the
10 organization of the corporation; or

11 (ii) to elect a board of directors who shall
12 complete the organization of the corporation.

13 (b) Action required or permitted by this chapter to
14 be taken by incorporators at an organizational meeting may be
15 taken without a meeting if the action taken is evidenced by
16 one or more written consents describing the action taken and
17 signed by each incorporator.

18 (c) An organizational meeting may be held in or out
19 of this state.

20 §10A-2A-2.05. Bylaws.

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

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

26 (c) The bylaws may contain one or both of the
27 following provisions:

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

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

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

22 §10A-2A-2.06. Emergency bylaws.

23 (a) Unless the certificate of incorporation provides
24 otherwise, the board of directors may adopt bylaws to be
25 effective only in an emergency defined in subsection (d). The
26 emergency bylaws, which are subject to amendment or repeal by

1 the stockholders, may make all provisions necessary for
2 managing the corporation during the emergency, including:

3 (1) procedures for calling a meeting of the board of
4 directors;

5 (2) quorum requirements for the meeting; and

6 (3) designation of additional or substitute
7 directors.

8 (b) All provisions of the regular bylaws not
9 inconsistent with the emergency bylaws remain effective during
10 the emergency. The emergency bylaws are not effective after
11 the emergency ends.

12 (c) Corporate action taken in good faith in
13 accordance with the emergency bylaws:

14 (1) binds the corporation; and

15 (2) may not be used to impose liability on a
16 director, officer, employee, or agent of the corporation.

17 (d) An emergency exists for purposes of this section
18 if a quorum of the board of directors cannot readily be
19 assembled because of some catastrophic event.

20 §10A-2A-2.07. Forum selection provisions.

21 (a) The certificate of incorporation or the bylaws
22 may require that any or all internal corporate claims shall be
23 brought exclusively in any specified court or courts of this
24 state and, if so specified, in any additional courts in this
25 state or in any other jurisdictions with which the corporation
26 has a reasonable relationship.

1 (b) A provision of the certificate of incorporation
2 or bylaws adopted under subsection (a) shall not have the
3 effect of conferring jurisdiction on any court or over any
4 person or claim, and shall not apply if none of the courts
5 specified by that provision has the requisite personal and
6 subject matter jurisdiction. If the court or courts of this
7 state specified in a provision adopted under subsection (a) do
8 not have the requisite personal and subject matter
9 jurisdiction and another court of this state does have
10 jurisdiction, then the internal corporate claim may be brought
11 in the other court of this state, notwithstanding that the
12 other court of this state is not specified in that provision,
13 and in any other court specified in that provision that has
14 the requisite jurisdiction.

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

19 (d) "Internal corporate claim" means, for the
20 purposes of this section, (i) any claim that is based upon a
21 violation of a duty under the laws of this state by a current
22 or former director, officer, or stockholder in their
23 capacities as such, (ii) any derivative action or proceeding
24 brought on behalf of the corporation, (iii) any action
25 asserting a claim arising pursuant to any provision of this
26 chapter or the certificate of incorporation or bylaws, or (iv)

1 any action asserting a claim governed by the internal affairs
2 doctrine that is not included in (i) through (iii) above.

3 ARTICLE 3. PURPOSES AND POWERS.

4 §10A-2A-3.01. Purposes.

5 (a) Every corporation incorporated under this
6 chapter has the purpose of engaging in any lawful business
7 unless a more limited purpose is set forth in the certificate
8 of incorporation.

9 (b) A corporation engaging in a business that is
10 subject to regulation under another statute of this state may
11 incorporate under this chapter only if permitted by, and
12 subject to all limitations of, the other statute.

13 §10A-2A-3.02. General powers.

14 Unless its certificate of incorporation provides
15 otherwise, every corporation has perpetual duration and
16 succession in its corporate name and has the same powers as an
17 individual to do all things necessary or convenient to carry
18 out its business and affairs, including all entity powers
19 provided in Section 10A-1-2.11, Section 10A-1-2.12, and
20 Section 10A-1-2.13.

21 §10A-2A-3.03. Emergency powers.

22 (a) In anticipation of or during an emergency
23 defined in subsection (d), the board of directors of a
24 corporation may:

25 (1) modify lines of succession to accommodate the
26 incapacity of any director, officer, employee, or agent; and

1 (2) relocate the principal office, designate
2 alternative principal offices or regional offices, or
3 authorize the officers to do so.

4 (b) During an emergency defined in subsection (d),
5 unless emergency bylaws provide otherwise:

6 (1) notice of a meeting of the board of directors
7 need be given only to those directors whom it is practicable
8 to reach and may be given in any practicable manner; and

9 (2) one or more officers of the corporation present
10 at a meeting of the board of directors may be deemed to be
11 directors for the meeting, in order of rank and within the
12 same rank in order of seniority, as necessary to achieve a
13 quorum.

14 (c) Corporate action taken in good faith during an
15 emergency under this section to further the ordinary business
16 affairs of the corporation:

17 (1) binds the corporation; and

18 (2) may not be used to impose liability on a
19 director, officer, employee, or agent.

20 (d) An emergency exists for purposes of this section
21 if a quorum of the board of directors cannot readily be
22 assembled because of some catastrophic event.

23 §10A-2A-3.04. Lack of power to act.

24 (a) Except as provided in subsection (b), the
25 validity of corporate action may not be challenged on the
26 ground that the corporation lacks or lacked power to act.

27 (b) A corporation's power to act may be challenged:

1 (1) in a proceeding by a stockholder against the
2 corporation to enjoin the act;

3 (2) in a proceeding by the corporation, directly,
4 derivatively, or through a receiver, trustee, or other legal
5 representative, against an incumbent or former director,
6 officer, employee, or agent of the corporation; or

7 (3) in a proceeding by the Attorney General under
8 Section 10A-2A-14.10.

9 (c) In a stockholder's proceeding under subsection
10 (b) (1) to enjoin an unauthorized corporate act, the court may
11 enjoin or set aside the act, if equitable and if all affected
12 persons are parties to the proceeding, and may award damages
13 for loss (other than anticipated profits) suffered by the
14 corporation or another party because of enjoining the
15 unauthorized act.

16 ARTICLE 4. RESERVED.

17 ARTICLE 5. RESERVED.

18 ARTICLE 6. STOCK AND DISTRIBUTIONS.

19 Division A. AUTHORIZED STOCK.

20 §10A-2A-6.01. Authorized stock.

21 (a) The certificate of incorporation must set forth
22 any classes of stock and series of stock within a class, and
23 the number of shares of stock of each class and series, that
24 the corporation is authorized to issue. If more than one class
25 or series of stock is authorized, the certificate of
26 incorporation must prescribe a distinguishing designation for
27 each class or series and, before the issuance of stock of a

1 class or series, describe the terms, including the
2 preferences, rights, and limitations, of that class or series.
3 Except to the extent varied as permitted by this section, all
4 shares of stock of a class or series must have terms,
5 including preferences, rights, and limitations, that are
6 identical with those of other shares of stock of the same
7 class or series.

8 (b) The certificate of incorporation must authorize:

9 (1) one or more classes or series of stock that
10 together have full voting rights, and

11 (2) one or more classes or series of stock (which
12 may be the same class, classes or series as those with voting
13 rights) that together are entitled to receive the net assets
14 of the corporation upon dissolution.

15 (c) The certificate of incorporation may authorize
16 one or more classes or series of stock that:

17 (1) have special, conditional, or limited voting
18 rights, or no right to vote, except to the extent otherwise
19 provided by this chapter;

20 (2) are redeemable or convertible as specified in
21 the certificate of incorporation:

22 (i) at the option of the corporation, the
23 stockholder, or another person or upon the occurrence of
24 a specified event;

25 (ii) for cash, indebtedness, securities, or other
26 property; and

1 (iii) at prices and in amounts specified or
2 determined in accordance with a formula;

3 (3) entitle the holders to distributions calculated
4 in any manner, including dividends that may be cumulative,
5 noncumulative, or partially cumulative; or

6 (4) have preference over any other class or series
7 of stock with respect to distributions, including
8 distributions upon the dissolution of the corporation.

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

12 (e) Any of the terms of stock may vary among holders
13 of the same class or series so long as those variations are
14 expressly set forth in the certificate of incorporation.

15 (f) The description of the preferences, rights, and
16 limitations of classes or series of stock in subsection (c) is
17 not exhaustive.

18 (g) The certificate of incorporation may authorize
19 the board of directors, without stockholder approval, to adopt
20 resolutions, prepare and deliver certificates and certificates
21 of designation to the Secretary of State, and take any other
22 actions described in Section 10A-2A-6.02.

23 §10A-2A-6.02. Terms of class or series determined by
24 board of directors.

25 (a) When any corporation desires to issue any shares
26 of stock of any class or of any series of any class of which
27 the powers, designations, preferences and relative,

1 participating, optional or other rights, if any, or the
2 qualifications, limitations or restrictions thereof, if any,
3 shall not have been set forth in the certificate of
4 incorporation or in any amendment thereto but shall be
5 provided for in a resolution or resolutions adopted by the
6 board of directors pursuant to authority expressly vested in
7 it by the certificate of incorporation or any amendment
8 thereto, a certificate of designations setting forth a copy of
9 the board resolution or resolutions and the number of shares
10 of stock of the class or series as to which the resolution or
11 resolutions apply shall be executed and delivered to the
12 Secretary of State for filing and shall become effective in
13 accordance with Article 4 of Chapter 1. If the certificate of
14 incorporation vests authority in the board of directors to
15 determine the powers, designations, preferences and relative,
16 participating, optional or other rights, if any, or the
17 qualifications, limitations or restrictions thereof, if any,
18 of any class or series of stock, the board of directors is
19 authorized to do so to the same extent permitted under Section
20 10A-2A-6.01.

21 (b) Unless otherwise provided in any resolution or
22 resolutions described in subsection (a), the number of shares
23 of stock of any class or series to which the resolution or
24 resolutions apply may be increased (but not above the total
25 number of authorized shares of the class) or decreased (but
26 not below the number of shares thereof then outstanding) by a
27 certificate likewise executed and delivered to the Secretary

1 of State for filing setting forth a statement that a specified
2 increase or decrease therein had been authorized and directed
3 by a resolution or resolutions likewise adopted by the board
4 of directors. In case the number of the authorized shares
5 shall be decreased the number of shares so specified in the
6 certificate shall resume the status which they had prior to
7 the adoption of the first resolution or resolutions.

8 (c) When no shares of any authorized class or series
9 are outstanding, either because none were issued or because no
10 issued shares of any authorized class or series remain
11 outstanding, a certificate setting forth a resolution or
12 resolutions adopted by the board of directors that none of the
13 authorized shares of that class or series are outstanding, and
14 that none will be issued subject to the certificate of
15 designations previously filed with respect to that class or
16 series, may be executed and delivered to the Secretary of
17 State for filing and shall become effective in accordance with
18 Article 4 of Chapter 1, and when the certificate becomes
19 effective, it shall have the effect of eliminating from the
20 certificate of incorporation all matters set forth in the
21 certificate of designations with respect to that class or
22 series of stock.

23 (d) Unless otherwise provided in the certificate of
24 incorporation, if no shares of stock have been issued of a
25 class or series of stock established by a resolution of the
26 board of directors, the voting powers, designations,
27 preferences and relative, participating, optional or other

1 rights, if any, or the qualifications, limitations or
2 restrictions thereof, may be amended by a resolution or
3 resolutions adopted by the board of directors. A certificate
4 which: (1) states that no shares of the class or series have
5 been issued; (2) sets forth a copy of the resolution or
6 resolutions; and (3) if the designation of the class or series
7 is being changed, indicates the original designation and the
8 new designation, shall be executed and delivered to the
9 Secretary of State for filing and shall become effective in
10 accordance with Article 4 of Chapter 1.

11 (e) When any certificate filed under this section
12 becomes effective, it shall have the effect of amending the
13 certificate of incorporation; except that neither the filing
14 of that certificate nor the filing of a restated certificate
15 of incorporation pursuant to Section 10A-2A-10.07 shall
16 prohibit the board of directors from subsequently adopting
17 resolutions as authorized by this section.

18 §10A-2A-6.03. Issued and outstanding stock.

19 (a) A corporation may issue the number of shares of
20 stock of each class or series authorized by the certificate of
21 incorporation. Stock that is issued is outstanding stock until
22 it is reacquired, redeemed, converted, or cancelled.

23 (b) The reacquisition, redemption, or conversion of
24 outstanding stock is subject to the limitations of subsection
25 (c) and to Section 10A-2A-6.40.

26 (c) At all times that stock of the corporation is
27 outstanding, one or more shares of stock that together have

1 full voting rights and one or more shares of stock that
2 together are entitled to receive the net assets of the
3 corporation upon dissolution must be outstanding.

4 §10A-2A-6.04. Fractional stock.

5 (a) A corporation may issue fractions of a share of
6 stock or in lieu of doing so may:

7 (1) pay in cash the value of fractions of a share of
8 stock;

9 (2) issue scrip in registered or bearer form
10 entitling the holder to receive a full share of stock upon
11 surrendering enough scrip to equal a full share of stock; or

12 (3) arrange for disposition of fractional stock by
13 the holders of that stock.

14 (b) Each certificate representing scrip must be
15 conspicuously labeled "scrip" and must contain the information
16 required by Section 10A-1-3.42(c).

17 (c) The holder of a fractional share of stock is
18 entitled to exercise the rights of a stockholder, including
19 the rights to vote, to receive dividends, and to receive
20 distributions upon dissolution. The holder of scrip is not
21 entitled to any of these rights unless the scrip provides for
22 them.

23 (d) The board of directors may authorize the
24 issuance of scrip subject to any condition, including that:

25 (1) the scrip will become void if not exchanged for
26 full stock before a specified date; and

1 (2) the stock for which the scrip is exchangeable
2 may be sold and the proceeds paid to the scripholders.

3 Division B. ISSUANCE OF STOCK.

4 §10A-2A-6.20. Subscription for stock before
5 incorporation.

6 (a) A subscription for stock entered into before
7 incorporation is irrevocable for six months unless the
8 subscription agreement provides a longer or shorter period or
9 all the subscribers agree to revocation.

10 (b) The board of directors may determine the payment
11 terms of subscriptions for stock that were entered into before
12 incorporation, unless the subscription agreement specifies
13 them. A call for payment by the board of directors must be
14 uniform so far as practicable as to all stock of the same
15 class or series, unless the subscription agreement specifies
16 otherwise.

17 (c) Stock issued pursuant to subscriptions entered
18 into before incorporation are fully paid and nonassessable
19 when the corporation receives the consideration specified in
20 the subscription agreement.

21 (d) If a subscriber defaults in payment of cash or
22 property under a subscription agreement entered into before
23 incorporation, the corporation may collect the amount owed as
24 any other debt. Alternatively, unless the subscription
25 agreement provides otherwise, the corporation may rescind the
26 agreement and may sell the stock if the debt remains unpaid

1 for more than 20 days after the corporation delivers a written
2 demand for payment to the subscriber.

3 §10A-2A-6.21. Issuance of stock.

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

7 (b) The board of directors may authorize stock to be
8 issued for consideration consisting of a contribution.

9 (c) Before the corporation issues stock, the board
10 of directors shall determine that the consideration received
11 or to be received for stock to be issued is adequate. That
12 determination by the board of directors is conclusive insofar
13 as the adequacy of consideration for the issuance of stock
14 relates to whether the stock is validly issued, fully paid,
15 and nonassessable.

16 (d) When the corporation receives the consideration
17 for which the board of directors authorized the issuance of
18 stock, the stock issued therefor is fully paid and
19 nonassessable.

20 (e) The corporation may place in escrow stock issued
21 for a contract for future services or benefits or a promissory
22 note, or make other arrangements to restrict the transfer of
23 the stock, and may credit distributions in respect of the
24 stock against its purchase price, until the services are
25 performed, the benefits are received, or the note is paid. If
26 the services are not performed, the benefits are not received,

1 or the note is not paid, the stock escrowed or restricted and
2 the distributions credited may be cancelled in whole or part.

3 §10A-2A-6.22. Liability of stockholders.

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

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

14 §10A-2A-6.23. Stock dividends.

15 (a) Unless the certificate of incorporation provides
16 otherwise, stock may be issued pro rata and without
17 consideration to the corporation's stockholders or to the
18 stockholders of one or more classes or series of stock. An
19 issuance of stock under this subsection is a stock dividend.

20 (b) Stock of one class or series may not be issued
21 as a stock dividend in respect of stock of another class or
22 series unless (i) the certificate of incorporation so
23 authorizes, (ii) a majority of the votes entitled to be cast
24 by the class or series to be issued approve the issuance, or
25 (iii) there is no outstanding stock of the class or series to
26 be issued.

1 (c) The board of directors may fix the record date
2 for determining stockholders entitled to a stock dividend,
3 which date may not be retroactive. If the board of directors
4 does not fix the record date for determining stockholders
5 entitled to a stock dividend, the record date is the date the
6 board of directors authorizes the stock dividend.

7 §10A-2A-6.24. Stock rights, options, warrants, and
8 awards.

9 (a) A corporation may issue rights, options, or
10 warrants for the purchase of stock or other securities of the
11 corporation. The board of directors shall determine (i) the
12 terms and conditions upon which the rights, options, or
13 warrants are issued and (ii) the terms, including the
14 consideration for which the stock or other securities are to
15 be issued. The authorization by the board of directors for the
16 corporation to issue rights, options, or warrants constitutes
17 authorization of the issuance of the stock or other securities
18 for which the rights, options, or warrants are exercisable.

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

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

1 (2) invalidate or void rights, options, or warrants
2 held by that person or persons or any of that person's
3 transferee or transferees.

4 (c) The board of directors may authorize one or more
5 officers to (i) designate the recipients of rights, options,
6 warrants, or other equity compensation awards that involve the
7 issuance of stock and (ii) determine, within an amount and
8 subject to any other limitations established by the board of
9 directors and, if applicable, the stockholders, the number of
10 the rights, options, warrants, or other equity compensation
11 awards and the terms of the rights, options, warrants, or
12 awards to be received by the recipients, provided that an
13 officer may not use that authority to designate himself or
14 herself or any other persons as the board of directors may
15 specify as a recipient of rights, options, warrants, or other
16 equity compensation awards.

17 §10A-2A-6.25. Form and content of certificates.

18 (a) Stock may, but need not, be represented by
19 certificates. Unless this chapter or another statute expressly
20 provides otherwise, the rights and obligations of stockholders
21 are identical regardless of whether their stock is represented
22 by certificates.

23 (b) Each stock certificate must be signed by two
24 officers designated in the certificate of incorporation or
25 bylaws.

26 (c) Each certificate representing stock shall comply
27 with Sections 10A-1-3.42, 10A-1-3.43(b), and 10A-1-3.44.

1 (d) No certificate representing stock shall be
2 issued in bearer form.

3 §10A-2A-6.26. Uncertificated interests.

4 (a) Unless the certificate of incorporation or
5 bylaws provide otherwise, the board of directors of a
6 corporation may authorize the issuance of some or all of the
7 shares of stock of any or all of its classes or series without
8 certificates. The authorization does not affect shares of
9 stock already represented by certificates until they are
10 surrendered to the corporation.

11 (b) Within a reasonable time after the issuance or
12 transfer of shares of stock without certificates, the
13 corporation shall comply with the notice requirements of
14 Section 10A-1-3.45.

15 §10A-2A-6.27. Restriction on transfer of stock.

16 (a) The certificate of incorporation, the bylaws, an
17 agreement among stockholders, or an agreement between
18 stockholders and the corporation may impose restrictions on
19 the transfer or registration of transfer of stock of the
20 corporation. A restriction does not affect stock issued before
21 the restriction was adopted unless the holders of the stock
22 are parties to the restriction agreement or voted in favor of
23 the restriction.

24 (b) A restriction on the transfer or registration of
25 transfer of stock is valid and enforceable against the
26 corporation, the holder, or a transferee of the holder if the
27 restriction is authorized by this section and as provided in

1 Section 10A-1-3.42 its existence is noted conspicuously on the
2 front or back of the certificate or is contained in the
3 information required by Section 10A-1-3.45. Unless so noted or
4 contained, a restriction is not enforceable against a person
5 without knowledge of the restriction.

6 (c) A restriction on the transfer or registration of
7 transfer of stock is authorized:

8 (1) to maintain the corporation's status when it is
9 dependent on the number or identity of its stockholders;

10 (2) to preserve exemptions under federal or state
11 securities law; or

12 (3) for any other reasonable purpose.

13 (d) A restriction on the transfer or registration of
14 transfer of stock may include a restriction that:

15 (1) obligates the stockholder first to offer the
16 corporation or other persons (separately, consecutively, or
17 simultaneously) an opportunity to acquire the restricted
18 stock;

19 (2) obligates the corporation or other persons
20 (separately, consecutively, or simultaneously) to acquire the
21 restricted stock;

22 (3) requires the corporation, the holders of any
23 class or series of its stock, or other persons to approve the
24 transfer of the restricted stock, if the requirement is not
25 manifestly unreasonable;

1 (4) prohibits the transfer or registration of the
2 restricted stock to designated persons or classes of persons,
3 if the prohibition is not manifestly unreasonable; or

4 (5) requires the corporation to refuse to transfer
5 the stock.

6 (e) For purposes of this section, "stock" includes a
7 security convertible into or carrying a right to subscribe for
8 or acquire stock.

9 §10A-2-6.28. Expense of issue.

10 A corporation may pay the expenses of selling or
11 underwriting its shares, and of organizing or reorganizing the
12 corporation, from the consideration received for shares.

13 Division C. SUBSEQUENT ACQUISITION OF STOCK BY
14 STOCKHOLDERS AND CORPORATION.

15 §10A-2A-6.30. Stockholders' preemptive rights.

16 (a) The stockholders of a corporation do not have a
17 preemptive right to acquire the corporation's unissued stock
18 except to the extent the certificate of incorporation so
19 provides.

20 (b) A statement included in the certificate of
21 incorporation that "the corporation elects to have preemptive
22 rights" (or words of similar effect) means that the following
23 principles apply except to the extent the certificate of
24 incorporation expressly provides otherwise:

25 (1) The stockholders of the corporation have a
26 preemptive right, granted on uniform terms and conditions
27 prescribed by the board of directors to provide a fair and

1 reasonable opportunity to exercise the right, to acquire
2 proportional amounts of the corporation's unissued stock upon
3 the decision of the board of directors to issue them.

4 (2) A preemptive right may be waived by a
5 stockholder. A waiver evidenced by a writing is irrevocable
6 even though it is not supported by consideration.

7 (3) There is no preemptive right with respect to:

8 (i) stock issued as compensation to directors,
9 officers, employees, or agents of the corporation, its
10 subsidiaries, or affiliates;

11 (ii) stock issued to satisfy conversion or option
12 rights created to provide compensation to directors, officers,
13 employees, or agents of the corporation, its subsidiaries, or
14 affiliates;

15 (iii) stock authorized in the certificate of
16 incorporation that is issued within six months from the
17 effective date of incorporation; or

18 (iv) stock sold otherwise than for cash.

19 (4) Holders of stock of any class or series without
20 voting power but with preferential rights to distributions
21 have no preemptive rights with respect to stock of any class
22 or series.

23 (5) Holders of stock of any class or series with
24 voting power but without preferential rights to distributions
25 have no preemptive rights with respect to stock of any class
26 or series with preferential rights to distributions unless the
27 stock with preferential rights is convertible into or carry a

1 right to subscribe for or acquire the stock without
2 preferential rights.

3 (6) Stock subject to preemptive rights that is not
4 acquired by stockholders may be issued to any person for
5 a period of one year after being offered to stockholders at a
6 consideration set by the board of directors that is not lower
7 than the consideration set for the exercise of preemptive
8 rights. An offer at a lower consideration or after the
9 expiration of one year is subject to the stockholders'
10 preemptive rights.

11 (c) For purposes of this section, "stock" includes a
12 security convertible into or carrying a right to subscribe for
13 or acquire stock.

14 §10A-2A-6.31. Corporation's acquisition of its own
15 stock.

16 (a) A corporation may acquire its own stock, and,
17 unless otherwise provided in the certificate of incorporation,
18 stock so acquired constitutes authorized but unissued stock.

19 (b) If the certificate of incorporation prohibits
20 the reissue of the acquired stock, the number of authorized
21 shares of stock is reduced by the number of shares of stock
22 acquired.

23 Division D. DISTRIBUTIONS.

24 §10A-2A-6.40. Distributions to stockholders.

25 (a) The board of directors may authorize and the
26 corporation may make distributions to its stockholders subject

1 to restriction by the certificate of incorporation and the
2 limitation in subsection (c).

3 (b) The board of directors may fix the record date
4 for determining stockholders entitled to a distribution, which
5 date may not be retroactive. If the board of directors does
6 not fix a record date for determining stockholders entitled to
7 a distribution (other than one involving a purchase,
8 redemption, or other acquisition of the corporation's stock),
9 the record date is the date the board of directors authorizes
10 the distribution.

11 (c) No distribution may be made if, after giving it
12 effect:

13 (1) the corporation would not be able to pay its
14 debts as they become due in the usual course of business; or

15 (2) the corporation's total assets would be less
16 than the sum of its total liabilities plus (unless the
17 certificate of incorporation permits otherwise) the amount
18 that would be needed, if the corporation were to be dissolved
19 at the time of the distribution, to satisfy the preferential
20 rights upon dissolution of stockholders whose preferential
21 rights are superior to those receiving the distribution.

22 (d) The board of directors may base a determination
23 that a distribution is not prohibited under subsection (c)
24 either on financial statements prepared on the basis of
25 accounting practices and principles that are reasonable in the
26 circumstances or on a fair valuation or other method that is
27 reasonable in the circumstances.

1 (e) Except as provided in subsection (g), the effect
2 of a distribution under subsection (c) is measured:

3 (1) in the case of distribution by purchase,
4 redemption, or other acquisition of the corporation's stock,
5 as of the earlier of (i) the date cash or other property is
6 transferred or debt to a stockholder is incurred by the
7 corporation or (ii) the date the stockholder ceases to be a
8 stockholder with respect to the acquired stock;

9 (2) in the case of any other distribution of
10 indebtedness, as of the date the indebtedness is distributed;
11 and

12 (3) in all other cases, as of (i) the date the
13 distribution is authorized if the payment occurs within 120
14 days after the date of authorization or (ii) the date the
15 payment is made if it occurs more than 120 days after the date
16 of authorization.

17 (f) A corporation's indebtedness to a stockholder
18 incurred by reason of a distribution made in accordance with
19 this section is at parity with the corporation's indebtedness
20 to its general, unsecured creditors except to the extent
21 subordinated by agreement.

22 (g) Indebtedness of a corporation, including
23 indebtedness issued as a distribution, is not considered a
24 liability for purposes of determinations under subsection (c)
25 if its terms provide that payment of principal and interest
26 are made only if and to the extent that payment of a
27 distribution to stockholders could then be made under this

1 section. If the indebtedness is issued as a distribution, each
2 payment of principal or interest is treated as a distribution,
3 the effect of which is measured on the date the payment is
4 actually made.

5 (h) This section shall not apply to distributions in
6 liquidation under Article 14.

7 ARTICLE 7. STOCKHOLDERS.

8 Division A. MEETINGS.

9 §10A-2A-7.01. Annual meetings.

10 (a) Unless directors are elected by written consent
11 in lieu of an annual meeting as permitted by Section
12 10A-2A-7.04, a corporation shall hold a meeting of
13 stockholders annually at a time stated in or fixed in
14 accordance with the certificate of incorporation or bylaws at
15 which directors shall be elected.

16 (b) Unless the board of directors determines to hold
17 the meeting solely by means of remote communication in
18 accordance with Section 10A-2A-7.09(c), annual meetings may be
19 held (i) in or out of this state at the place stated in or
20 fixed in accordance with the certificate of incorporation or
21 bylaws or (ii) if no place is stated in or fixed in accordance
22 with the certificate of incorporation or bylaws, at the
23 corporation's principal office.

24 (c) The failure to hold an annual meeting at the
25 time stated in or fixed in accordance with a corporation's
26 certificate of incorporation or bylaws does not affect the
27 validity of any corporate action.

1 §10A-2A-7.02. Special meetings.

2 (a) Special meetings of the stockholders may be
3 called by the board of directors or by such person or persons
4 as may be authorized by the certificate of incorporation or by
5 the bylaws.

6 (b) In the event that the certificate of
7 incorporation or bylaws allow stockholders to demand a special
8 meeting of the stockholders, then if not otherwise fixed under
9 Section 10A-2A-7.03 or Section 10A-2A-7.07, the record date
10 for determining stockholders entitled to demand a special
11 meeting shall be the first date on which a signed stockholder
12 demand is delivered to the corporation. No written demand for
13 a special meeting shall be effective unless, within 60 days of
14 the earliest date on which the demand delivered to the
15 corporation as allowed by the certificate of incorporation or
16 bylaws was signed, written demands signed by stockholders
17 holding at least the percentage of votes specified in or fixed
18 in accordance with the certificate of incorporation or bylaws
19 have beendelivered to the corporation.

20 (c) Unless the board of directors determines to hold
21 the meeting solely by means of remote participation in
22 accordance with Section 10A-2A-7.09(c), special meetings of
23 stockholders may be held (i) in or out of this state at the
24 place stated in or fixed in accordance with the certificate of
25 incorporation or bylaws or (ii) if no place is stated in or
26 fixed in accordance with the certificate of incorporation or
27 bylaws, at the corporation's principal office.

1 (d) Only business within the purpose or purposes
2 described in the meeting notice required by Section
3 10A-2A-7.05(c) may be conducted at a special meeting of
4 stockholders.

5 §10A-2A-7.03. Court-ordered meetings.

6 (a) The circuit court of the county where a
7 corporation's principal office, or, if none in this state, its
8 registered office, is located may summarily order a meeting to
9 be held:

10 (1) on application of any stockholder of the
11 corporation entitled to participate in an annual meeting if an
12 annual meeting was not held or action by written consent in
13 lieu of an annual meeting did not become effective within the
14 earlier of 12 months after the end of the corporation's fiscal
15 year or 15 months after its last annual meeting; or

16 (2) on application of one or more stockholders who
17 signed a demand for a special meeting valid under Section
18 10A-2A-7.02, if:

19 (i) notice of the special meeting was not given
20 within 30 days after the first day on which the requisite
21 number of demands have been delivered to the corporation; or

22 (ii) the special meeting was not held in accordance
23 with the notice.

24 (b) The court may fix the time and place of the
25 meeting, determine the stock entitled to participate in the
26 meeting, specify a record date or dates for determining
27 stockholders entitled to notice of and to vote at the meeting,

1 prescribe the form and content of the meeting notice, fix the
2 quorum required for specific matters to be considered at the
3 meeting (or direct that the stock represented at the meeting
4 constitute a quorum for action on those matters), and enter
5 other orders necessary to accomplish the purpose or purposes
6 of the meeting.

7 (c) For purposes of subsection (a) (1), "stockholder"
8 means a record stockholder, a beneficial stockholder, and an
9 unrestricted voting trust beneficial owner.

10 §10A-2A-7.04. Action without meeting.

11 (a) Unless otherwise provided in the certificate of
12 incorporation, any action required or permitted by this
13 chapter to be taken at any meeting of the stockholders may be
14 taken without a meeting, and without prior notice, if one or
15 more consents in writing setting forth the action so taken are
16 signed by the holders of outstanding stock having not less
17 than the minimum number of votes that would be required to
18 authorize or take the action at a meeting at which all shares
19 of stock entitled to vote on the action were present and
20 voted; provided, however, that if a corporation's certificate
21 of incorporation authorizes stockholders to cumulate their
22 votes when electing directors pursuant to Section 10A-2A-7.28,
23 directors may not be elected by less than unanimous written
24 consent. The action must be evidenced by one or more written
25 consents describing the action taken, signed by the
26 stockholders approving the action and delivered to the

1 corporation for filing by the corporation with the minutes or
2 corporate records.

3 (b) If not otherwise fixed under Section 10A-2A-7.07
4 and if prior action by the board of directors is not required
5 respecting the action to be taken without a meeting, the
6 record date for determining the stockholders entitled to take
7 action without a meeting shall be the first date on which a
8 signed written consent is delivered to the corporation. If not
9 otherwise fixed under Section 10A-2A-7.07 and if prior action
10 by the board of directors is required respecting the action to
11 be taken without a meeting, the record date shall be the close
12 of business on the day the resolution of the board of
13 directors taking the prior action is adopted. No written
14 consent shall be effective to take the corporate action
15 referred to therein unless, within 60 days of the earliest
16 date on which a consent is delivered to the corporation as
17 required by this section, written consents signed by
18 sufficient stockholders to take the action have been delivered
19 to the corporation. A written consent may be revoked by a
20 writing to that effect delivered to the corporation before
21 unrevoked written consents sufficient in number to take the
22 corporate action have been delivered to the corporation.

23 (c) A consent signed pursuant to the provisions of
24 this section has the effect of a vote taken at a meeting and
25 may be described as such in any document. Unless the
26 certificate of incorporation, bylaws or a resolution of the
27 board of directors provides for a reasonable delay to permit

1 tabulation of written consents, the action taken by written
2 consent shall be effective when written consents signed by
3 sufficient stockholders to take the action have been delivered
4 to the corporation.

5 (d) If this chapter requires that notice of a
6 proposed action be given to nonvoting stockholders and the
7 action is to be taken by written consent of the voting
8 stockholders, the corporation shall give its nonvoting
9 stockholders written notice of the action not more than 10
10 days after (i) written consents sufficient to take the action
11 have been delivered to the corporation, or (ii) any later date
12 that tabulation of consents is completed pursuant to an
13 authorization under subsection (d). The notice must reasonably
14 describe the action taken and contain or be accompanied by the
15 same material that, under any provision of this chapter, would
16 have been required to be sent to nonvoting stockholders in a
17 notice of a meeting at which the proposed action would have
18 been submitted to the stockholders for action.

19 (e) If action is taken by less than unanimous
20 written consent of the voting stockholders, the corporation
21 shall give its nonconsenting voting stockholders written
22 notice of the action not more than 10 days after (i) written
23 consents sufficient to take the action have been delivered to
24 the corporation, or (ii) any later date that tabulation of
25 consents is completed pursuant to an authorization under
26 subsection (c). The notice must reasonably describe the action
27 taken and contain or be accompanied by the same material that,

1 under any provision of this chapter, would have been required
2 to be sent to voting stockholders in a notice of a meeting at
3 which the action would have been submitted to the stockholders
4 for action.

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

13 §10A-2A-7.05. Notice of meeting.

14 (a) A corporation shall notify stockholders of the
15 place, if any, date, and time of each annual and special
16 stockholders' meeting no fewer than 10 nor more than 60 days
17 before the meeting date. If the board of directors has
18 authorized participation by means of remote communication
19 pursuant to Section 10A-2A-7.09 for holders of any class or
20 series of stock, the notice to the holders of that class or
21 series of stock must describe the means of remote
22 communication to be used. The notice must include the record
23 date for determining the stockholders entitled to vote at the
24 meeting, if that date is different from the record date for
25 determining stockholders entitled to notice of the meeting.
26 Unless this chapter or the certificate of incorporation
27 requires otherwise, the corporation is required to give notice

1 only to stockholders entitled to vote at the meeting as of the
2 record date for determining the stockholders entitled to
3 notice of the meeting.

4 (b) Unless this chapter or the certificate of
5 incorporation requires otherwise, the notice of an annual
6 meeting of stockholders need not include a description of the
7 purpose or purposes for which the meeting is called.

8 (c) Notice of a special meeting of stockholders must
9 include a description of the purpose or purposes for which the
10 meeting is called.

11 (d) If not otherwise fixed under Section 10A-2A-7.03
12 or Section 10A-2A-7.07, the record date for determining
13 stockholders entitled to notice of and to vote at an annual or
14 special stockholders' meeting is the day before the first
15 notice is delivered to stockholders.

16 (e) Unless the certificate of incorporation or
17 bylaws require otherwise, if an annual or special
18 stockholders' meeting is adjourned to a different place, if
19 any, date, or time, notice need not be given of the new place,
20 if any, date, or time if the new place, if any, date, or time
21 is announced at the meeting before adjournment. If a new
22 record date for the adjourned meeting is or must be fixed
23 under Section 10A-2A-7.07, however, notice of the adjourned
24 meeting shall be given under this section to stockholders
25 entitled to vote at the adjourned meeting as of the record
26 date fixed for notice of the adjourned meeting.

27 §10A-2A-7.06. Waiver of notice.

1 (a) A stockholder may waive any notice required by
2 this chapter or the certificate of incorporation or bylaws,
3 before or after the date and time stated in the notice. The
4 waiver must be in writing, be signed by the stockholder
5 entitled to the notice, and be delivered to the corporation
6 for filing by the corporation with the minutes or corporate
7 records.

8 (b) A stockholder's attendance at a meeting:

9 (1) waives objection to lack of notice or defective
10 notice of the meeting, unless the stockholder at the beginning
11 of the meeting objects to holding the meeting or transacting
12 business at the meeting; and

13 (2) waives objection to consideration of a
14 particular matter at the meeting that is not within the
15 purpose or purposes described in the meeting notice, unless
16 the stockholder objects to considering the matter when it is
17 presented.

18 §10A-2A-7.07. Record date for meeting.

19 (a) The certificate of incorporation or bylaws may
20 fix or provide the manner of fixing the record date or dates
21 for one or more voting groups to determine the stockholders
22 entitled to notice of a stockholders' meeting, to demand a
23 special meeting, to vote, or to take any other action. If the
24 certificate of incorporation or bylaws do not fix or provide
25 for fixing a record date, the board of directors may fix the
26 record date.

1 (b) A record date fixed under this section may not
2 be more than 70 days before the meeting or action requiring
3 a determination of stockholders and may not be retroactive.

4 (c) A determination of stockholders entitled to
5 notice of or to vote at a stockholders' meeting is effective
6 for any adjournment of the meeting unless the board of
7 directors fixes a new record date or dates, which it shall do
8 if the meeting is adjourned to a date more than 120 days after
9 the date fixed for the original meeting.

10 (d) If a court orders a meeting adjourned to a date
11 more than 120 days after the date fixed for the original
12 meeting, it may provide that the original record date or dates
13 continues in effect or it may fix a new record date or dates.

14 (e) The record dates for a stockholders' meeting
15 fixed by or in the manner provided in the certificate of
16 incorporation or bylaws or by the board of directors shall be
17 the record date for determining stockholders entitled both to
18 notice of and to vote at the stockholders' meeting, unless in
19 the case of a record date fixed by the board of directors and
20 to the extent not prohibited by the certificate of
21 incorporation or bylaws, the board of directors, at the time
22 it fixes the record date for stockholders entitled to notice
23 of the meeting, fixes a later record date on or before the
24 date of the meeting to determine the stockholders entitled to
25 vote at the meeting.

26 §10A-2A-7.08. Conduct of meeting.

1 Unless the certificate of incorporation or bylaws
2 provide otherwise, a meeting of the stockholders shall be
3 conducted as follows:

4 (a) At each meeting of stockholders, a chair shall
5 preside. The chair shall be appointed by the board of
6 directors.

7 (b) The board of directors shall determine the order
8 of business and shall have the authority to establish rules
9 for the conduct of the meeting.

10 (c) The chair of the meeting shall announce at the
11 meeting when the polls close for each matter voted upon. If no
12 announcement is made, the polls shall be deemed to have closed
13 upon the final adjournment of the meeting. After the polls
14 close, no ballots, proxies or votes nor any revocations or
15 changes to ballots, proxies or votes may be accepted.

16 §10A-2A-7.09. Remote participation in stockholders'
17 meetings; meetings held solely by remote participation.

18 (a) Stockholders of any class or series of stock may
19 participate in any meeting of stockholders by means of remote
20 communication to the extent the board of directors authorizes
21 participation for that class or series. Participation as a
22 stockholder by means of remote communication shall be subject
23 to guidelines and procedures as the board of directors adopts,
24 and shall be in conformity with subsection (b).

25 (b) Stockholders participating in a stockholders'
26 meeting by means of remote communication shall be deemed

1 present and may vote at that meeting if the corporation has
2 implemented reasonable measures:

3 (1) to verify that each person participating
4 remotely as a stockholder is a stockholder; and

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

11 (c) Unless the certificate of incorporation or
12 bylaws require the meeting of stockholders to be held at a
13 place, the board of directors may determine that any meeting
14 of stockholders shall not be held at any place and shall
15 instead be held solely by means of remote communication, but
16 only if the corporation implements the measures specified in
17 subsection (b).

18 Division B. VOTING.

19 §10A-2A-7.20. Stockholders' list for meeting.

20 (a) After fixing a record date for a meeting, a
21 corporation shall prepare an alphabetical list of the names of
22 all its stockholders who are entitled to notice of a
23 stockholders' meeting. If the board of directors fixes a
24 different record date under Section 10A-2A-7.07(e) to
25 determine the stockholders entitled to vote at the meeting, a
26 corporation also shall prepare an alphabetical list of the
27 names of all its stockholders who are entitled to vote at the

1 meeting. A list must be arranged by voting group (and within
2 each voting group by class or series of stock) and show the
3 address of and number of shares of stock held by each
4 stockholder. Nothing contained in this subsection shall
5 require the corporation to include on that list the electronic
6 mail address or other electronic contact information of a
7 stockholder.

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

1 (c) If the meeting is to be held at a place, the
2 corporation shall make the list of stockholders entitled to
3 vote available at the meeting, and any stockholder, or the
4 stockholder's agent or attorney, is entitled to inspect the
5 list at any time during the meeting or any adjournment. If the
6 meeting is to be held solely by means of remote communication,
7 then such list shall also be open to such inspection during
8 the meeting on a reasonably accessible electronic network, and
9 the information required to access such list shall be provided
10 with the notice of the meeting.

11 (d) If the corporation refuses to allow a
12 stockholder, or the stockholder's agent or attorney, to
13 inspect a stockholders' list before or at the meeting (or copy
14 a list as permitted by subsection (b)), the circuit court of
15 the county where the corporation's principal office, or, if
16 none in this state, its registered office, is located, on
17 application of the stockholder, may summarily order the
18 inspection or copying at the corporation's expense and may
19 postpone the meeting for which the list was prepared until the
20 inspection or copying is complete.

21 (e) Refusal or failure to prepare or make available
22 the stockholders' list does not affect the validity of action
23 taken at the meeting.

24 (f) The stock transfer records of the corporation
25 shall be prima facie evidence as to who are the stockholders
26 entitled to examine the stockholders' list or transfer records
27 or to vote at any meeting of stockholders.

1 §10A-2A-7.21. Voting entitlement of stock.

2 (a) Except as provided in subsections (b) and (d) or
3 unless the certificate of incorporation provides otherwise,
4 each outstanding share of stock, regardless of class or
5 series, is entitled to one vote on each matter voted on at a
6 stockholders' meeting. Only stock is entitled to vote.

7 (b) Stock of a corporation is not entitled to vote
8 if it is owned by or otherwise belongs to the corporation
9 directly, or indirectly through an entity of which a majority
10 of the voting power is held directly or indirectly by the
11 corporation or which is otherwise controlled by the
12 corporation.

13 (c) Stock held by the corporation in a fiduciary
14 capacity for the benefit of any person is entitled to vote
15 unless it is held for the benefit of, or otherwise belongs to,
16 the corporation directly, or indirectly through an entity of
17 which a majority of the voting power is held directly or
18 indirectly by the corporation or which is otherwise controlled
19 by the corporation.

20 (d) Redeemable stock is not entitled to vote after
21 delivery of written notice of redemption is effective and a
22 sum sufficient to redeem the stock has been deposited with a
23 bank, trust company, or other financial institution under an
24 irrevocable obligation to pay the holders the redemption price
25 on surrender of the stock.

26 (e) For purposes of this section, "voting power"
27 means the current power to vote in the election of directors

1 of a corporation or to elect, select or appoint governing
2 persons of another entity.

3 §10A-2A-7.22. Proxies.

4 (a) A stockholder may vote the stockholder's stock
5 in person or by proxy.

6 (b) A stockholder, or the stockholder's agent or
7 attorney-in-fact, may appoint a proxy to vote or otherwise act
8 for the stockholder by signing an appointment form, or by an
9 electronic transmission. An electronic transmission must
10 contain or be accompanied by information from which the
11 recipient can determine the date of the transmission and that
12 the transmission was authorized by the sender or the sender's
13 agent or attorney-in-fact.

14 (c) An appointment of a proxy is effective when a
15 signed appointment form or an electronic transmission of the
16 appointment is received by the inspector of election or the
17 officer or agent of the corporation authorized to count votes.
18 An appointment is valid for the term provided in the
19 appointment form, and, if no term is provided, is valid for 11
20 months unless the appointment is irrevocable under subsection
21 (d).

22 (d) An appointment of a proxy is revocable unless
23 the appointment form or electronic transmission states that it
24 is irrevocable and the appointment is coupled with an
25 interest. Appointments coupled with an interest include the
26 appointment of:

27 (1) a pledgee;

1 (2) a person who purchased or agreed to purchase the
2 stock;

3 (3) a creditor of the corporation who extended it
4 credit under terms requiring the appointment;

5 (4) an employee of the corporation whose employment
6 contract requires the appointment; or

7 (5) a party to a voting agreement created under
8 Section 10A-2A-7.31.

9 (e) The death or incapacity of the stockholder
10 appointing a proxy does not affect the right of the
11 corporation to accept the proxy's authority unless notice of
12 the death or incapacity is received by the secretary or other
13 officer or agent authorized to tabulate votes before the proxy
14 exercises authority under the appointment.

15 (f) An appointment made irrevocable under subsection
16 (d) is revoked when the interest with which it is coupled is
17 extinguished.

18 (g) Unless it otherwise provides, an appointment
19 made irrevocable under subsection (d) continues in effect
20 after a transfer of the stock and a transferee takes subject
21 to the appointment, except that a transferee for value of
22 stock subject to an irrevocable appointment may revoke the
23 appointment if the transferee did not know of its existence
24 when acquiring the stock and the existence of the irrevocable
25 appointment was not noted conspicuously on the certificate
26 representing the stock or on the information statement for
27 stock without certificates.

1 (h) Subject to Section 10A-2A-7.24 and to any
2 express limitation on the proxy's authority stated in the
3 appointment form or electronic transmission, a corporation is
4 entitled to accept the proxy's vote or other action as that of
5 the stockholder making the appointment.

6 (i) Nothing in this section shall be construed as
7 limiting, or extending, authority granted under a durable
8 power of attorney under Section 26-1-2 or Chapter 1A of Title
9 26, and any successor statute or statutes thereto.

10 §10A-2A-7.23. Stock held by intermediaries and
11 nominees.

12 (a) A corporation's board of directors may establish
13 a procedure under which a person on whose behalf stock is
14 registered in the name of an intermediary or nominee may elect
15 to be treated by the corporation as the record stockholder by
16 filing with the corporation a beneficial ownership
17 certificate. The terms, conditions, and limitations of this
18 treatment shall be specified in the procedure. To the extent
19 that person is treated under those procedures as having rights
20 or privileges that the record stockholder otherwise would
21 have, the record stockholder shall not have those rights or
22 privileges.

23 (b) The procedure must specify:

24 (1) the types of intermediaries or nominees to which
25 it applies;

1 (2) the rights or privileges that the corporation
2 recognizes in a person with respect to whom a beneficial
3 ownership certificate is filed;

4 (3) the manner in which the procedure is selected
5 which must include that the beneficial ownership certificate
6 be signed or assented to by or on behalf of the record
7 stockholder and the person on whose behalf the stock is held;

8 (4) the information that must be provided when the
9 procedure is selected;

10 (5) the period for which selection of the procedure
11 is effective;

12 (6) requirements for notice to the corporation with
13 respect to the arrangement; and

14 (7) the form and contents of the beneficial
15 ownership certificate.

16 (c) The procedure may specify any other aspects of
17 the rights and duties created by the filing of a beneficial
18 ownership certificate.

19 §10A-2A-7.24. Acceptance of votes and other
20 instruments.

21 (a) If the name signed on a vote, ballot, consent,
22 waiver, stockholder demand, or proxy appointment corresponds
23 to the name of a stockholder, the corporation, if acting in
24 good faith, is entitled to accept the vote, ballot, consent,
25 waiver, stockholder demand, or proxy appointment and give it
26 effect as the act of the stockholder.

1 (b) If the name signed on a vote, ballot, consent,
2 waiver, stockholder demand, or proxy appointment does not
3 correspond to the name of its stockholder, the corporation, if
4 acting in good faith, is nevertheless entitled to accept the
5 vote, ballot, consent, waiver, stockholder demand, or proxy
6 appointment and give it effect as the act of the stockholder
7 if:

8 (1) the stockholder is an entity and the name signed
9 purports to be that of an officer or agent of the entity;

10 (2) the name signed purports to be that of an
11 administrator, executor, guardian, or conservator representing
12 the stockholder and, if the corporation requests, evidence of
13 fiduciary status acceptable to the corporation has been
14 presented with respect to the vote, ballot, consent, waiver,
15 stockholder demand, or proxy appointment;

16 (3) the name signed purports to be that of a
17 receiver or trustee in bankruptcy of the stockholder and, if
18 the corporation requests, evidence of this status acceptable
19 to the corporation has been presented with respect to the
20 vote, ballot, consent, waiver, stockholder demand, or proxy
21 appointment;

22 (4) the name signed purports to be that of a
23 pledgee, beneficial owner, or attorney-in-fact of the
24 stockholder and, if the corporation requests, evidence
25 acceptable to the corporation of the signatory's authority to
26 sign for the stockholder has been presented with respect to

1 the vote, ballot, consent, waiver, stockholder demand, or
2 proxy appointment; or

3 (5) two or more persons are the stockholder as
4 co-tenants or fiduciaries and the name signed purports to be
5 the name of at least one of the co-owners and the person
6 signing appears to be acting on behalf of all the co-owners.

7 (c) The corporation is entitled to reject a vote,
8 ballot, consent, waiver, stockholder demand, or proxy
9 appointment if the person authorized to accept or reject that
10 instrument, acting in good faith, has reasonable basis for
11 doubt about the validity of the signature on it or about the
12 signatory's authority to sign for the stockholder.

13 (d) Neither the corporation or any person authorized
14 by it, nor an inspector of election appointed under Section
15 10A-2A-7.29, that accepts or rejects a vote, ballot, consent,
16 waiver, stockholder demand, or proxy appointment in good faith
17 and in accordance with the standards of this Section
18 10A-2A-7.24 or Section 10A-2A-7.22(b) is liable in damages to
19 the stockholder for the consequences of the acceptance or
20 rejection.

21 (e) Corporate action based on the acceptance or
22 rejection of a vote, ballot, consent, waiver, stockholder
23 demand, or proxy appointment under this section is valid
24 unless a court of competent jurisdiction determines otherwise.

25 (f) If an inspector of election has been appointed
26 under Section 10A-2A-7.29, the inspector of election also has
27 the authority to request information and make determinations

1 under subsections (a), (b), and (c). Any determination made by
2 the inspector of election under those subsections is
3 controlling.

4 §10A-2A-7.25. Quorum and voting requirements for
5 voting groups.

6 (a) Stock entitled to vote as a separate voting
7 group may take action on a matter at a meeting only if a
8 quorum of those shares of stock exists with respect to that
9 matter. Unless the certificate of incorporation provides
10 otherwise, stock representing a majority of the votes entitled
11 to be cast on the matter by the voting group constitutes a
12 quorum of that voting group for action on that matter.
13 Whenever this chapter requires a particular quorum for a
14 specified action, the certificate of incorporation may not
15 provide for a lower quorum.

16 (b) Once a share of stock is represented for any
17 purpose at a meeting, it is deemed present for quorum purposes
18 for the remainder of the meeting and for any adjournment of
19 that meeting unless a new record date is or must be fixed for
20 that adjourned meeting.

21 (c) If a quorum exists, action on a matter (other
22 than the election of directors) by a voting group is approved
23 if the votes cast within the voting group favoring the action
24 exceed the votes cast opposing the action, unless the
25 certificate of incorporation requires a greater number of
26 affirmative votes.

1 (d) An amendment of the certificate of incorporation
2 adding, changing, or deleting a quorum or voting requirement
3 for a voting group greater than specified in subsection (a) or
4 subsection (c) is governed by Section 10A-2A-7.27.

5 (e) The election of directors is governed by Section
6 10A-2A-7.28.

7 (f) Whenever a provision of this chapter provides
8 for voting of classes or series as separate voting groups, the
9 rules provided in Section 10A-2A-10.04(c) for amendments of
10 the certificate of incorporation apply to that provision.

11 §10A-2A-7.26. Action by single and multiple voting
12 groups.

13 (a) If the certificate of incorporation or this
14 chapter provides for voting by a single voting group on a
15 matter, action on that matter is taken when voted upon by that
16 voting group as provided in Section 10A-2A-7.25.

17 (b) If the certificate of incorporation or this
18 chapter provides for voting by two or more voting groups on a
19 matter, action on that matter is taken only when voted upon by
20 each of those voting groups counted separately as provided in
21 Section 10A-2A-7.25. Action may be taken by different voting
22 groups on a matter at different times.

23 §10A-2A-7.27. Modifying quorum or voting
24 requirements.

25 An amendment to the certificate of incorporation
26 that adds, changes, or deletes a quorum or voting requirement
27 shall meet the same quorum requirement and be adopted by the

1 same vote and voting groups required to take action under the
2 quorum and voting requirements then in effect or proposed to
3 be adopted, whichever is greater.

4 §10A-2A-7.28. Voting for directors; cumulative
5 voting.

6 (a) Unless otherwise provided in the certificate of
7 incorporation, directors are elected by a plurality of the
8 votes cast by the stock entitled to vote in the election at a
9 meeting at which a quorum is present.

10 (b) Stockholders do not have a right to cumulate
11 their votes for directors unless the certificate of
12 incorporation so provides.

13 (c) A statement included in the certificate of
14 incorporation that "[all] [a designated voting group of]
15 stockholders are entitled to cumulate their votes for
16 directors" (or words of similar import) means that the
17 stockholders designated are entitled to multiply the number of
18 votes they are entitled to cast by the number of directors for
19 whom they are entitled to vote and cast the product for a
20 single candidate or distribute the product among two or more
21 candidates.

22 (d) Stock otherwise entitled to vote cumulatively
23 may not be voted cumulatively at a particular meeting unless:

24 (1) the meeting notice or proxy statement
25 accompanying the notice states conspicuously that cumulative
26 voting is authorized; or

1 (2) a stockholder who has the right to cumulate the
2 stockholder's votes gives notice to the corporation not less
3 than 48 hours before the time set for the meeting of the
4 stockholder's intent to cumulate votes during the meeting, and
5 if one stockholder gives this notice all other stockholders in
6 the same voting group participating in the election
7 are entitled to cumulate their votes without giving further
8 notice.

9 §10A-2A-7.29. Inspectors of election.

10 (a) The corporation shall, in advance of any meeting
11 of stockholders, appoint one or more inspectors to act at the
12 meeting and make a written report thereof. The corporation may
13 designate one or more persons as alternate inspectors to
14 replace any inspector who fails to act. If no inspector or
15 alternate is able to act at a meeting of stockholders, the
16 person presiding at the meeting shall appoint one or more
17 inspectors to act at the meeting. Each inspector, before
18 entering upon the discharge of the duties of inspector, shall
19 take and sign an oath faithfully to execute the duties of
20 inspector with strict impartiality and according to the best
21 of the inspector's ability.

22 (b) The inspectors shall:

23 (1) Ascertain the number of shares of stock
24 outstanding and the voting power of each;

25 (2) Determine the shares of stock represented at a
26 meeting and the validity of proxies and ballots;

27 (3) Count all votes and ballots;

1 (4) Determine and retain for a reasonable period a
2 record of the disposition of any challenges made to any
3 determination by the inspectors; and

4 (5) Certify their determination of the number of
5 shares represented at the meeting, and their count of all
6 votes and ballots. The inspectors may appoint or retain other
7 persons or entities to assist the inspectors in the
8 performance of the duties of the inspectors.

9 (c) The date and time of the opening and the closing
10 of the polls for each matter upon which the stockholders will
11 vote at a meeting shall be announced at the meeting. No
12 ballot, proxies or votes, nor any revocations thereof or
13 changes thereto, shall be accepted by the inspectors after the
14 closing of the polls unless a court of competent jurisdiction
15 upon application by a stockholder shall determine otherwise.

16 (d) In determining the validity and counting of
17 proxies and ballots, the inspectors shall be limited to an
18 examination of the proxies, any envelopes submitted with those
19 proxies, any information provided in accordance with Section
20 10-2A-7.22, or any information provided pursuant to Section
21 10A-2A-7.09(b), ballots and the regular books and records of
22 the corporation, except that the inspectors may consider other
23 reliable information for the limited purpose of reconciling
24 proxies and ballots submitted by or on behalf of banks,
25 brokers, their nominees or similar persons which represent
26 more votes than the holder of a proxy is authorized by the
27 record owner to cast or more votes than the stockholder holds

1 of record. If the inspectors consider other reliable
2 information for the limited purpose permitted herein, the
3 inspectors at the time they make their certification pursuant
4 to paragraph (b) (5) of this section shall specify the precise
5 information considered by them including the person or persons
6 from whom they obtained the information, when the information
7 was obtained, the means by which the information was obtained
8 and the basis for the inspectors' belief that the information
9 is accurate and reliable.

10 (e) Unless otherwise provided in the certificate of
11 incorporation or bylaws, this section shall not apply to a
12 corporation that does not have a class of voting stock that
13 is:

14 (1) Listed on a national securities exchange;

15 (2) Authorized for quotation on an interdealer
16 quotation system of a registered national securities
17 association; or

18 (3) Held of record by more than 2,000 stockholders.

19 Division C. VOTING TRUSTS AND AGREEMENTS.

20 §10A-2A-7.30. Voting trusts.

21 (a) One or more stockholders may create a voting
22 trust, conferring on a trustee the right to vote or otherwise
23 act for them, by signing an agreement setting out the
24 provisions of the trust (which may include anything consistent
25 with its purpose) and transferring their stock to the trustee.
26 When a voting trust agreement is signed, the trustee shall
27 prepare a list of the names and addresses of all voting trust

1 beneficial owners, together with the number and class of stock
2 each transferred to the trust, and deliver copies of the list
3 and agreement to the corporation at its principal office.

4 (b) A voting trust becomes effective on the date the
5 first shares of stock subject to the trust are registered in
6 the trustee's name.

7 (c) Limits, if any, on the duration of a voting
8 trust shall be as set forth in the voting trust. A voting
9 trust that became effective when this chapter provided a
10 10-year limit on its duration remains governed by the
11 provisions of this section concerning duration then in effect,
12 unless the voting trust is amended to provide otherwise by
13 unanimous agreement of the parties to the voting trust.

14 §10A-2A-7.31. Voting agreements.

15 (a) Two or more stockholders may provide for the
16 manner in which they will vote their stock by signing an
17 agreement for that purpose. A voting agreement created under
18 this section is not subject to the provisions of Section
19 10A-2A-7.30.

20 (b) A voting agreement created under this section is
21 specifically enforceable.

22 §10A-2A-7.32. Stockholder agreements.

23 (a) An agreement among the stockholders of a
24 corporation that complies with this section is effective among
25 the stockholders and the corporation even though it is
26 inconsistent with one or more other provisions of this chapter
27 in that it:

1 (1) eliminates the board of directors or restricts
2 the discretion or powers of the board of directors;

3 (2) governs the authorization or making of
4 distributions, regardless of whether they are in proportion to
5 ownership of stock, subject to the limitations in Section
6 10A-2A-6.40;

7 (3) establishes who shall be directors or officers
8 of the corporation, or their terms of office or manner of
9 selection or removal;

10 (4) governs, in general or in regard to specific
11 matters, the exercise or division of voting power by or
12 between the stockholders and directors or by or among any of
13 them, including use of weighted voting rights or director
14 proxies;

15 (5) establishes the terms and conditions of any
16 agreement for the transfer or use of property or the provision
17 of services between the corporation and any stockholder,
18 director, officer or employee of the corporation or among any
19 of them;

20 (6) transfers to one or more stockholders or other
21 persons all or part of the authority to exercise the corporate
22 powers or to manage the business and affairs of the
23 corporation, including the resolution of any issue about which
24 there exists a deadlock among directors or stockholders;

25 (7) requires dissolution of the corporation at the
26 request of one or more of the stockholders or upon the
27 occurrence of a specified event or contingency; or

1 (8) otherwise governs the exercise of the corporate
2 powers or the management of the business and affairs of the
3 corporation or the relationship among the stockholders, the
4 directors and the corporation, or among any of them, and is
5 not contrary to public policy.

6 (b) An agreement authorized by this section shall
7 be:

8 (1) as set forth (i) in the certificate of
9 incorporation or bylaws and approved by all persons who are
10 stockholders at the time of the agreement, or (ii) in a
11 written agreement that is signed by all persons who are
12 stockholders at the time of the agreement and is made known to
13 the corporation; and

14 (2) subject to amendment only by all persons who are
15 stockholders at the time of the amendment, unless the
16 agreement provides otherwise.

17 (c) The existence of an agreement authorized by this
18 section shall be noted conspicuously on the front or back of
19 each certificate for outstanding stock or in the information
20 required by Section 10A-1-3.45. If at the time of the
21 agreement the corporation has stock outstanding represented by
22 certificates, the corporation shall recall the outstanding
23 certificates and issue substitute certificates that comply
24 with this subsection. The failure to note the existence of the
25 agreement as required by this subsection shall not affect the
26 validity of the agreement or any action taken pursuant to it.
27 Any purchaser of stock who, at the time of purchase, did not

1 have knowledge of the existence of the agreement shall be
2 entitled to rescission of the purchase. A purchaser shall be
3 deemed to have knowledge of the existence of the agreement if
4 its existence is noted on the certificate or if the stock is
5 not represented by a certificate, the information required by
6 Section 10A-1-3.45 is delivered to the purchaser at or before
7 the time of purchase of the stock. An action to enforce the
8 right of rescission authorized by this subsection shall be
9 commenced within the earlier of 90 days after discovery of the
10 existence of the agreement or two years after the time of
11 purchase of the stock.

12 (d) If the agreement ceases to be effective for any
13 reason, the board of directors may, if the agreement is
14 contained or referred to in the corporation's certificate of
15 incorporation or bylaws, adopt an amendment to the certificate
16 of incorporation or bylaws, without stockholder action, to
17 delete the agreement and any references to it.

18 (e) An agreement authorized by this section that
19 limits the discretion or powers of the board of directors
20 shall relieve the directors of, and impose upon the person or
21 persons in whom the discretion or powers are vested, liability
22 for acts or omissions imposed by law on directors to the
23 extent that the discretion or powers of the directors are
24 limited by the agreement. An agreement authorized by this
25 section that eliminates the board of directors shall impose on
26 the person or persons in whom the discretion or powers of the

1 directors are vested the liability for acts or omissions as
2 are imposed by law on directors.

3 (f) The existence or performance of an agreement
4 authorized by this section shall not be a ground for imposing
5 personal liability on any stockholder for the acts or debts of
6 the corporation even if the agreement or its performance
7 treats the corporation as if it were a partnership or results
8 in failure to observe the corporate formalities otherwise
9 applicable to the matters governed by the agreement.

10 (g) Incorporators or subscribers for stock may act
11 as stockholders with respect to an agreement authorized by
12 this section if no stock has been issued when the agreement is
13 made.

14 (h) Limits, if any, on the duration of an agreement
15 authorized by this section must be set forth in the agreement.

16 Division D. DERIVATIVE PROCEEDINGS.

17 §10A-2A-7.40. Division definitions.

18 In this division:

19 (1) "Derivative proceeding" means a civil suit in
20 the right of a corporation or, to the extent provided in
21 Section 10A-2A-7.48, in the right of a foreign corporation.

22 (2) "Stockholder" means a record stockholder, a
23 beneficial stockholder, and an unrestricted voting trust
24 beneficial owner.

25 §10A-2A-7.41. Right of derivative action.

1 A stockholder may commence or maintain a derivative
2 action in the right of a corporation to enforce a right of the
3 corporation by complying with this division.

4 §10A-2A-7.42. Standing.

5 A stockholder may commence or maintain a derivative
6 action in the right of the corporation only if the
7 stockholder:

8 (1) fairly and adequately represents the interests
9 of the corporation in enforcing the right of the corporation;
10 and

11 (2) either:

12 (A) was a stockholder of the corporation at the time
13 of the act or omission of which the stockholder complains; or

14 (B) whose status as a stockholder devolved upon the
15 person by operation of law from a person who was a stockholder
16 at the time of the act or omission of which the stockholder
17 complains.

18 §10A-2A-7.43. Demand.

19 A stockholder may commence a derivative action in
20 the right of the corporation, if:

21 (a) the stockholder first makes a written demand
22 upon the corporation requesting that it bring an action to
23 enforce the right and the corporation does not bring the
24 action within a reasonable time; or

25 (b) a demand under subsection (a) would be futile.

26 §10A-2A-7.44. Pleading.

1 In a derivative action, the complaint must state
2 with particularity:

3 (a) the date and content of plaintiff's demand and
4 the corporation's response by the corporation to the demand;
5 or

6 (b) why the demand should be excused as futile.

7 §10A-2A-7.45. Stay of proceedings.

8 For the purpose of allowing the corporation time to
9 undertake an inquiry into the allegations made in the demand
10 or complaint commenced pursuant to this division, the court
11 may stay any derivative action for the period the court deems
12 appropriate.

13 §10A-2A-7.46. Discontinuance or settlement.

14 A derivative action may not be dismissed or
15 compromised without the approval of the court, and notice of
16 the proposed dismissal or compromise shall be given to
17 stockholders of the corporation in such manner as the court
18 directs.

19 §10A-2A-7.47. Proceeds and expenses.

20 (a) Except as otherwise provided in subsection (b):

21 (1) any proceeds or other benefits of a derivative
22 action, whether by judgment, compromise, or settlement, belong
23 to the corporation and not to the derivative plaintiff; and

24 (2) if the derivative plaintiff receives any
25 proceeds, the derivative plaintiff shall immediately remit
26 them to the corporation.

1 (b) If a derivative action is successful in whole or
2 in part, the court may award the plaintiff reasonable
3 expenses, including reasonable attorney's fees, from the
4 recovery of the corporation.

5 §10A-2A-7.48. Applicability to foreign corporations.

6 In any derivative action in the right of a foreign
7 corporation, the right of a person to commence or maintain a
8 derivative action in the right of a foreign corporation, and
9 any matters raised in the action covered by Sections
10 10A-2A-7.42 through 10A-2A-7.47, shall be governed by the law
11 of the jurisdiction under which the foreign corporation was
12 formed; except that any matters raised in the action covered
13 by Sections 10A-2A-7.45, 10A-2A-7.46, and 10A-2A-7.47 shall be
14 governed by the law of this state.

15 ARTICLE 8. DIRECTORS AND OFFICERS.

16 Division A. BOARD OF DIRECTORS.

17 §10A-2A-8.01. Requirement for and functions of board
18 of directors.

19 (a) Except as may be provided in an agreement
20 authorized under Section 10A-2A-7.32, each corporation shall
21 have a board of directors.

22 (b) Except as may be provided in an agreement
23 authorized under Section 10A-2A-7.32, and subject to any
24 limitation in the certificate of incorporation permitted by
25 Section 10A-2A-2.02(b), all corporate powers shall be
26 exercised by or under the authority of the board of directors,
27 and the business and affairs of the corporation shall be

1 managed by or under the direction, and subject to the
2 oversight, of the board of directors.

3 §10A-2A-8.02. Qualifications of directors.

4 (a) The certificate of incorporation or bylaws may
5 prescribe qualifications for directors or for nominees for
6 directors. Qualifications must be reasonable as applied to the
7 corporation and be lawful.

8 (b) A requirement that is based on a past,
9 prospective, or current action, or expression of opinion, by a
10 nominee for director or a director that could limit the
11 ability of a nominee for director or a director to discharge
12 his or her duties as a director is not a permissible
13 qualification under this section. Notwithstanding the
14 foregoing, qualifications may include not being or having been
15 subject to specified criminal, civil, or regulatory sanctions
16 or not having been removed as a director by judicial action or
17 for cause.

18 (c) A director shall be a natural person of the age
19 of at least 19 years but need not be a resident of this state
20 or a stockholder unless the certificate of incorporation or
21 bylaws so prescribe.

22 (d) A qualification for nomination for director
23 prescribed before a person's nomination shall apply to that
24 person at the time of nomination. A qualification for
25 nomination for director prescribed after a person's nomination
26 shall not apply to that person with respect to that person's
27 nomination.

1 (e) A qualification for director prescribed before a
2 director has been elected or appointed may apply only at the
3 time an individual becomes a director or may apply during a
4 director's term. A qualification prescribed after a director
5 has been elected or appointed shall not apply to that director
6 before the end of that director's term.

7 §10A-2A-8.03. Number and election of directors.

8 (a) A board of directors shall consist of one or
9 more individuals, with the number specified in or fixed in
10 accordance with the certificate of incorporation or bylaws.

11 (b) The number of directors may be increased or
12 decreased from time to time by amendment to, or in the manner
13 provided in, the certificate of incorporation or bylaws.

14 (c) Except as set forth in Section 10A-2A-2.04,
15 directors are elected at the first annual stockholders'
16 meeting and at each annual stockholders' meeting thereafter
17 unless elected by written consent in lieu of an annual meeting
18 as permitted by Section 10A-2A-7.04 or unless their terms are
19 staggered under Section 10A-2A-8.06.

20 §10A-2A-8.04. Election of directors by certain
21 classes or series of stock.

22 If the certificate of incorporation or action by the
23 board of directors pursuant to Section 10A-2A-6.02 authorizes
24 dividing the stock into classes or series, the certificate of
25 incorporation may also authorize the election of all or a
26 specified number of directors by the holders of one or more
27 authorized classes or series of stock. A class or series (or

1 multiple classes or series) of stock entitled to elect one or
2 more directors is a separate voting group for purposes of the
3 election of directors.

4 §10A-2A-8.05. Terms of directors generally.

5 (a) The terms of the initial directors of a
6 corporation expire at the first stockholders' meeting at which
7 directors are elected.

8 (b) The terms of all other directors expire at the
9 next, or if their terms are staggered in accordance with
10 Section 10A-2A-8.06, at the applicable second or third, annual
11 stockholders' meeting following their election, except to the
12 extent (i) provided in Section 10A-2A-10.22 if a bylaw
13 electing to be governed by that section is in effect, or (ii)
14 a shorter term is specified in the certificate of
15 incorporation in the event of a director nominee failing to
16 receive a specified vote for election.

17 (c) A decrease in the number of directors does not
18 shorten an incumbent director's term.

19 (d) Except as set forth in the next sentence of this
20 subsection, the term of a director elected to fill a vacancy
21 expires at the next stockholders' meeting at which directors
22 are elected. The term of a director elected to fill a vacancy
23 in a corporation, the directors of which have been divided
24 into groups under Section 10A-2A-8.06, shall hold office until
25 the next election of the group for which that group of
26 directors has been chosen, and until their successors shall be
27 elected and qualified.

1 (e) Except to the extent otherwise provided in the
2 certificate of incorporation or under Section 10A-2A-10.22 if
3 a bylaw electing to be governed by that section is in effect,
4 despite the expiration of a director's term, the director
5 continues to serve until the director's successor is elected
6 and qualifies or there is a decrease in the number of
7 directors.

8 §10A-2A-8.06. Staggered terms for directors.

9 The certificate of incorporation may provide for
10 staggering the terms of directors by dividing the total number
11 of directors into two or three groups, with each group
12 containing half or one-third of the total, as near as may be
13 practicable. In that event, the terms of directors in the
14 first group expire at the first annual stockholders' meeting
15 after their election, the terms of the second group expire at
16 the second annual stockholders' meeting after their election,
17 and the terms of the third group, if any, expire at the third
18 annual stockholders' meeting after their election. At each
19 annual stockholders' meeting held thereafter, directors shall
20 be elected for a term of two years or three years, as the case
21 may be, to succeed those whose terms expire.

22 §10A-2A-8.07. Resignation of directors.

23 (a) A director may resign at any time by delivering
24 a written notice of resignation to the board of directors or
25 its chair, to the secretary, or to the corporation.

26 (b) A resignation is effective as provided in
27 Section 10A-2A-1.41(i) unless the resignation provides for a

1 delayed effectiveness, including effectiveness determined upon
2 a future event or events. A resignation that is conditioned
3 upon failing to receive a specified vote for election as a
4 director may provide that it is irrevocable.

5 §10A-2A-8.08. Removal of directors by stockholders.

6 (a) The stockholders may remove one or more
7 directors with or without cause unless the certificate of
8 incorporation provides that directors may be removed only for
9 cause.

10 (b) If a director is elected by a voting group of
11 stockholders, only the stockholders of that voting group may
12 participate in the vote to remove that director.

13 (c) A director may be removed if the number of votes
14 cast to remove exceeds the number of votes cast not to remove
15 the director, except to the extent the certificate of
16 incorporation or bylaws require a greater number; provided
17 that if cumulative voting is authorized, a director may not be
18 removed if, in the case of a meeting, the number of votes
19 sufficient to elect the director under cumulative voting is
20 voted against removal and, if in the case of an action by
21 written consent, the action is taken by less than unanimous
22 consent.

23 (d) A director may be removed by the stockholders
24 only at a meeting called for the purpose of removing the
25 director and the meeting notice must state that removal of the
26 director is a purpose of the meeting.

1 §10A-2A-8.09. Removal of directors by judicial
2 proceeding.

3 (a) The circuit court of the county where the
4 corporation's principal office, or if none in this state, its
5 registered office, is located may remove a director from
6 office or may order other relief, including barring the
7 director from reelection for a period prescribed by the court,
8 in a proceeding commenced by or in the right of the
9 corporation if the court finds that (i) the director engaged
10 in fraudulent conduct with respect to the corporation or its
11 stockholders, grossly abused the position of director, or
12 intentionally inflicted harm on the corporation; and (ii)
13 considering the director's course of conduct and the
14 inadequacy of other available remedies, removal or such other
15 relief would be in the best interest of the corporation.

16 (b) A stockholder proceeding on behalf of the
17 corporation under subsection (a) shall comply with all of the
18 requirements of Division D of Article 7, except clause (2) of
19 Section 10A-2A-7.42.

20 §10A-2A-8.10. Vacancy on board of directors.

21 (a) Unless the certificate of incorporation provides
22 otherwise, if a vacancy occurs on a board of directors,
23 including a vacancy resulting from an increase in the number
24 of directors:

25 (1) the stockholders may fill the vacancy;

26 (2) the board of directors may fill the vacancy; or

1 (3) if the directors remaining in office are less
2 than a quorum, they may fill the vacancy by the affirmative
3 vote of a majority of all the directors remaining in office.

4 (b) If the vacant office was held by a director
5 elected by a voting group of stockholders, only the holders of
6 stock of that voting group are entitled to vote to fill the
7 vacancy if it is filled by the stockholders, and only the
8 remaining directors elected by that voting group, even if less
9 than a quorum, are entitled to fill the vacancy if it is
10 filled by the directors.

11 (c) A vacancy that will occur at a specific later
12 date (by reason of a resignation effective at a later date
13 under Section 10A-2A-8.07(b) or otherwise) may be filled
14 before the vacancy occurs but the new director may not take
15 office until the vacancy occurs.

16 §10A-2A-8.11. Compensation of directors.

17 Unless the certificate of incorporation or bylaws
18 provide otherwise, the board of directors may fix the
19 compensation of directors.

20 Division B. MEETINGS AND ACTION OF THE BOARD OF
21 DIRECTORS.

22 §10A-2A-8.20. Meetings.

23 (a) The board of directors may hold regular or
24 special meetings in or out of this state.

25 (b) Unless restricted by the certificate of
26 incorporation or bylaws, any or all directors may participate
27 in any meeting of the board of directors through the use of

1 any means of communication by which all directors
2 participating may simultaneously hear each other during the
3 meeting. A director participating in a meeting by this means
4 is deemed to be present in person at the meeting.

5 §10A-2A-8.21. Action without meeting.

6 (a) Except to the extent that the certificate of
7 incorporation or bylaws require that action by the board of
8 directors be taken at a meeting, action required or permitted
9 by this chapter to be taken by the board of directors may be
10 taken without a meeting if each director signs a consent
11 describing the action to be taken and delivers it to the
12 corporation.

13 (b) Action taken under this section is the act of
14 the board of directors when one or more consents signed by all
15 the directors are delivered to the corporation. The consent
16 may specify a later time as the time at which the action taken
17 is to be effective. A director's consent may be withdrawn by a
18 revocation signed by the director and delivered to the
19 corporation before delivery to the corporation of unrevoked
20 written consents signed by all the directors.

21 (c) A consent signed under this section has the
22 effect of action taken at a meeting of the board of directors
23 and may be described as such in any document.

24 §10A-2A-8.22. Notice of meeting.

25 (a) Unless the certificate of incorporation or
26 bylaws provide otherwise, regular meetings of the board of

1 directors may be held without notice of the date, time, place,
2 or purpose of the meeting.

3 (b) Unless the certificate of incorporation or
4 bylaws provide for a longer or shorter period, special
5 meetings of the board of directors shall be preceded by at
6 least two days' notice of the date, time, and place of the
7 meeting. The notice need not describe the purpose of the
8 special meeting unless required by the certificate of
9 incorporation or bylaws.

10 §10A-2A-8.23. Waiver of notice.

11 (a) A director may waive any notice required by this
12 chapter, the certificate of incorporation or the bylaws before
13 or after the date and time stated in the notice. Except as
14 provided by subsection (b), the waiver must be in writing,
15 signed by the director entitled to the notice and delivered to
16 the corporation for filing by the corporation with the minutes
17 or corporate records.

18 (b) A director's attendance at or participation in a
19 meeting waives any required notice to the director of the
20 meeting unless the director at the beginning of the meeting
21 (or promptly upon arrival) objects to holding the meeting or
22 transacting business at the meeting and does not after
23 objecting vote for or assent to action taken at the meeting.

24 §10A-2A-8.24. Quorum and voting.

25 (a) Unless the certificate of incorporation or
26 bylaws provide for a greater or lesser number or unless
27 otherwise expressly provided in this chapter, a quorum of a

1 board of directors consists of a majority of the number of
2 directors specified in or fixed in accordance with the
3 certificate of incorporation or bylaws.

4 (b) The quorum of the board of directors specified
5 in or fixed in accordance with the certificate of
6 incorporation or bylaws may not consist of less than one-third
7 of the specified or fixed number of directors.

8 (c) If a quorum is present when a vote is taken, the
9 affirmative vote of a majority of directors present is the act
10 of the board of directors unless the certificate of
11 incorporation or bylaws require the vote of a greater number
12 of directors or unless otherwise expressly provided in this
13 chapter.

14 (d) A director who is present at a meeting of the
15 board of directors or a committee when corporate action is
16 taken is deemed to have assented to the action taken unless:
17 (i) the director objects at the beginning of the meeting (or
18 promptly upon arrival) to holding it or transacting business
19 at the meeting; (ii) the dissent or abstention from the action
20 taken is entered in the minutes of the meeting; or (iii) the
21 director delivers written notice of the director's dissent or
22 abstention to the presiding officer of the meeting before its
23 adjournment or to the corporation immediately after
24 adjournment of the meeting. The right of dissent or abstention
25 is not available to a director who votes in favor of the
26 action taken.

27 §10A-2A-8.25. Committees of the board.

1 (a) Unless this chapter, the certificate of
2 incorporation, or the bylaws provide otherwise, a board of
3 directors may establish one or more board committees composed
4 exclusively of one or more directors to perform functions of
5 the board of directors.

6 (b) The establishment of a board committee and
7 appointment of members to it shall be approved by the greater
8 of (i) a majority of all the directors in office when the
9 action is taken or (ii) the number of directors required by
10 the certificate of incorporation or bylaws to take action
11 under Section 10A-2A-8.24, unless, in either case, this
12 chapter or the certificate of incorporation provides
13 otherwise.

14 (c) Section 10A-2A-8.20 through Section 10A-2A-8.24
15 apply to board committees and their members.

16 (d) A board committee may exercise the powers of the
17 board of directors under Section 10A-2A-8.01, to the extent
18 specified by the board of directors or in the certificate of
19 incorporation or bylaws, except that a board committee may
20 not:

21 (1) authorize or approve distributions, except
22 according to a formula or method, or within limits, prescribed
23 by the board of directors;

24 (2) approve or propose to stockholders action that
25 this chapter requires be approved by stockholders;

26 (3) fill vacancies on the board of directors or,
27 subject to subsection (e), on any board committees; or

1 (4) adopt, amend, or repeal bylaws or amend or
2 restate the certificate of incorporation.

3 (e) The board of directors may appoint one or more
4 directors as alternate members of any board committee to
5 replace any absent or disqualified member during the member's
6 absence or disqualification. If the certificate of
7 incorporation, the bylaws, or the resolution creating the
8 board committee so provide, the member or members present at
9 any board committee meeting and not disqualified from voting
10 may, by unanimous action, appoint another director to act in
11 place of an absent or disqualified member during that member's
12 absence or disqualification.

13 §10A-2A-8.26. Submission of matters for stockholder
14 vote.

15 A corporation may agree to submit a matter to a vote
16 of its stockholders even if, after approving the matter, the
17 board of directors determines it no longer recommends the
18 matter.

19 Division C. DIRECTORS.

20 §10A-2A-8.30. Standards of conduct for directors.

21 Notwithstanding Division C of Article 3 of Chapter
22 1:

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

1 (b) The members of the board of directors or a board
2 committee, when becoming informed in connection with their
3 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 a
17 member if the director reasonably believes the committee
18 merits confidence.

19 §10A-2A-8.31. Standards of liability for directors.

20 Notwithstanding Division C of Article 3 of Chapter
21 1:

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 to
11 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 of
14 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 the
18 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-8.32. Directors' liability for unlawful
14 distributions.

15 (a) A director who votes for or assents to a
16 distribution in excess of what may be authorized and made
17 pursuant to Section 10A-2A-6.40(a) or Section 10A-2A-14.08(a)
18 is personally liable to the corporation for the amount of the
19 distribution that exceeds what could have been distributed
20 without violating Section 10A-2A-6.40(a) or Section
21 10A-2A-14.08(a) if the party asserting liability establishes
22 that when taking the action the director did not comply with
23 Section 10A-2A-8.30.

24 (b) A director held liable under subsection (a) for
25 an unlawful distribution is entitled to:

1 (1) contribution from every other director who could
2 be held liable under subsection (a) for the unlawful
3 distribution; and

4 (2) recoupment from each stockholder of the pro-rata
5 portion of the amount of the unlawful distribution the
6 stockholder accepted, knowing the distribution was made in
7 violation of Section 10A-2A-6.40(a) or Section
8 10A-2A-14.08(a).

9 (c) A proceeding to enforce:

10 (1) the liability of a director under subsection (a)
11 is barred unless it is commenced within two years after the
12 date (i) on which the effect of the distribution was measured
13 under Section 10A-2A-6.40(e) or (g), (ii) as of which the
14 violation of Section 10A-2A-6.40(a) occurred as the
15 consequence of disregard of a restriction in the certificate
16 of incorporation, or (iii) on which the distribution of assets
17 to stockholders under Section 10A-2A-14.08(a) was made; or

18 (2) contribution or recoupment under subsection (b)
19 is barred unless it is commenced within one year after the
20 liability of the claimant has been finally adjudicated under
21 subsection (a).

22 Division D. OFFICERS.

23 §10A-2A-8.40. Officers.

24 (a) A corporation has the officers described in its
25 certificate of incorporation or bylaws or appointed by the
26 board of directors in accordance with the certificate of
27 incorporation or bylaws.

1 (b) The board of directors may elect individuals to
2 fill one or more offices of the corporation. An officer may
3 appoint one or more officers if authorized by the certificate
4 of incorporation or bylaws or the board of directors.

5 (c) The certificate of incorporation, bylaws, or the
6 board of directors shall assign to an officer responsibility
7 for maintaining and authenticating the records of the
8 corporation required to be kept under Section 10A-2A-16.01(a).

9 (d) Unless the certificate of incorporation or
10 bylaws provide otherwise, the same individual may
11 simultaneously hold more than one office in a corporation.

12 §10A-2A-8.41. Functions of officers.

13 Each officer has the authority and shall perform the
14 functions set forth in the certificate of incorporation or
15 bylaws or, to the extent consistent with the certificate of
16 incorporation or bylaws, the functions prescribed by the board
17 of directors or by direction of an officer authorized by the
18 board of directors to prescribe the functions of other
19 officers.

20 §10A-2A-8.42. Standards of conduct for officers.

21 Notwithstanding Division C of Article 3 of Chapter
22 1:

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

25 (1) in good faith;

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

1 (3) in a manner the officer reasonably believes to
2 be in the best interests of the corporation.

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

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

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

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

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

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

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

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

16 §10A-2A-8.43. Resignation and removal of officers.

17 Notwithstanding Division C of Article 3 of Chapter
18 1:

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

1 officer may fill the pending vacancy before the delayed
2 effectiveness but the new officer may not take office until
3 the vacancy occurs.

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

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

13 §10A-2A-8.44. Contract rights of officers.

14 (a) The election or appointment of an officer does
15 not itself create contract rights.

16 (b) An officer's removal does not affect the
17 officer's contract rights, if any, with the corporation. An
18 officer's resignation does not affect the corporation's
19 contract rights, if any, with the officer.

20 Division E. INDEMNIFICATION AND ADVANCE FOR
21 EXPENSES.

22 §10A-2A-8.50. Division definitions.

23 In this division:

24 "Corporation" includes any domestic or foreign
25 predecessor entity of a corporation.

26 "Director" or "officer" means an individual who is
27 or was a director or officer, respectively, of a corporation

1 or who, while a director or officer of the corporation, is or
2 was serving at the corporation's request as a director,
3 officer, manager, partner, trustee, employee, or agent of
4 another entity or employee benefit plan. A director or officer
5 is considered to be serving an employee benefit plan at the
6 corporation's request if the individual's duties to the
7 corporation also impose duties on, or otherwise involve
8 services by, the individual to the plan or to participants in
9 or beneficiaries of the plan. "Director" or "officer"
10 includes, unless the context requires otherwise, the estate or
11 personal representative of a director or officer.

12 "Liability" means the obligation to pay a judgment,
13 settlement, penalty, fine (including an excise tax assessed
14 with respect to an employee benefit plan), or expenses
15 incurred with respect to a proceeding.

16 "Official capacity" means: (i) when used with
17 respect to a director, the office of director in a
18 corporation; and (ii) when used with respect to an officer, as
19 contemplated in Section 10A-2A-8.56, the office in a
20 corporation held by the officer. "Official capacity" does not
21 include service for any other corporation or foreign
22 corporation or any joint venture, trust, employee benefit
23 plan, or other entity.

24 "Party" means an individual who was, is, or is
25 threatened to be made, a defendant or respondent in a
26 proceeding.

1 "Proceeding" means any threatened, pending, or
2 completed action, suit, or proceeding, whether civil,
3 criminal, administrative, arbitrative, or investigative and
4 whether formal or informal.

5 §10A-2A-8.51. Permissible indemnification.

6 (a) Except as otherwise provided in this section, a
7 corporation may indemnify an individual who is a party to a
8 proceeding because the individual is a director against
9 liability incurred in the proceeding if:

10 (1) (i) the director conducted himself or herself in
11 good faith; and

12 (ii) the director reasonably believed:

13 (A) in the case of conduct in an official capacity,
14 that his or her conduct was in the best interests of the
15 corporation; and

16 (B) in all other cases, that his or her conduct was
17 at least not opposed to the best interests of the corporation;
18 and

19 (iii) in the case of any criminal proceeding, the
20 director had no reasonable cause to believe his or her conduct
21 was unlawful; or

22 (2) the director engaged in conduct for which
23 broader indemnification has been made permissible or
24 obligatory under a provision of the certificate of
25 incorporation (as authorized by Section 10A-2A-2.02(b)(5)).

26 (b) A director's conduct with respect to an employee
27 benefit plan for a purpose the director reasonably believed to

1 be in the interests of the participants in, and the
2 beneficiaries of, the plan is conduct that satisfies the
3 requirement of subsection (a) (1) (ii) (B).

4 (c) The termination of a proceeding by judgment,
5 order, settlement, or conviction, or upon a plea of nolo
6 contendere or its equivalent, is not, of itself, determinative
7 that the director did not meet the relevant standard of
8 conduct described in this section.

9 (d) Unless ordered by a court under Section
10 10A-2A-8.54(a) (3), a corporation may not indemnify a director:

11 (1) in connection with a proceeding by or in the
12 right of the corporation, except for expenses incurred in
13 connection with the proceeding if it is determined that the
14 director has met the relevant standard of conduct under
15 subsection (a); or

16 (2) in connection with any proceeding with respect
17 to conduct for which the director was adjudged liable on the
18 basis of receiving a financial benefit to which he or she was
19 not entitled, regardless of whether it involved action in the
20 director's official capacity.

21 §10A-2A-8.52. Mandatory indemnification.

22 A corporation shall indemnify a director who was
23 wholly successful, on the merits or otherwise, in the defense
24 of any proceeding to which the director was a party because he
25 or she was a director of the corporation against expenses
26 incurred by the director in connection with the proceeding.

27 §10A-2A-8.53. Advance for expenses.

1 (a) A corporation may, before final disposition of a
2 proceeding, advance funds to pay for or reimburse expenses
3 incurred in connection with the proceeding by an individual
4 who is a party to the proceeding because that individual is a
5 director if the director delivers to the corporation a signed
6 written undertaking of the director to repay any funds
7 advanced if (i) the director is not entitled to mandatory
8 indemnification under Section 10A-2A-8.52 and (ii) it is
9 ultimately determined under Section 10A-2A-8.54 or Section
10 10A-2A-8.55 that the director is not entitled to
11 indemnification.

12 (b) The undertaking required by subsection (a) must
13 be an unlimited general obligation of the director but need
14 not be secured and may be accepted without reference to the
15 financial ability of the director to make repayment.

16 (c) Authorizations under this section shall be made:

17 (1) by the board of directors:

18 (i) if there are two or more qualified directors, by
19 a majority vote of all the qualified directors (a majority of
20 whom shall for that purpose constitute a quorum) or by a
21 majority of the members of a committee consisting solely of
22 two or more qualified directors appointed by a majority vote
23 of qualified directors; or

24 (ii) if there are fewer than two qualified
25 directors, by the vote necessary for action by the board of
26 directors in accordance with Section 10A-2A-8.24(c), in which

1 authorization directors who are not qualified directors may
2 participate; or

3 (2) by the stockholders, but stock owned by or voted
4 under the control of a director who at the time is not a
5 qualified director may not be voted on the authorization.

6 §10A-2A-8.54. Court-ordered indemnification and
7 advance for expenses.

8 (a) A director who is a party to a proceeding
9 because he or she is a director may apply for indemnification
10 or an advance for expenses to the court conducting the
11 proceeding or to another court of competent jurisdiction.
12 After receipt of an application and after giving any notice it
13 considers necessary, the court shall:

14 (1) order indemnification if the court determines
15 that the director is entitled to mandatory indemnification
16 under Section 10A-2A-8.52;

17 (2) order indemnification or advance for expenses if
18 the court determines that the director is entitled to
19 indemnification or advance for expenses pursuant to a
20 provision authorized by Section 10A-2A-8.58(a); or

21 (3) order indemnification or advance for expenses if
22 the court determines, in view of all the relevant
23 circumstances, that it is fair and reasonable (i) to indemnify
24 the director, or (ii) to advance expenses to the director,
25 even if, in the case of (i) or (ii), he or she has not met the
26 relevant standard of conduct set forth in Section
27 10A-2A-8.51(a), failed to comply with Section 10A-2A-8.53 or

1 was adjudged liable in a proceeding referred to in Section
2 10A-2A-8.51(d) (1) or Section 10A-2A-8.51(d) (2), but if the
3 director was adjudged so liable indemnification shall be
4 limited to expenses incurred in connection with the
5 proceeding.

6 (b) If the court determines that the director is
7 entitled to indemnification under subsection (a) (1) or to
8 indemnification or advance for expenses under subsection
9 (a) (2), it shall also order the corporation to pay the
10 director's expenses incurred in connection with obtaining
11 court-ordered indemnification or advance for expenses. If the
12 court determines that the director is entitled to
13 indemnification or advance for expenses under subsection
14 (a) (3), it may also order the corporation to pay the
15 director's expenses to obtain court-ordered indemnification or
16 advance for expenses.

17 §10A-2A-8.55. Determination and authorization of
18 indemnification.

19 (a) A corporation may not indemnify a director under
20 Section 10A-2A-8.51 unless authorized for a specific
21 proceeding after a determination has been made that
22 indemnification is permissible because the director has met
23 the relevant standard of conduct set forth in Section
24 10A-2A-8.51.

25 (b) The determination shall be made:

26 (1) if there are two or more qualified directors, by
27 the board of directors by a majority vote of all the qualified

1 directors (a majority of whom shall for that purpose
2 constitute a quorum), or by a majority of the members of a
3 committee of two or more qualified directors appointed by
4 a majority vote of qualified directors;

5 (2) by special legal counsel:

6 (i) selected in the manner prescribed in subsection
7 (b) (1); or

8 (ii) if there are fewer than two qualified
9 directors, selected by the board of directors (in which
10 selection directors who are not qualified directors may
11 participate); or

12 (3) by the stockholders, but stock owned by or voted
13 under the control of a director who at the time is not a
14 qualified director may not be voted on the determination.

15 (c) Authorization of indemnification shall be made
16 in the same manner as the determination that indemnification
17 is permissible except that if there are fewer than two
18 qualified directors, or if the determination is made by
19 special legal counsel, authorization of indemnification shall
20 be made by those entitled to select special legal counsel
21 under subsection (b) (2) (ii).

22 §10A-2A-8.56. Indemnification of officers.

23 (a) A corporation may indemnify and advance expenses
24 under this Division E of this Article 8 to an officer who is a
25 party to a proceeding because he or she is an officer

26 (1) to the same extent as a director; and

1 (2) if he or she is an officer but not a director,
2 to such further extent as may be provided by the certificate
3 of incorporation or the bylaws, or by a resolution adopted or
4 a contract approved by the board of directors or stockholders,
5 except for

6 (i) liability in connection with a proceeding by or
7 in the right of the corporation other than for expenses
8 incurred in connection with the proceeding, or

9 (ii) liability arising out of conduct that
10 constitutes

11 (A) receipt by the officer of a financial benefit to
12 which he or she is not entitled,

13 (B) an intentional infliction of harm on the
14 corporation or the stockholders, or

15 (C) an intentional violation of criminal law.

16 (b) Subsection (a)(2) shall apply to an officer who
17 is also a director if he or she is made a party to the
18 proceeding based on an act or omission solely as an officer.

19 (c) An officer who is not a director is entitled to
20 mandatory indemnification under Section 10A-2A-8.52, and may
21 apply to a court under Section 10A-2A-8.54 for indemnification
22 or an advance for expenses, in each case to the same extent to
23 which a director may be entitled to indemnification or advance
24 for expenses under those sections.

25 §10A-2A-8.57. Insurance.

26 A corporation may purchase and maintain insurance on
27 behalf of an individual who is a director or officer of the

1 corporation, or who, while a director or officer of the
2 corporation, serves at the corporation's request as a
3 director, officer, partner, trustee, employee, or agent of
4 another corporation or foreign corporation or a joint venture,
5 trust, employee benefit plan, or other entity, against
6 liability asserted against or incurred by the individual in
7 that capacity or arising from the individual's status as a
8 director or officer, regardless of whether the corporation
9 would have power to indemnify or advance expenses to the
10 individual against the same liability under this Division E of
11 this Article 8.

12 §10A-2A-8.58. Variation by corporate action;
13 application of division.

14 (a) A corporation may, by a provision in its
15 certificate of incorporation, bylaws, or in a resolution
16 adopted or a contract approved by the board of directors or
17 stockholders, obligate itself in advance of the act or
18 omission giving rise to a proceeding to provide
19 indemnification in accordance with Section 10A-2A-8.51 or
20 advance funds to pay for or reimburse expenses in accordance
21 with Section 10A-2A-8.53. Any obligatory provision shall be
22 deemed to satisfy the requirements for authorization referred
23 to in Section 10A-2A-8.53(c) and in Section 10A-2A-8.55(c).
24 Any provision that obligates the corporation to provide
25 indemnification to the fullest extent permitted by law shall
26 be deemed to obligate the corporation to advance funds to pay
27 for or reimburse expenses in accordance with Section

1 10A-2A-8.53 to the fullest extent permitted by law, unless the
2 provision expressly provides otherwise.

3 (b) A right of indemnification or to advances for
4 expenses created by this Division E of this Article 8 or under
5 subsection (a) and in effect at the time of an act or omission
6 shall not be eliminated or impaired with respect to the act or
7 omission by an amendment of the certificate of incorporation,
8 bylaws, or a resolution of the board of directors or
9 stockholders, adopted after the occurrence of the act or
10 omission, unless, in the case of a right created under
11 subsection (a), the provision creating the right and in effect
12 at the time of the act or omission explicitly authorizes
13 elimination or impairment after the act or omission has
14 occurred.

15 (c) Any provision pursuant to subsection (a) shall
16 not obligate the corporation to indemnify or advance expenses
17 to a director of a predecessor of the corporation, pertaining
18 to conduct with respect to the predecessor, unless otherwise
19 expressly provided. Any provision for indemnification or
20 advance for expenses in the certificate of incorporation,
21 bylaws, or a resolution of the board of directors or
22 stockholders of a predecessor of the corporation in a merger
23 or in a contract to which the predecessor is a party, existing
24 at the time the merger takes effect, shall be governed by
25 Section 10A-2A-11.07(a) (4).

26 (d) Subject to subsection (b), a corporation may, by
27 a provision in its certificate of incorporation, limit any of

1 the rights to indemnification or advance for expenses created
2 by or pursuant to this Division E of this Article 8.

3 (e) This Division E of this Article 8 does not limit
4 a corporation's power to pay or reimburse expenses incurred by
5 a director or an officer in connection with appearing as a
6 witness in a proceeding at a time when he or she is not a
7 party.

8 (f) This Division E of this Article 8 does not limit
9 a corporation's power to indemnify, advance expenses to or
10 provide or maintain insurance on behalf of an employee or
11 agent.

12 §10A-2A-8.59. Exclusivity of division.

13 Notwithstanding Division A of Article 6 of Chapter
14 1, a corporation may provide indemnification or advance
15 expenses to a director or an officer only as permitted by this
16 Division E of this Article 8.

17 Division F. INTERESTED DIRECTORS; QUORUM.

18 §10A-2A-8.60. Interested directors; quorum.

19 (a) No contract or transaction between a corporation
20 and one or more of its directors or officers, or between a
21 corporation and any other corporation, partnership,
22 association, or other entity in which one or more of its
23 directors or officers, are directors or officers, or have a
24 financial interest, shall be void or voidable solely for this
25 reason, or solely because the director or officer is present
26 at or participates in the meeting of the board of directors or
27 committee which authorizes the contract or transaction, or

1 solely because the director's or officer's votes are counted
2 for that purpose, if:

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

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

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

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

24 ARTICLE 9. CONVERSIONS.

25 Division A. ARTICLE DEFINITIONS.

26 §10A-2A-9.01. Definitions.

27 As used in this Article 9:

1 Notwithstanding Section 10A-1-1.03, as used in this
2 article, unless the context otherwise requires, the following
3 terms have the following meanings:

4 (1) "Converted organization" means the organization
5 into which a converting organization converts pursuant to this
6 article.

7 (2) "Converting corporation" means a converting
8 organization that is a corporation.

9 (3) "Converting organization" means an organization
10 that converts into another organization pursuant to this
11 article.

12 (4) "Governing statute" of an organization means the
13 statute that governs the organization's internal affairs.

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

22 (6) "Organizational documents" means:

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

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

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

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

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

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

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

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

5 Division B. CONVERSION.

6 §10A-2A-9.11. Conversion.

7 (a) An organization other than a corporation may
8 convert to a corporation, and a corporation may convert to an
9 organization other than a corporation pursuant to this
10 article, and a plan of conversion, if:

11 (1) the governing statute of the organization that
12 is not a corporation authorizes the conversion;

13 (2) the law of the jurisdiction governing the
14 converting organization and the converted organization does
15 not prohibit the conversion; and

16 (3) the converting organization and the converted
17 organization each comply with the governing statute and
18 organizational documents applicable to that organization in
19 effecting the conversion.

20 (b) A plan of conversion must be in writing and must
21 include:

22 (1) the name, type of organization, and mailing
23 address of the principal office of the converting organization
24 and its unique identifying number or other designation as
25 assigned by the Secretary of State, if any, before conversion;

1 (2) the name, type of organization, and mailing
2 address of the principal office of the converted organization
3 after conversion;

4 (3) the terms and conditions of the conversion,
5 including the manner and basis for converting interests in the
6 converting organization into any combination of money,
7 interests in the converted organization, and other
8 consideration allowed in Section 10A-9A-10.02(c); and

9 (4) the organizational documents of the converted
10 organization.

11 (c) In connection with a conversion, rights or
12 securities of or interests in the converting organization may
13 be exchanged for or converted into cash, property, or rights
14 or securities of or interests in the converted organization,
15 or, in addition to or in lieu thereof, may be exchanged for or
16 converted into cash, property, or rights or securities of or
17 interests in another organization or may be cancelled.

18 (d) In addition to the requirements of subsection
19 (a), a plan of conversion may contain any other provision not
20 prohibited by law.

21 (e) The terms of a plan of conversion may be made
22 dependent upon facts objectively ascertainable outside the
23 plan in accordance with Section 10A-2A-1.20(c).

24 §10A-2A-9.12. Action on a plan of conversion.

25 In the case of a conversion of a corporation the
26 plan of conversion shall be adopted in the following manner:

1 (a) The plan of conversion shall first be adopted by
2 the board of directors.

3 (b) The plan of conversion shall then be approved by
4 the stockholders. In submitting the plan of conversion to the
5 stockholders for their approval, the board of directors must
6 recommend that the stockholders approve the plan, unless (i)
7 the board of directors makes a determination that because of
8 conflicts of interest or other special circumstances it should
9 not make a recommendation, or (ii) Section 10A-2A-8.26
10 applies. If either (i) or (ii) applies, the board of directors
11 shall inform the stockholders of the basis for its so
12 proceeding.

13 (c) The board of directors may set conditions for
14 approval of the plan of conversion by the stockholders or the
15 effectiveness of the plan of conversion.

16 (d) If the approval of the stockholders is to be
17 given at a meeting, the corporation shall notify each
18 stockholder, regardless of whether entitled to vote, of the
19 meeting of stockholders at which the plan of conversion is to
20 be submitted for approval. The notice must state that the
21 purpose, or one of the purposes, of the meeting is to consider
22 the plan of conversion and must contain or be accompanied by a
23 copy or summary of the plan. The notice must include or be
24 accompanied by a copy of the organizational documents of the
25 converted organization which are to be in writing as they will
26 be in effect immediately after the conversion.

1 (e) Unless the certificate of incorporation, or the
2 board of directors acting pursuant to subsection (c), requires
3 a greater vote or a greater quorum, approval of the plan of
4 conversion requires (i) the approval of the stockholders at a
5 meeting at which a quorum exists consisting of a majority of
6 the votes entitled to be cast on the plan, and (ii) the
7 approval of each class or series of stock voting as a separate
8 voting group at a meeting at which a quorum of the voting
9 group exists consisting of a majority of the votes entitled to
10 be cast on the plan by that voting group.

11 (f) If as a result of the conversion one or more
12 stockholders of the converting corporation would become
13 subject to personal liability, approval of the plan of
14 conversion shall require the signing in connection with the
15 transaction, by each stockholder who would become subject to
16 personal liability, of a separate written consent to become
17 subject to personal liability.

18 §10A-2A-9.13. Statement of conversion;
19 effectiveness.

20 (a) After a plan of conversion is approved:

21 (1) if the converting organization is an
22 organization formed under, or its internal affairs are
23 governed by, the laws of this state, the converting
24 organization shall file a statement of conversion in
25 accordance with subsection (c), which statement of conversion
26 must be signed in accordance with Section 10A-1-4.01 and which
27 must include:

1 (A) the name, type of organization, and mailing
2 address of the principal office of the converting
3 organization, and its unique identifying number or other
4 designation as assigned by the Secretary of State, if any;

5 (B) the date of the filing of the certificate of
6 formation of the converting organization, if any, and all
7 prior amendments and the filing office or offices, if any,
8 where the certificate of formation and amendments are filed;

9 (C) a statement that the converting organization has
10 been converted into the converted organization;

11 (D) the name and type of organization of the
12 converted organization and the jurisdiction of its governing
13 statute;

14 (E) the street and mailing address of the principal
15 office of the converted organization;

16 (F) the date the conversion is effective under the
17 governing statute of the converted organization;

18 (G) a statement that the conversion was approved as
19 required by this chapter;

20 (H) a statement that the conversion was approved as
21 required by the governing statute of the converted
22 organization;

23 (I) a statement that a copy of the plan of
24 conversion will be furnished by the converted organization, on
25 request and without cost, to any owner of the converting
26 organization; and

1 (J) if the converted organization is a foreign
2 organization not authorized to conduct activities and affairs
3 in this state, the street and mailing address of an office for
4 the purposes of Section 10A-2A-9.15(b); and

5 (2) if the converted organization is a corporation,
6 the converting organization shall deliver for filing a
7 certificate of incorporation in accordance with subsection
8 (d), which certificate of incorporation must include, in
9 addition to the information required by Section 10A-2A-2.02:

10 (A) a statement that the corporation was converted
11 from the converting organization;

12 (B) the name and type of organization of the
13 converting organization, the jurisdiction of the converting
14 organization's governing statute, and the converting
15 organization's unique identifying number or other designation
16 as assigned by the Secretary of State, if any; and

17 (C) a statement that the conversion was approved in
18 a manner that complied with the converting organization's
19 governing statute.

20 (b) A conversion becomes effective:

21 (1) if the converted organization is a corporation,
22 when the certificate of incorporation takes effect; and

23 (2) if the converted organization is not a
24 corporation, as provided by the governing statute of the
25 converted organization.

26 (c) If the converting organization is an
27 organization formed under, or its internal affairs are

1 governed by, the laws of this state, then the converting
2 organization shall deliver for filing the statement of
3 conversion required under subsection (a)(1) to the Secretary
4 of State.

5 (d) If the converted organization is a corporation,
6 then, the converting organization shall deliver for filing the
7 certificate of incorporation required under subsection (a)(2)
8 to the Secretary of State.

9 (e) If the converting organization is required to
10 deliver for filing a statement of conversion and a certificate
11 of formation to the Secretary of State, then the converting
12 organization shall deliver for filing the statement of
13 conversion and the certificate of formation to the Secretary
14 of State simultaneously.

15 (f) After a conversion becomes effective, if the
16 converted organization is a corporation, then, except for
17 certified copies of the statement of conversion permitted to
18 be delivered to the judge of probate for filing pursuant to
19 subsection (h), all filing instruments required to be filed
20 under this title regarding that converted organization shall
21 be delivered for filing to the Secretary of State.

22 (g) If:

23 (1) the converting organization is a filing entity
24 or a foreign filing entity registered to conduct activities
25 and affairs in this state;

1 (2) the converted organization will be a filing
2 entity or a foreign filing entity registered to conduct
3 activities and affairs in this state;

4 (3) the name of the converting organization and the
5 converted organization are to be the same, other than words,
6 phrases or abbreviations indicating the type of entity; and

7 (4) the name of the converted organization complies
8 with Division A of Article 5 of Chapter 1 or Section
9 10A-1-7.07, as the case may be; then notwithstanding Division
10 B of Article 5 of Chapter 1, no name reservation shall be
11 required and the converted organization shall for all purposes
12 of this title be entitled to utilize the name of the
13 converting organization without any further action by the
14 converting organization or the converted organization.

15 (h) A certified copy of any document required to be
16 filed under this section may be filed in the real estate
17 records in the office of the judge of probate in any county in
18 which the converting organization owned real property, without
19 payment and without collection by the judge of probate of any
20 deed or other transfer tax or fee. The judge of probate shall,
21 however, be entitled to collect a filing fee of five dollars
22 (\$5). Any such filing with the judge of probate shall evidence
23 chain of title, but lack of filing shall not affect the
24 converted organization's title to such real property.

25 (i) A statement of conversion is a filing instrument
26 under Chapter 1.

1 (j) The filing fees for a statement of conversion
2 shall be as set forth in Chapter 1.

3 §10A-2A-9.14. Amendment of plan of conversion;
4 abandonment.

5 (a) A plan of conversion of a converting
6 organization that is a corporation may be amended:

7 (1) in the same manner as the plan was approved, if
8 the plan does not provide for the manner in which it may be
9 amended; or

10 (2) in the manner provided in the plan, except that
11 if the plan has been approved by the stockholders that were
12 entitled to vote on, consent to, or approve of the plan, then
13 those stockholders are entitled to vote on, consent to, or
14 approve of any amendment of the plan that will change:

15 (i) the amount or kind of eligible interests or
16 other securities, obligations, rights to acquire eligible
17 interests or other securities, cash, other property, or any
18 combination of the foregoing, to be received by any of the
19 stockholders of the converting corporation under the plan;

20 (ii) the organizational documents of the converted
21 organization that will be in effect immediately after the
22 conversion becomes effective, except for changes that do not
23 require approval of the eligible interest holders of the
24 converted organization under its governing statute or
25 organizational documents; or

1 (iii) any other terms or conditions of the plan, if
2 the change would adversely affect the stockholders in any
3 material respect.

4 (b) After a plan of conversion has been approved by
5 a converting organization that is a corporation in the manner
6 required by this Division B of this Article 9 and before the
7 statement of conversion becomes effective, the plan may be
8 abandoned by the corporation without action by its
9 stockholders in accordance with any procedures set forth in
10 the plan or, if no procedures are set forth in the plan, in
11 the manner determined by the board of directors.

12 (c) If a conversion is abandoned after the statement
13 of conversion has been delivered to the Secretary of State for
14 filing and before the statement of conversion becomes
15 effective, a statement of abandonment, signed by the
16 converting organization, must be delivered to the Secretary of
17 State for filing before the statement of conversion becomes
18 effective. The statement of abandonment takes effect on
19 filing, and the conversion is abandoned and does not become
20 effective. The statement of abandonment must contain:

21 (1) the name of the converting organization;

22 (2) the date on which the statement of conversion
23 were filed by the Secretary of State; and

24 (3) a statement that the conversion has been
25 abandoned in accordance with this section.

26 §10A-2A-9.15. Effect of conversion.

27 (a) When a conversion takes effect:

1 (1) all property and contract rights owned by the
2 converting organization remain vested in the converted
3 organization without transfer, reversion or impairment and the
4 title to any property vested by deed or otherwise in the
5 converting organization shall not revert or be in any way
6 impaired by reason of the conversion;

7 (2) all debts, obligations, or other liabilities of
8 the converting organization continue as debts, obligations, or
9 other liabilities of the converted organization and neither
10 the rights of creditors, nor the liens upon the property of
11 the converting organization shall be impaired by the
12 conversion;

13 (3) an action or proceeding pending by or against
14 the converting organization continues as if the conversion had
15 not occurred and the name of the converted organization may,
16 but need not, be substituted for the name of the converting
17 organization in any pending action or proceeding;

18 (4) except as prohibited by law other than this
19 chapter, all of the rights, privileges, immunities, powers,
20 and purposes of the converting organization remain vested in
21 the converted organization;

22 (5) except as otherwise provided in the plan of
23 conversion, the terms and conditions of the plan of conversion
24 take effect;

25 (6) except as otherwise agreed, for all purposes of
26 the laws of this state, the converting organization shall not
27 be required to wind up its affairs or pay its liabilities and

1 distribute its assets, and the conversion shall not be deemed
2 to constitute a dissolution of the converting organization;

3 (7) for all purposes of the laws of this state, the
4 rights, privileges, powers, interests in property, debts,
5 liabilities and duties of the converting organization, shall
6 be the rights, privileges, powers, interests in property,
7 debts, liabilities and duties of the converted organization,
8 and shall not be deemed as a consequence of the conversion, to
9 have been transferred to the converted organization;

10 (8) if the converted organization is a corporation,
11 for all purposes of the laws of this state, the corporation
12 shall be deemed to be the same organization as the converting
13 organization, and the conversion shall constitute a
14 continuation of the existence of the converting organization
15 in the form of a corporation;

16 (9) if the converted organization is a corporation,
17 the existence of the corporation shall be deemed to have
18 commenced on the date the converting organization commenced
19 its existence in the jurisdiction in which the converting
20 organization was first created, formed, organized,
21 incorporated, or otherwise came into being;

22 (10) the conversion shall not affect the choice of
23 law applicable to matters arising prior to conversion;

24 (11) if the Secretary of State has assigned a unique
25 identifying number or other designation to the converting
26 organization and (i) the converted organization is formed
27 pursuant to, or its internal affairs are governed by, the laws

1 of this state or (ii) the converted organization is, within 30
2 days after the effective date of the conversion, registered to
3 transact business in this State, then that unique identifying
4 number or other designation shall continue to be assigned to
5 the converted organization; and

6 (12) the stock or eligible interests of the
7 converting organization are reclassified into stock, eligible
8 interests or other securities, obligations, rights to acquire
9 stock, eligible interests or other securities, cash, or other
10 property in accordance with the terms of the conversion, and
11 the stockholders or interest holders of the converting
12 organization are entitled only to the rights provided to them
13 by those terms and to any appraisal rights they may have under
14 the governing statute of the converting organization.

15 (b) A converted organization that is a foreign
16 entity consents to the jurisdiction of the courts of this
17 state to enforce any debt, obligation or other liability for
18 which the converting corporation, is liable if, before the
19 conversion, the converting corporation was subject to suit in
20 this state on the debt, obligation or other liability or was
21 subject to pay amounts to its stockholders under Article 13.
22 If a converted organization is a foreign entity and fails to
23 designate or maintain a registered agent, or the designated
24 registered agent cannot with reasonable diligence be served,
25 then service of process on that converted organization for the
26 purposes of enforcing a debt, obligation, or other liability

1 under this subsection may be made in the same manner and has
2 the same consequences as provided in Section 10A-1-5.35.

3 (c) When the converting organization is a
4 corporation and the conversion becomes effective, the
5 converted organization is deemed to agree that it will
6 promptly pay the amount, if any, to which the stockholders of
7 the converting corporation are entitled under Article 13.

8 §10A-2A-9.16. Nonexclusive.

9 This article is not exclusive. This article does not
10 preclude a corporation from converting under law other than
11 this chapter.

12 ARTICLE 10. AMENDMENT OF CERTIFICATE OF
13 INCORPORATION AND BYLAWS.

14 Division A. AMENDMENT OF CERTIFICATE OF
15 INCORPORATION.

16 §10A-2A-10.01. Authority to amend.

17 (a) A corporation may amend its certificate of
18 incorporation at any time to add or change a provision that is
19 required or permitted in the certificate of incorporation as
20 of the effective date of the amendment or to delete a
21 provision that is not required to be contained in the
22 certificate of incorporation. Whether a provision is required
23 or permitted in the certificate of incorporation is determined
24 as of the effective date of the amendment.

25 (b) A stockholder of the corporation does not have a
26 vested property right resulting from any provision in the
27 certificate of incorporation, including provisions relating to

1 management, control, capital structure, dividend entitlement,
2 or purpose or duration of the corporation.

3 §10A-2A-10.02. Amendment before issuance of stock.

4 If a corporation has not yet issued stock, its board
5 of directors, or its incorporators if it has no board of
6 directors, may adopt one or more amendments to the
7 corporation's certificate of incorporation.

8 §10A-2A-10.03. Amendment by board of directors and
9 stockholders.

10 If a corporation has issued stock, an amendment to
11 the certificate of incorporation shall be adopted in the
12 following manner:

13 (a) The proposed amendment shall first be adopted by
14 the board of directors.

15 (b) Except as provided in Sections 10A-2A-10.05,
16 10A-2A-10.07, and 10A-2A-10.08, the amendment shall then be
17 approved by the stockholders. In submitting the proposed
18 amendment to the stockholders for approval, the board of
19 directors shall recommend that the stockholders approve the
20 amendment, unless (i) the board of directors makes a
21 determination that because of conflicts of interest or other
22 special circumstances it should not make a recommendation, or
23 (ii) Section 10A-2A-8.26 applies. If either (i) or (ii)
24 applies, the board of directors must inform the stockholders
25 of the basis for its so proceeding.

1 (c) The board of directors may set conditions for
2 the approval of the amendment by the stockholders or the
3 effectiveness of the amendment.

4 (d) If the amendment is required to be approved by
5 the stockholders, and the approval is to be given at a
6 meeting, the corporation shall notify each stockholder,
7 regardless of whether entitled to vote, of the meeting of
8 stockholders at which the amendment is to be submitted for
9 approval. The notice must state that the purpose, or one of
10 the purposes, of the meeting is to consider the amendment. The
11 notice must contain or be accompanied by a copy of the
12 amendment.

13 (e) Unless the certificate of incorporation, or the
14 board of directors acting pursuant to subsection (c), requires
15 a greater vote or a greater quorum, approval of the amendment
16 requires the approval of the stockholders at a meeting at
17 which a quorum consisting of a majority of the votes entitled
18 to be cast on the amendment exists, and, if any class or
19 series of stock is entitled to vote as a separate group on the
20 amendment, except as provided in Section 10A-2A-10.04(c), the
21 approval of each separate voting group at a meeting at which a
22 quorum of the voting group exists consisting of a majority of
23 the votes entitled to be cast on the amendment by that voting
24 group.

25 (f) If as a result of an amendment of the
26 certificate of incorporation one or more stockholders of a
27 corporation would become subject to new personal liability,

1 approval of the amendment requires the signing in connection
2 with the amendment, by each stockholder who will become
3 subject to new personal liability, of a separate written
4 consent to become subject to new personal liability, unless in
5 the case of a stockholder that already has personal liability
6 the terms and conditions of the new personal liability (i) are
7 substantially identical to those of the existing personal
8 liability, or (ii) are substantially identical to those of the
9 existing personal liability (other than changes that eliminate
10 or reduce existing personal liability).

11 (g) For purposes of subsection (f) and Section
12 10A-2A-10.09, "new personal liability" means personal
13 liability of a person resulting from an amendment of the
14 certificate of incorporation if (i) the person did not have
15 personal liability before the amendment becomes effective, or
16 (ii) the person had personal liability before the amendment
17 becomes effective, the terms and conditions of which are
18 changed when the amendment becomes effective.

19 §10A-2A-10.04. Voting on amendments by voting
20 groups.

21 (a) The holders of the outstanding stock of a class
22 are entitled to vote as a separate voting group (if
23 stockholder voting is otherwise required by this chapter) on a
24 proposed amendment to the certificate of incorporation if the
25 amendment would:

26 (1) effect an exchange or reclassification of all or
27 part of the stock of the class into stock of another class;

1 (2) effect an exchange or reclassification, or
2 create the right of exchange, of all or part of the stock of
3 another class into stock of the class;

4 (3) change the rights, preferences, or limitations
5 of all or part of the stock of the class;

6 (4) change the stock of all or part of the class
7 into a different number of shares of stock of the same class;

8 (5) create a new class of stock having rights or
9 preferences with respect to distributions that are prior or
10 superior to the stock of the class;

11 (6) increase the rights, preferences, or number of
12 authorized shares of stock of any class that, after giving
13 effect to the amendment, have rights or preferences with
14 respect to distributions that are prior or superior to the
15 stock of the class;

16 (7) limit or deny an existing preemptive right of
17 all or part of the stock of the class; or

18 (8) cancel or otherwise affect rights to
19 distributions that have accumulated but not yet been
20 authorized on all or part of the stock of the class.

21 (b) If a proposed amendment would affect a series of
22 a class of stock in one or more of the ways described in
23 subsection (a), the holders of stock of that series are
24 entitled to vote as a separate voting group on the proposed
25 amendment.

26 (c) If a proposed amendment that entitles the
27 holders of two or more classes or series of stock to vote as

1 separate voting groups under this section would affect those
2 two or more classes or series in the same or a substantially
3 similar way, the holders of stock of all the classes or series
4 so affected shall vote together as a single voting group on
5 the proposed amendment, unless otherwise provided in the
6 certificate of incorporation or added as a condition by the
7 board of directors pursuant to Section 10A-2A-10.03(c).

8 (d) A class or series of stock is entitled to the
9 voting rights granted by this section even if the certificate
10 of incorporation provides that the stock is nonvoting stock.

11 §10A-2A-10.05. Amendment by board of directors.

12 Unless the certificate of incorporation provides
13 otherwise, a corporation's board of directors may adopt
14 amendments to the corporation's certificate of incorporation
15 without stockholder approval:

16 (a) to extend the duration of the corporation if it
17 was incorporated at a time when limited duration was required
18 by law;

19 (b) to delete the names and addresses of the
20 incorporators or initial directors;

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

24 (d) if the corporation has only one class of stock
25 outstanding:

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

4 (2) to increase the number of authorized shares of
5 stock of the class to the extent necessary to permit the
6 issuance of stock as a stock dividend;

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

9 (f) to reflect a reduction in authorized stock, as a
10 result of the operation of Section 10A-2A-6.31(b), when the
11 corporation has acquired its own stock and the certificate of
12 incorporation prohibits the reissue of the acquired stock;

13 (g) to delete a class of stock from the certificate
14 of incorporation, as a result of the operation of Section
15 10A-2A-6.31(b), when there is no remaining stock of the class
16 because the corporation has acquired all stock of the class
17 and the certificate of incorporation prohibits the reissue of
18 the acquired stock; or

19 (h) to take actions expressly permitted by Section
20 10A-2A-6.02 to be made without stockholder approval.

21 §10A-2A-10.06. Certificate of amendment.

22 Notwithstanding Division B of Article 3 of Chapter
23 1:

24 (a) After an amendment to the certificate of
25 incorporation has been adopted and approved in the manner
26 required by this chapter and by the certificate of
27 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.

25 (b) A certificate of amendment shall take effect at
26 the effective date determined in accordance with Article 4 of
27 Chapter 1.

1 §10A-2A-10.07. Restated certificate of
2 incorporation.

3 Notwithstanding Division B of Article 3 of Chapter
4 1:

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

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

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

16 (1) the name of the corporation;

17 (2) the text of the restated certificate of
18 incorporation;

19 (3) a statement that the restated certificate of
20 incorporation consolidates all amendments into a single
21 document; and

22 (4) if a new amendment is included in the restated
23 certificate of incorporation, the statements required under
24 Section 10A-2A-10.06 with respect to the new amendment.

25 (d) The duly adopted restated certificate of
26 incorporation supersedes the original certificate of

1 incorporation and all amendments to the certificate of
2 incorporation.

3 (e) The Secretary of State may certify the restated
4 certificate of incorporation as the certificate of
5 incorporation currently in effect, without including the
6 statements required by subsection (c) (4).

7 §10A-2A-10.08. Amendment pursuant to reorganization.

8 Notwithstanding Division B of Article 3 of Chapter
9 1:

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

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

20 (1) the name of the corporation;

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

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

25 (4) the title of the reorganization proceeding in
26 which the order or decree was entered; and

1 (5) a statement that the court had jurisdiction of
2 the proceeding under federal statute.

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

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

10 §10A-2A-10.09. Effect of amendment.

11 (a) An amendment to the certificate of incorporation
12 does not affect a cause of action existing against or in favor
13 of the corporation, a proceeding to which the corporation is a
14 party, or the existing rights of persons other than the
15 stockholders. An amendment changing a corporation's name does
16 not affect a proceeding brought by or against the corporation
17 in its former name.

18 (b) A stockholder who becomes subject to new
19 personal liability in respect of the corporation as a result
20 of an amendment to the certificate of incorporation shall have
21 that new personal liability only in respect of interest holder
22 liabilities that arise after the amendment becomes effective.

23 (c) Except as otherwise provided in the certificate
24 of incorporation of the corporation, the personal liability of
25 a stockholder who had personal liability in respect of the
26 corporation before the amendment becomes effective and has new

1 personal liability after the amendment becomes effective shall
2 be as follows:

3 (1) The amendment does not discharge that prior
4 personal liability with respect to any interest holder
5 liabilities that arose before the amendment becomes effective.

6 (2) The provisions of the certificate of
7 incorporation relating to personal liability as in effect
8 immediately prior to the amendment shall continue to apply to
9 the collection or discharge of any interest holder liabilities
10 preserved by subsection (c) (1), as if the amendment had not
11 occurred.

12 (3) The stockholder shall have the rights of
13 contribution from other persons as are provided by the
14 certificate of incorporation relating to personal liability as
15 in effect immediately prior to the amendment with respect to
16 any interest holder liabilities preserved by subsection
17 (c) (1), as if the amendment had not occurred.

18 (4) The stockholder shall not, by reason of any
19 prior personal liability, have personal liability with respect
20 to any interest holder liabilities that arise after the
21 amendment becomes effective.

22 Division B. AMENDMENT OF BYLAWS.

23 §10A-2A-10.20. Authority to amend.

24 (a) A corporation's stockholders may amend or repeal
25 the corporation's bylaws.

26 (b) A corporation's board of directors may amend or
27 repeal the corporation's bylaws, unless:

1 (1) the certificate of incorporation, Section
2 10A-2A-10.21 or, if applicable, Section 10A-2A-10.22, reserves
3 that power exclusively to the stockholders in whole or part;
4 or

5 (2) except as provided in Section 10A-2A-2.05(d),
6 the stockholders in amending, repealing, or adopting a bylaw
7 expressly provide that the board of directors may not amend,
8 repeal, or adopt that bylaw.

9 (c) A stockholder of the corporation does not have a
10 vested property right resulting from any provision in the
11 bylaws.

12 §10A-2A-10.21. Bylaw increasing quorum or voting
13 requirement for directors or requiring a meeting place.

14 (a) A bylaw that increases a quorum or voting
15 requirement for the board of directors or that requires a
16 meeting of stockholders to be held at a place may be amended
17 or repealed:

18 (1) if originally adopted by the stockholders, only
19 by the stockholders, unless the bylaw otherwise provides; or

20 (2) if adopted by the board of directors, either by
21 the stockholders or by the board of directors.

22 (b) A bylaw adopted or amended by the stockholders
23 that increases a quorum or voting requirement for the board of
24 directors may provide that it can be amended or repealed only
25 by a specified vote of either the stockholders or the board of
26 directors.

1 (c) Action by the board of directors under
2 subsection (a) to amend or repeal a bylaw that changes a
3 quorum or voting requirement for the board of directors shall
4 meet the same quorum requirement and be adopted by the same
5 vote required to take action under the quorum and voting
6 requirement then in effect or proposed to be adopted,
7 whichever is greater.

8 §10A-2A-10.22. Bylaw provisions relating to the
9 election of directors.

10 (a) Unless the certificate of incorporation (i)
11 specifically prohibits the adoption of a bylaw pursuant to
12 this section, (ii) alters the vote specified in Section
13 10A-2A-7.28(a), or (iii) provides for cumulative voting, a
14 corporation may elect in its bylaws to be governed in the
15 election of directors as follows:

16 (1) each vote entitled to be cast may be voted for
17 or against up to that number of candidates that is equal to
18 the number of directors to be elected, or a stockholder may
19 indicate an abstention, but without cumulating the votes;

20 (2) to be elected, a nominee shall have received a
21 plurality of the votes cast by holders of stock entitled to
22 vote in the election at a meeting at which a quorum is
23 present, provided that a nominee who is elected but receives
24 more votes against than for election shall serve as a director
25 for a term that shall terminate on the date that is the
26 earlier of (i) 90 days from the date on which the voting
27 results are determined pursuant to Section 10A-2A-7.29(b) (5)

1 or (ii) the date on which an individual is selected by the
2 board of directors to fill the office held by that director,
3 which selection shall be deemed to constitute the filling of a
4 vacancy by the board of directors to which Section 10A-2A-8.10
5 applies. Subject to subsection (a) (3), a nominee who is
6 elected but receives more votes against than for election
7 shall not serve as a director beyond the 90-day period
8 referenced above; and

9 (3) the board of directors may select any qualified
10 individual to fill the office held by a director who received
11 more votes against than for election.

12 (b) Subsection (a) does not apply to an election of
13 directors by a voting group if (i) at the expiration of the
14 time fixed under a provision requiring advance notification of
15 director candidates, or (ii) absent that provision, at a time
16 fixed by the board of directors which is not more than 14 days
17 before notice is given of the meeting at which the election is
18 to occur, there are more candidates for election by the voting
19 group than the number of directors to be elected, one or more
20 of whom are properly proposed by stockholders. An individual
21 shall not be considered a candidate for purposes of this
22 subsection if the board of directors determines before the
23 notice of meeting is given that the individual's candidacy
24 does not create a bona fide election contest.

25 (c) A bylaw electing to be governed by this section
26 may be repealed:

1 (1) if originally adopted by the stockholders, only
2 by the stockholders, unless the bylaw otherwise provides;

3 (2) if adopted by the board of directors, by the
4 board of directors or the stockholders.

5 ARTICLE 11. MERGERS AND STOCK EXCHANGES.

6 §10A-2A-11.01. Definitions.

7 Notwithstanding Section 10A-1-1.03, as used in this
8 article, unless the context otherwise requires, the following
9 terms mean:

10 (1) "Acquired entity" means the corporation or
11 foreign corporation that will have all of one or more classes
12 or series of its stock acquired in a stock exchange.

13 (2) "Acquiring entity" means the corporation or
14 foreign corporation that will acquire all of one or more
15 classes or series of stock of the acquired entity in a stock
16 exchange.

17 (3) "Constituent corporation" means a constituent
18 organization that is a corporation.

19 (4) "Constituent organization" means an organization
20 that is party to a merger under this article.

21 (5) "Governing statute" of an organization means the
22 statute that governs the organization's internal affairs.

23 (6) "Organization" means a general partnership,
24 including a limited liability partnership; limited
25 partnership, including a limited liability limited
26 partnership; limited liability company; business trust;
27 corporation; nonprofit corporation; professional corporation;

1 or any other person having a governing statute. The term
2 includes domestic and foreign organizations whether or not
3 organized for profit.

4 (7) "Organizational documents" means:

5 (A) for a general partnership or foreign general
6 partnership, its partnership agreement and if applicable, its
7 registration as a limited liability partnership or a foreign
8 limited liability partnership;

9 (B) for a limited partnership or foreign limited
10 partnership, its certificate of formation and partnership
11 agreement, or comparable writings as provided in its governing
12 statute;

13 (C) for a limited liability company or foreign
14 limited liability company, its certificate of formation and
15 limited liability company agreement, or comparable writings as
16 provided in its governing statute;

17 (D) for a business or statutory trust or foreign
18 business or statutory trust its agreement of trust and
19 declaration of trust, or comparable writings as provided in
20 its governing statute;

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

26 (F) for a nonprofit corporation or foreign nonprofit
27 corporation, its certificate of incorporation, bylaws, and

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

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

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

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

1 immediately before the stock exchange became effective if (A)
2 the person did not have personal liability immediately before
3 the stock exchange became effective, or (B) the person had
4 personal liability immediately before the stock exchange
5 became effective, the terms and conditions of which were
6 changed when the stock exchange became effective.

7 (9) "Surviving organization" means an organization
8 into which one or more other organizations are merged under
9 this article, whether the organization pre-existed the merger
10 or was created pursuant to the merger.

11 §10A-2A-11.02. Merger.

12 (a) A corporation may merge with one or more other
13 constituent organizations pursuant to this article, and a plan
14 of merger, if:

15 (1) the governing statute of each of the other
16 organizations authorizes the merger;

17 (2) the merger is not prohibited by the law of a
18 jurisdiction that enacted any of those governing statutes; and

19 (3) each of the other organizations complies with
20 its governing statute in effecting the merger.

21 (b) A plan of merger must be in writing and must
22 include:

23 (1) the name, type of organization, and mailing
24 address of the principal office of each constituent
25 organization, the jurisdiction of the governing statute of
26 each constituent organization, and the respective unique

1 identifying number or other designation as assigned by the
2 Secretary of State, if any, of each constituent organization;

3 (2) the name, type of organization, and mailing
4 address of the principal office of the surviving organization,
5 the unique identifying number or other designation as assigned
6 by the Secretary of State, if any, of the surviving
7 organization, the jurisdiction of the governing statute of the
8 surviving organization, and, if the surviving organization is
9 created pursuant to the merger, a statement to that effect;

10 (3) the terms and conditions of the merger,
11 including the manner and basis for converting the stock or
12 eligible interests in each constituent organization into any
13 combination of money, stock, eligible interests in the
14 surviving organization, and other consideration as allowed by
15 subsection (c);

16 (4) if the surviving organization is to be created
17 pursuant to the merger, the surviving organization's
18 organizational documents; and

19 (5) if the surviving organization is not to be
20 created pursuant to the merger, any amendments to be made by
21 the merger to the surviving organization's organizational
22 documents.

23 (c) In connection with a merger, rights, securities,
24 stock, or eligible interests in a constituent organization may
25 be exchanged for or converted into cash, property, rights,
26 securities, stock, or eligible interests in the surviving
27 organization, or, in addition to or in lieu thereof, may be

1 exchanged for or converted into cash, property, rights,
2 securities, stock, or eligible interests in another
3 organization or may be cancelled.

4 (d) In addition to the requirements of subsection
5 (b), a plan of merger may contain any other provision not
6 prohibited by law.

7 (e) Terms of a plan of merger may be made dependent
8 on facts objectively ascertainable outside the plan in
9 accordance with Section 10A-2A-1.20(c).

10 (f) A plan of merger may be amended only with the
11 consent of each constituent organization, except as provided
12 in the plan. A domestic constituent organization may approve
13 an amendment to a plan:

14 (1) in the same manner as the plan was approved, if
15 the plan does not provide for the manner in which it may be
16 amended; or

17 (2) in the manner provided in the plan, except that
18 if the plan has been approved by the stockholders, members, or
19 interest holders that were entitled to vote on, consent to, or
20 approve of, the plan, then those stockholders, members, or
21 interest holders are entitled to vote on, consent to, or
22 approve of any amendment of the plan that will change:

23 (i) the amount or kind of stock or other securities,
24 eligible interests, obligations, rights to acquire stock,
25 other securities or eligible interests, cash, or other
26 property to be received under the plan by the stockholders,
27 members, or interest holders of a constituent organization;

1 (ii) the certificate of incorporation of any
2 corporation, foreign corporation, nonprofit corporation,
3 foreign nonprofit corporation or the organizational documents
4 of any unincorporated entity or foreign unincorporated entity,
5 that will be the surviving organization, except for changes
6 permitted by Section 10A-2A-10.05 or by comparable provisions
7 of the governing statute of the foreign corporation, nonprofit
8 corporation, foreign nonprofit corporation, unincorporated
9 entity or foreign unincorporated entity; or

10 (iii) any of the other terms or conditions of the
11 plan if the change would adversely affect the stockholders,
12 members, or interest holders in any material respect.

13 §10A-2A-11.03. Stock exchange.

14 (a) By complying with this Article 11:

15 (1) a corporation may acquire all of the stock of
16 one or more classes or series of stock, of another corporation
17 or foreign corporation, in exchange for stock or other
18 securities, obligations, rights to acquire stock or other
19 securities, cash, other property, or any combination of the
20 foregoing, pursuant to a plan of stock exchange; or

21 (2) all of the stock of one or more classes or
22 series of stock of a corporation may be acquired by another
23 corporation or foreign corporation, in exchange for stock or
24 other securities, obligations, rights to acquire stock or
25 other securities, cash, other property, or any combination of
26 the foregoing, pursuant to a plan of stock exchange.

1 (b) A foreign corporation may be the acquired entity
2 in a stock exchange only if the stock exchange is permitted by
3 the governing statute of that foreign corporation.

4 (c) The plan of stock exchange must include:

5 (1) the name of each corporation or foreign
6 corporation the stock of which will be acquired, the name of
7 the corporation or foreign corporation that will acquire that
8 stock, and the respective unique identifying numbers or other
9 designations as assigned by the Secretary of State, if any, of
10 the corporation or foreign corporation;

11 (2) the terms and conditions of the stock exchange;

12 (3) the manner and basis of exchanging stock of a
13 corporation or foreign corporation, the stock of which will be
14 acquired under the stock exchange for stock or other
15 securities, obligations, rights to acquire stock, other
16 securities, cash, other property, or any combination of the
17 foregoing; and

18 (4) any other provisions required by the governing
19 statute governing the acquired entity or its certificate of
20 incorporation or organizational documents.

21 (d) Terms of a plan of stock exchange may be made
22 dependent on facts objectively ascertainable outside the plan
23 in accordance with Section 10A-2A-1.20(c).

24 (e) A plan of stock exchange may be amended only
25 with the consent of each party to the stock exchange, except
26 as provided in the plan. A corporation may approve an
27 amendment to a plan:

1 (1) in the same manner as the plan was approved, if
2 the plan does not provide for the manner in which it may be
3 amended; or

4 (2) in the manner provided in the plan, except that
5 if the plan has been approved by the stockholders that were
6 entitled to vote on, consent to, or approve of the plan then
7 those stockholders are entitled to vote on, consent to, or
8 approve of any amendment of the plan that will change:

9 (i) the amount or kind of stock or other securities,
10 obligations, rights to acquire stock, other securities, cash,
11 or other property to be received under the plan by the
12 stockholders of the acquired entity; or

13 (ii) any of the other terms or conditions of the
14 plan if the change would adversely affect the stockholders in
15 any material respect.

16 §10A-2A-11.04. Action on a plan of merger or stock
17 exchange.

18 In the case of a corporation that is a constituent
19 organization or the acquired entity in a stock exchange, the
20 plan of merger or stock exchange shall be adopted in the
21 following manner:

22 (a) The plan of merger or stock exchange shall first
23 be adopted by the board of directors.

24 (b) Except as provided in subsections (h), (j), and
25 (l) and in Section 10A-2A-11.05, the plan of merger or stock
26 exchange shall then be approved by the stockholders. In
27 submitting the plan of merger or stock exchange to the

1 stockholders for approval, the board of directors shall
2 recommend that the stockholders approve the plan or, in the
3 case of an offer referred to in subsection (j)(2), that the
4 stockholders tender their stock to the offeror in response to
5 the offer, unless (i) the board of directors makes a
6 determination that because of conflicts of interest or other
7 special circumstances it should not make a recommendation or
8 (ii) Section 10A-2A-8.26 applies. If either (i) or (ii)
9 applies, the board of directors shall inform the stockholders
10 of the basis for its so proceeding.

11 (c) The board of directors may set conditions for
12 the approval of the plan of merger or stock exchange by the
13 stockholders or the effectiveness of the plan of merger or
14 stock exchange.

15 (d) If the plan of merger or stock exchange is
16 required to be approved by the stockholders, and if the
17 approval is to be given at a meeting, the corporation shall
18 notify each stockholder, regardless of whether entitled to
19 vote, of the meeting of stockholders at which the plan is to
20 be submitted for approval. The notice must state that the
21 purpose, or one of the purposes, of the meeting is to consider
22 the plan and must contain or be accompanied by a copy or
23 summary of the plan. If the corporation is to be merged into
24 an existing corporation, foreign corporation, or eligible
25 entity, the notice must also include or be accompanied by a
26 copy or summary of the certificate of incorporation and bylaws
27 or the organizational documents of that corporation, foreign

1 corporation, or eligible entity. If the corporation is to be
2 merged with a corporation, foreign corporation, or eligible
3 entity and a new corporation, foreign corporation, or eligible
4 entity is to be created pursuant to the merger, the notice
5 must include or be accompanied by a copy or a summary of the
6 certificate of incorporation and bylaws or the organizational
7 documents of the new corporation, foreign corporation, or
8 eligible entity.

9 (e) Unless the certificate of incorporation, or the
10 board of directors acting pursuant to subsection (c), requires
11 a greater vote or a greater quorum, approval of the plan of
12 merger or stock exchange requires the approval of the
13 stockholders at a meeting at which a quorum exists consisting
14 of a majority of the votes entitled to be cast on the plan,
15 and, if any class or series of stock is entitled to vote as a
16 separate group on the plan of merger or stock exchange, the
17 approval of each separate voting group at a meeting at which a
18 quorum of the voting group is present consisting of a majority
19 of the votes entitled to be cast on the merger or stock
20 exchange by that voting group.

21 (f) Subject to subsection (g), separate voting by
22 voting groups is required:

23 (1) on a plan of merger, by each class or series of
24 stock that:

25 (i) are to be converted under the plan of merger
26 into stock, other securities, eligible interests, obligations,
27 rights to acquire stock, other securities or eligible

1 interests, cash, other property, or any combination of the
2 foregoing; or

3 (ii) are entitled to vote as a separate group on a
4 provision in the plan that constitutes a proposed amendment to
5 the certificate of incorporation of a surviving corporation
6 that requires action by separate voting groups under Section
7 10A-2A-10.04;

8 (2) on a plan of stock exchange, by each class or
9 series of stock included in the exchange, with each class or
10 series constituting a separate voting group; and

11 (3) on a plan of merger or stock exchange, if the
12 voting group is entitled under the certificate of
13 incorporation to vote as a voting group to approve a plan of
14 merger or stock exchange, respectively.

15 (g) The certificate of incorporation may expressly
16 limit or eliminate the separate voting rights provided in
17 subsection (f) (1) (i) and subsection (f) (2) as to any class or
18 series of stock, except when the plan of merger or stock
19 exchange (i) includes what is or would be in effect an
20 amendment subject to subsection (f) (1) (ii), and (ii) will not
21 effect a substantive business combination.

22 (h) Unless the certificate of incorporation
23 otherwise provides, approval by the corporation's stockholders
24 of a plan of merger is not required if:

25 (1) the corporation will survive the merger;

1 (2) except for amendments permitted by Section
2 10A-2A-10.05, its certificate of incorporation will not be
3 changed; and

4 (3) each stockholder of the corporation whose stock
5 was outstanding immediately before the effective date of the
6 merger or stock exchange will hold the same number of shares
7 of stock, with identical preferences, rights and limitations,
8 immediately after the effective date of the merger.

9 (i) If as a result of a merger or stock exchange one
10 or more stockholders of a corporation will have new personal
11 liability with respect to the surviving organization or the
12 acquiring entity, approval of the plan of merger or stock
13 exchange will be ineffective without the consent to the plan
14 of merger or stock exchange of the stockholder who will have
15 new personal liability. A stockholder does not give consent
16 required in this subsection (i) merely by consenting to a
17 provision in the certification of incorporation, the bylaws,
18 or an agreement of the stockholders, that allows for a plan of
19 merger or stock exchange to impose new personal liability on
20 that stockholder without that stockholder's consent at the
21 time of the plan of merger or stock exchange.

22 (j) Unless the certificate of incorporation
23 otherwise provides, approval by the stockholders of a plan of
24 merger or stock exchange is not required if:

25 (1) the plan of merger or stock exchange expressly
26 (i) permits or requires the merger or stock exchange to be
27 effected under this subsection and (ii) provides that, if the

1 merger or stock exchange is to be effected under this
2 subsection, the merger or stock exchange will be effected as
3 soon as practicable following the satisfaction of the
4 requirement set forth in subsection (j)(6);

5 (2) another party to the merger, the acquiring
6 entity in the stock exchange, or a parent of another party to
7 the merger or the acquiring entity in the stock exchange,
8 makes an offer to purchase, on the terms provided in the plan
9 of merger or stock exchange, any and all of the outstanding
10 stock of the corporation that, absent this subsection, would
11 be entitled to vote on the plan of merger or stock exchange,
12 except that the offer may exclude stock of the corporation
13 that is owned at the commencement of the offer by the
14 corporation, the offeror, or any parent of the offeror, or by
15 any wholly owned subsidiary of any of the foregoing;

16 (3) the offer discloses that the plan of merger or
17 stock exchange provides that the merger or stock exchange will
18 be effected as soon as practicable following the satisfaction
19 of the requirement set forth in subsection (j)(6) and that the
20 stock of the corporation that is not tendered in response to
21 the offer will be treated as set forth in subsection (j)(8);

22 (4) the offer remains open for at least 10 days;

23 (5) the offeror purchases all stock properly
24 tendered in response to the offer and not properly withdrawn;

25 (6) the stock listed below is collectively entitled
26 to cast at least the minimum number of votes on the merger or
27 stock exchange that, absent this subsection, would be required

1 by this Article 11 and by the certificate of incorporation for
2 the approval of the merger or stock exchange by the
3 stockholders, and by any other voting group entitled to vote
4 on the merger or stock exchange at a meeting at which all
5 stock entitled to vote on the approval was present and voted,
6 and with the consent of the stockholders required under
7 Section 10A-2A-11.04(i):

8 (i) stock purchased by the offeror in accordance
9 with the offer;

10 (ii) stock otherwise owned by the offeror or by any
11 parent of the offeror or any wholly owned subsidiary of any of
12 the foregoing; and

13 (iii) stock subject to an agreement that the stock
14 is to be transferred, contributed or delivered to the offeror,
15 any parent of the offeror, or any wholly owned subsidiary of
16 any of the foregoing in exchange for stock or eligible
17 interests in the offeror, parent or subsidiary;

18 (7) the offeror or a wholly owned subsidiary of the
19 offeror merges with or into, or effects a stock exchange in
20 which it acquires stock of, the corporation; and

21 (8) each outstanding share of stock of each class or
22 series of stock of the corporation that the offeror is
23 offering to purchase in accordance with the offer, and that is
24 not purchased in accordance with the offer, is to be converted
25 in the merger into, or into the right to receive, or is to be
26 exchanged in the stock exchange for, or for the right to
27 receive, the same amount and kind of securities, eligible

1 interests, obligations, rights, cash, or other property to be
2 paid or exchanged in accordance with the offer for each share
3 of stock of that class or series of stock that is tendered in
4 response to the offer, except that stock of the corporation
5 that is owned by the corporation or that are described in
6 clause (ii) or (iii) of subsection (j) (6) need not be
7 converted into or exchanged for the consideration described in
8 this subsection (j) (8).

9 (k) As used in subsection (j):

10 (1) "offer" means the offer referred to in
11 subsection (j) (2);

12 (2) "offeror" means the person making the offer;

13 (3) "parent" of an entity means a person that owns,
14 directly or indirectly (through one or more wholly owned
15 subsidiaries), all of the outstanding stock of or eligible
16 interests in that entity;

17 (4) stock tendered in response to the offer shall be
18 deemed to have been "purchased" in accordance with the offer
19 at the earliest time as of which (i) the offeror has
20 irrevocably accepted that stock for payment and (ii) either
21 (A) in the case of stock represented by certificates, the
22 offeror, or the offeror's designated depository or other
23 agent, has physically received the certificates representing
24 that stock or (B) in the case of stock without certificates,
25 that stock has been transferred into the account of the
26 offeror or its designated depository or other agent, or an

1 agent's message relating to that stock has been received by
2 the offeror or its designated depository or other agent; and

3 (5) "wholly owned subsidiary" of a person means an
4 entity of or in which that person owns, directly or indirectly
5 (through one or more wholly owned subsidiaries), all of the
6 outstanding stock or eligible interests.

7 (1) Unless the certificate of incorporation
8 otherwise provides,

9 (1) approval of a plan of stock exchange by the
10 stockholders of a corporation is not required if the
11 corporation is the acquiring entity in the stock exchange; and

12 (2) stock not to be exchanged under the plan of
13 stock exchange is not entitled to vote on the plan.

14 §10A-2A-11.05. Merger between parent and subsidiary
15 or between subsidiaries.

16 (a) A domestic or foreign parent entity that owns
17 stock of a corporation which carries at least 90 percent of
18 the voting power of each class and series of the outstanding
19 stock of that subsidiary corporation that has voting power may
20 (i) merge that subsidiary corporation into itself (if it is a
21 corporation, foreign corporation, or eligible entity), (ii)
22 merge that subsidiary corporation into another corporation,
23 foreign corporation, or eligible entity in which the parent
24 entity owns at least 90 percent of the voting power of each
25 class and series of the outstanding stock or eligible
26 interests which have voting power, or (iii) merge itself (if
27 it is a corporation, foreign corporation, or eligible entity)

1 into that subsidiary corporation, in any case without the
2 approval of the board of directors or stockholders of that
3 subsidiary corporation, unless the certificate of
4 incorporation or organizational documents of the parent entity
5 or the certificate of incorporation of that subsidiary
6 corporation otherwise provide. The certificate of
7 incorporation, organizational documents, and the governing
8 statute of the parent entity and the other corporation,
9 foreign corporation or eligible entity into which the parent
10 entity intends to merge the subsidiary corporation under
11 clause (ii) of this subsection (a) shall determine the
12 necessary consent or approval required for the merger. Section
13 10A-2A-11.04(i) applies to a merger under this section. The
14 statement of merger relating to a merger under this section
15 does not need to be signed by the subsidiary corporation.

16 (b) A parent entity shall, within 10 days after the
17 effective date of a merger approved under subsection (a),
18 notify each of the subsidiary corporation's stockholders that
19 the merger has become effective.

20 (c) Except as provided in subsections (a) and (b), a
21 merger between a parent entity and a subsidiary corporation
22 shall, as to the subsidiary corporation and a parent entity
23 that is a corporation, be governed by the provisions of
24 Article 11 applicable to mergers generally, and as to a parent
25 entity that is not a corporation, be governed by the
26 organizational documents and governing statute of that parent
27 entity.

1 §10A-2A-11.06. Statement of merger or stock
2 exchange.

3 (a) After a plan of merger has been adopted and
4 approved as required by this article, then a statement of
5 merger shall be signed by each party to the merger except as
6 provided in Section 10A-2A-11.05(a). The statement of merger
7 must set forth:

8 (1) the name, type of organization, and mailing
9 address of the principal office of each constituent
10 organization, the jurisdiction of the governing statute of
11 each constituent organization, and the respective unique
12 identifying number or other designation as assigned by the
13 Secretary of State, if any, of each constituent organization;

14 (2) the name, type of organization, and mailing
15 address of the principal office of the surviving organization,
16 the unique identifying number or other designation as assigned
17 by the Secretary of State, if any, of the surviving
18 organization, the jurisdiction of the governing statute of the
19 surviving organization, and, if the surviving organization is
20 created pursuant to the merger, a statement to that effect;

21 (3) the date of the filing of the certificate of
22 formation, if any, and all prior amendments and the filing
23 office or offices, if any, and where the certificate of
24 formation is filed of each constituent organization which was
25 formed under the laws of this state;

26 (4) the date the merger is effective under the
27 governing statute of the surviving organization;

1 (5) if the surviving organization is to be created
2 pursuant to the merger:

3 (A) if it will be a corporation, the corporation's
4 certificate of incorporation; or

5 (B) if it will be an organization other than a
6 corporation, any organizational document that creates the
7 organization that is required to be in a public writing or in
8 the case of a limited liability partnership, its statement of
9 limited liability partnership;

10 (6) if the surviving organization exists before the
11 merger, any amendments provided for in the plan of merger for
12 the organizational document that created the organization that
13 are in a public writing;

14 (7) a statement as to each constituent organization
15 that the merger was approved as required by the organization's
16 governing statute;

17 (8) if the surviving organization is a foreign
18 organization not authorized to conduct activities and affairs
19 in this state, the street and mailing address of an office for
20 the purposes of Section 10A-2A-11.07(c);

21 (9) any additional information required by the
22 governing statute of any constituent organization;

23 (10) if the plan of merger required approval by the
24 stockholders of a corporation that is a constituent
25 organization, a statement that the plan was duly approved by
26 the stockholders and, if voting by any separate voting group

1 was required, by each separate voting group, in the manner
2 required by this chapter and the certificate of incorporation;

3 (11) if the plan of merger did not require approval
4 by the stockholders of a corporation that is a constituent
5 organization, a statement to that effect; and

6 (12) a statement that the plan of merger will be
7 furnished by the surviving organization, on request and
8 without cost, to any owner of any constituent organization
9 which is a party to the merger.

10 (b) After a plan of stock exchange in which the
11 acquired entity is a corporation has been adopted and approved
12 as required by this chapter, a statement of stock exchange
13 shall be signed by the acquired entity and the acquiring
14 entity. The statement of stock exchange shall set forth:

15 (1) the name and mailing address of the principal
16 office of the acquired entity, and the jurisdiction of its
17 governing statute, and its unique identifying number or other
18 designation as assigned by the Secretary of State, if any;

19 (2) the name, jurisdiction of formation, and type of
20 entity of the corporation or foreign corporation that is the
21 acquiring entity;

22 (3) a statement that the plan of stock exchange was
23 duly approved by the acquired entity by:

24 (i) the required vote or consent of each class or
25 series of stock included in the exchange; and

26 (ii) the required vote or consent of each other
27 class or series of stock entitled to vote on approval of the

1 exchange by the certificate of incorporation of the acquired
2 entity; and

3 (4) if the stock exchange did not require the
4 approval by the stockholders of a corporation that is a party
5 to the stock exchange, a statement to that effect.

6 (c) In addition to the requirements of subsection
7 (a) or subsection (b), statement of merger or stock exchange
8 may contain any other provision not prohibited by law.

9 (d) The statement of merger or stock exchange shall
10 be delivered to the Secretary of State for filing and, subject
11 to subsection (e), the merger or stock exchange shall take
12 effect at the effective date determined in accordance with
13 Article 4 of Chapter 1.

14 (e) With respect to a merger in which one or more
15 foreign organizations is a constituent organization or a
16 foreign organization created by the merger is the surviving
17 organization, the merger itself shall become effective at the
18 later of:

19 (1) when all documents required to be filed in
20 foreign jurisdictions to effect the merger have become
21 effective, or

22 (2) when the statement of merger takes effect.

23 (f) A statement of merger filed under this section
24 may be combined with any filing required under the governing
25 statute governing any domestic organization involved in the
26 transaction if the combined filing satisfies the requirements

1 of this section, the other governing statute, and Article 4 of
2 Chapter 1.

3 (g) After a merger becomes effective, if the
4 surviving organization is a corporation, then, except for
5 certified copies of the statement of merger permitted to be
6 delivered to the judge of probate for filing pursuant to
7 subsection (h), all filing instruments required to be filed
8 under this title regarding that surviving organization shall
9 be delivered for filing to the Secretary of State.

10 (h) A certified copy of the statement of merger
11 required to be filed under this section may be filed in the
12 real estate records in the office of the judge of probate in
13 any county in which any constituent organization owned real
14 property, without payment and without collection by the judge
15 of probate of any deed or other transfer tax or fee. The judge
16 of probate, however, shall be entitled to collect the filing
17 fee of five dollars (\$5). Any filing shall evidence chain of
18 title, but lack of filing shall not affect the surviving
19 organization's title to real property.

20 §10A-2A-11.07. Effect of merger or stock exchange.

21 (a) When a merger becomes effective:

22 (1) the surviving organization continues or, in the
23 case of a surviving organization created pursuant to the
24 merger, comes into existence;

25 (2) each constituent organization that merges into
26 the surviving organization ceases to exist as a separate
27 entity;

1 (3) except as provided in the plan of merger, all
2 property owned by, and every contract right possessed by, each
3 constituent organization that ceases to exist vests in the
4 surviving organization without transfer, reversion, or
5 impairment and the title to any property and contract rights
6 vested by deed or otherwise in the surviving organization
7 shall not revert, be in any way impaired, or be deemed to be a
8 transfer by reason of the merger;

9 (4) all debts, obligations and other liabilities of
10 each constituent organization, other than the surviving
11 organization, are debts, obligations and liabilities of the
12 surviving organization, and neither the rights of creditors,
13 nor any liens upon the property of any constituent
14 organization, shall be impaired by the merger;

15 (5) an action or proceeding pending by or against
16 any constituent organization continues as if the merger had
17 not occurred and the name of the surviving organization may,
18 but need not be, substituted in any pending proceeding for the
19 name of any constituent organization whose separate existence
20 ceased in the merger;

21 (6) except as prohibited by law other than this
22 chapter or as provided in the plan of merger, all the rights,
23 privileges, franchises, immunities, powers, and purposes of
24 each constituent organization, other than the surviving
25 organization, vest in the surviving organization;

1 (7) except as otherwise provided in the plan of
2 merger, the terms and conditions of the plan of merger take
3 effect;

4 (8) except as otherwise agreed, if a constituent
5 organization that is a corporation ceases to exist, the merger
6 does not dissolve the corporation;

7 (9) if the surviving organization is created
8 pursuant to the merger:

9 (A) if it is a corporation, the certificate of
10 incorporation and bylaws become effective; or

11 (B) if it is an organization other than a
12 corporation, the organizational documents that create the
13 organization becomes effective;

14 (10) if the surviving organization existed before
15 the merger, any amendments provided for in the statement of
16 merger for the organizational documents of that organization
17 become effective;

18 (11) the stock of each corporation or foreign
19 corporation that is a constituent organization to the merger,
20 and the eligible interests in an eligible entity that is a
21 constituent organization, that are to be converted in
22 accordance with the terms of the merger into stock or other
23 securities, eligible interests, obligations, rights to acquire
24 stock, other securities, or eligible interests, cash, other
25 property, or any combination of the foregoing, are converted,
26 and the former holders of stock or eligible interests are
27 entitled only to the rights provided to them by those terms or

1 to any rights they may have under Article 13 or the governing
2 statute governing the eligible entity or foreign corporation;

3 (12) if the surviving organization exists before the
4 merger:

5 (i) except as provided in the plan of merger, all
6 property and contract rights of the surviving organization
7 remain its property and contract rights without transfer,
8 reversion, or impairment;

9 (ii) the surviving organization remains subject to
10 all its debts, obligations, and other liabilities; and

11 (iii) except as provided by law other than this
12 chapter or the plan of merger, the surviving organization
13 continues to hold all of its rights, privileges, franchises,
14 immunities, powers and purposes.

15 (b) When a stock exchange becomes effective, the
16 stock in the acquired entity that is to be exchanged for stock
17 or other securities, obligations, rights to acquire stock,
18 other securities, cash, other property, or any combination of
19 the foregoing, are entitled only to the rights provided to
20 them in the plan of stock exchange or to any rights they may
21 have under Article 13 or under the governing statute governing
22 the acquired entity.

23 (c) A surviving organization that is a foreign
24 organization:

25 (1) consents to the jurisdiction of this state to
26 enforce any debt, obligation, or other liability owed by a
27 constituent organization, if before the merger the constituent

1 organization was subject to suit in this state on the debt,
2 obligation, or other liability;

3 (2) consents that if it fails to designate or
4 maintain a registered agent, or the designated registered
5 agent cannot with reasonable diligence be served, then the
6 service of process on that surviving organization for the
7 purposes of enforcing a debt, obligation, or other liability
8 under this subsection and for enforcing the rights of
9 stockholders of each corporation that is a constituent
10 organization who exercise appraisal rights may be made in the
11 same manner and has the same consequences as provided in
12 Section 10A-1-5.35; and

13 (3) agrees that it will promptly pay the amount, if
14 any, to which stockholders referred to in clause (2) of this
15 subsection (c) are entitled under Article 13.

16 §10A-2A-11.08. Abandonment of a merger or stock
17 exchange.

18 (a) After a plan of merger or stock exchange has
19 been adopted and approved as required by this Article 11, and
20 before the statement of merger or stock exchange has become
21 effective, the plan may be abandoned by a corporation that is
22 a party to the plan without action by its stockholders in
23 accordance with any procedures set forth in the plan of merger
24 or stock exchange or, if no procedures are set forth in the
25 plan, in the manner determined by the board of directors.

26 (b) If a merger or stock exchange is abandoned under
27 subsection (a) after the statement of merger or stock exchange

1 has been delivered to the Secretary of State for filing but
2 before the merger or stock exchange has become effective, a
3 statement of abandonment signed by all the parties that signed
4 the statement of merger or stock exchange shall be delivered
5 to the Secretary of State for filing before the statement of
6 merger or stock exchange becomes effective. The statement
7 shall take effect on filing and the merger or stock exchange
8 shall be deemed abandoned and shall not become effective. The
9 statement of abandonment must contain:

10 (1) the name of each party to the merger or the
11 names of the acquiring and acquired entities in a stock
12 exchange;

13 (2) the date on which the statement of merger or
14 stock exchange was filed by the Secretary of State; and

15 (3) a statement that the merger or stock exchange
16 has been abandoned in accordance with this section.

17 §10A-2A-11.09. Nonexclusive.

18 This article is not exclusive. This article does not
19 preclude a corporation from merging or exchanging its stock
20 under law other than this chapter.

21 Article 12. DISPOSITION OF ASSETS.

22 §10A-2A-12.01. Disposition of assets not requiring
23 stockholder approval.

24 No approval of the stockholders is required, unless
25 the certificate of incorporation otherwise provides:

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

4 (b) to mortgage, pledge, dedicate to the repayment
5 of indebtedness (whether with or without recourse), or
6 otherwise encumber any or all of the corporation's assets,
7 regardless of whether in the usual and regular course of
8 business;

9 (c) to transfer any or all of the corporation's
10 assets to one or more corporations, foreign corporations, or
11 other entities all of the stock or interests of which are
12 owned by the corporation; or

13 (d) to distribute assets pro rata to the holders of
14 one or more classes or series of the corporation's stock.

15 §10A-2A-12.02. Stockholder approval of certain
16 dispositions.

17 (a) A sale, lease, exchange, or other disposition of
18 assets, other than a disposition described in Section
19 10A-2A-12.01, requires approval of the corporation's
20 stockholders if the disposition would leave the corporation
21 without a significant continuing business activity. A
22 corporation will conclusively be deemed to have retained a
23 significant continuing business activity if it retains a
24 business activity that represented, for the corporation and
25 its subsidiaries on a consolidated basis, at least (i) 25
26 percent of total assets at the end of the most recently
27 completed fiscal year, and (ii) either 25 percent of either

1 income from continuing operations before taxes or 25 percent
2 of revenues from continuing operations, in each case for the
3 most recently completed fiscal year.

4 (b) To obtain the approval of the stockholders under
5 subsection (a) the board of directors shall first adopt a
6 resolution authorizing the disposition. The disposition shall
7 then be approved by the stockholders. In submitting the
8 disposition to the stockholders for approval, the board of
9 directors shall recommend that the stockholders approve the
10 disposition, unless (i) the board of directors makes a
11 determination that because of conflicts of interest or other
12 special circumstances it should not make a recommendation, or
13 (ii) Section 10A-2A-8.26 applies. If either (i) or (ii)
14 applies, the board of directors shall inform the stockholders
15 of the basis for its so proceeding.

16 (c) The board of directors may set conditions for
17 the approval by the stockholders of a disposition or the
18 effectiveness of the disposition.

19 (d) If a disposition is required to be approved by
20 the stockholders under subsection (a), and if the approval is
21 to be given at a meeting, the corporation shall notify each
22 stockholder, regardless of whether entitled to vote, of the
23 meeting of stockholders at which the disposition is to be
24 submitted for approval. The notice must state that the
25 purpose, or one of the purposes, of the meeting is to consider
26 the disposition and must contain a description of the
27 disposition, including the terms and conditions of the

1 disposition and the consideration to be received by the
2 corporation.

3 (e) Unless the certificate of incorporation or the
4 board of directors acting pursuant to subsection (c) requires
5 a greater vote or a greater quorum, the approval of a
6 disposition by the stockholders shall require the approval of
7 the stockholders at a meeting at which a quorum exists
8 consisting of a majority of the votes entitled to be cast on
9 the disposition.

10 (f) After a disposition has been approved by the
11 stockholders under this Article 12, and at any time before the
12 disposition has been consummated, it may be abandoned by the
13 corporation without action by the stockholders, subject to any
14 contractual rights of other parties to the disposition.

15 (g) A disposition of assets in the course of
16 dissolution under Article 14 is not governed by this section.

17 (h) For purposes of this section only, the property
18 and assets of the corporation include the property and assets
19 of any subsidiary of the corporation. As used in this
20 subsection, "subsidiary" means any entity wholly owned and
21 controlled, directly or indirectly, by the corporation and
22 includes, without limitation, corporations, partnerships,
23 limited partnerships, limited liability partnerships, limited
24 liability companies, and/or statutory trusts. Notwithstanding
25 subsection (a) of this section, except to the extent the
26 certificate of incorporation otherwise provides, no vote by

1 stockholders shall be required for a sale, lease or exchange
2 of property and assets of the corporation to a subsidiary.

3 ARTICLE 13. APPRAISAL RIGHTS.

4 Division A. RIGHT TO APPRAISAL AND PAYMENT
5 FOR STOCK.

6 §10A-2A-13.01. Definitions.

7 Notwithstanding Chapter 1, in this Article 13:

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

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

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

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

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

26 (iii) without discounting for lack of marketability
27 or minority status.

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

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

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

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

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

25 (C) was a senior executive or director of the
26 corporation or a senior executive of any affiliate of the
27 corporation, and that senior executive or director will

1 receive, as a result of the corporate action, a financial
2 benefit not generally available to other stockholders as such,
3 other than:

4 (I) employment, consulting, retirement, or similar
5 benefits established separately and not as part of or in
6 contemplation of the corporate action;

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

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

20 (ii) "Beneficial owner" means any person who,
21 directly or indirectly, through any contract, arrangement, or
22 understanding, other than a revocable proxy, has or shares the
23 power to vote, or to direct the voting of, stock; except that
24 a member of a national securities exchange is not deemed to be
25 a beneficial owner of securities held directly or indirectly
26 by it on behalf of another person if the member is precluded
27 by the rules of the exchange from voting without instruction

1 on contested matters or matters that may affect substantially
2 the rights or privileges of the holders of the securities to
3 be voted. When two or more persons agree to act together for
4 the purpose of voting their stock of the corporation, each
5 member of the group formed thereby is deemed to have acquired
6 beneficial ownership, as of the date of the agreement, of all
7 stock having voting power of the corporation beneficially
8 owned by any member of the group.

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

14 (6) "Preferred stock" means a class or series of
15 stock whose holders have preference over any other class or
16 series of stock with respect to distributions.

17 (7) "Senior executive" means the chief executive
18 officer, chief operating officer, chief financial officer, and
19 any individual in charge of a principal business unit or
20 function.

21 (8) "Stockholder" means a record stockholder, a
22 beneficial stockholder, and a voting trust beneficial owner.

23 §10A-2A-13.02. Right to appraisal.

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

1 (1) consummation of a merger to which the
2 corporation is a party (i) if the corporation is a subsidiary
3 and the merger is governed by Section 10A-2A-11.05 or (ii) if
4 stockholder approval is required for the merger by Section
5 10A-2A-11.04, or would be required but for the provisions of
6 Section 10A-2A-11.04(j), except that appraisal rights shall
7 not be available to any stockholder of the corporation with
8 respect to stock of any class or series that remain
9 outstanding after consummation of the merger;

10 (2) consummation of a stock exchange to which the
11 corporation is a party the stock of which will be acquired,
12 except that appraisal rights shall not be available to any
13 stockholder of the corporation with respect to any class or
14 series of stock of the corporation that is not acquired in the
15 stock exchange;

16 (3) consummation of a disposition of assets pursuant
17 to Section 10A-2A-12.02 if the stockholder is entitled to vote
18 on the disposition, except that appraisal rights shall not be
19 available to any stockholder of the corporation with respect
20 to stock of any class or series if (i) under the terms of the
21 corporate action approved by the stockholders there is to be
22 distributed to stockholders in cash the corporation's net
23 assets, in excess of a reasonable amount reserved to meet
24 claims of the type described in Section 10A-2A-14.06 and
25 Section 10A-2A-14.07, (A) within one year after the
26 stockholders' approval of the action and (B) in accordance
27 with their respective interests determined at the time of

1 distribution, and (ii) the disposition of assets is not an
2 interested transaction;

3 (4) an amendment of the certificate of incorporation
4 with respect to a class or series of stock that reduces the
5 number of stock of a class or series owned by the stockholder
6 to a fraction of a stock if the corporation has the obligation
7 or right to repurchase the fractional stock so created;

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

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

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

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

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

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

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

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

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

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

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

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

26 (3) Subsection (b)(1) shall not be applicable and
27 appraisal rights shall be available pursuant to subsection (a)

1 for the holders of any class or series of stock (i) who are
2 required by the terms of the corporate action requiring
3 appraisal rights to accept for their stock anything other than
4 cash or stock of any class or any series of stock of any
5 corporation, or any other proprietary interest of any other
6 entity, that satisfies the standards set forth in subsection
7 (b) (1) at the time the corporate action becomes effective, or
8 (ii) in the case of the consummation of a disposition of
9 assets pursuant to Section 10A-2A-12.02, unless the cash,
10 stock, or proprietary interests received in the disposition
11 are, under the terms of the corporate action approved by the
12 stockholders, to be distributed to the stockholders, as part
13 of a distribution to stockholders of the net assets of the
14 corporation in excess of a reasonable amount to meet claims of
15 the type described in Sections 10A-2A-14.06 and 10A-2A-14.07,
16 (A) within one year after the stockholders' approval of the
17 action, and (B) in accordance with their respective interests
18 determined at the time of the distribution.

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

23 (c) Notwithstanding any other provision of Section
24 10A-2A-13.02, the certificate of incorporation as originally
25 filed or any amendment to the certificate of incorporation may
26 limit or eliminate appraisal rights for any class or series of
27 preferred stock, except that (i) no limitation or elimination

1 shall be effective if the class or series does not have the
2 right to vote separately as a voting group (alone or as part
3 of a group) on the action or if the action is a conversion or
4 merger in which the converted organization or the surviving
5 organization is not a corporation or foreign corporation and
6 (ii) any limitation or elimination contained in an amendment
7 to the certificate of incorporation that limits or eliminates
8 appraisal rights for any stock that is outstanding immediately
9 before the effective date of the amendment or that the
10 corporation is or may be required to issue or sell thereafter
11 pursuant to any conversion, exchange or other right existing
12 immediately before the effective date of the amendment shall
13 not apply to any corporate action that becomes effective
14 within one year after the effective date of the amendment if
15 that action would otherwise afford appraisal rights.

16 §10A-2A-13.03. Assertion of rights by nominees and
17 beneficial stockholders.

18 (a) A record stockholder may assert appraisal rights
19 as to fewer than all the shares of stock registered in the
20 record stockholder's name but owned by a beneficial
21 stockholder or a voting trust beneficial owner only if the
22 record stockholder objects with respect to all shares of stock
23 of a class or series owned by the beneficial stockholder or
24 the voting trust beneficial owner and notifies the corporation
25 in writing of the name and address of each beneficial
26 stockholder or voting trust beneficial owner on whose behalf
27 appraisal rights are being asserted. The rights of a record

1 stockholder who asserts appraisal rights for only part of the
2 stock held of record in the record stockholder's name under
3 this subsection shall be determined as if the stock as to
4 which the record stockholder objects and the record
5 stockholder's other shares of stock were registered in the
6 names of different record stockholders.

7 (b) A beneficial stockholder and a voting trust
8 beneficial owner may assert appraisal rights as to stock of
9 any class or series held on behalf of the stockholder only if
10 the stockholder:

11 (1) submits to the corporation the record
12 stockholder's written consent to the assertion of appraisal
13 rights no later than the date referred to in Section
14 10A-2A-13.22(b) (2) (ii); and

15 (2) does so with respect to all stock of the class
16 or series that is beneficially owned by the beneficial
17 stockholder or the voting trust beneficial owner.

18 Division B. PROCEDURE FOR EXERCISE
19 OF APPRAISAL RIGHTS.

20 §10A-2A-13.20. Notice of appraisal rights.

21 (a) Where any corporate action specified in Section
22 10A-2A-13.02(a) is to be submitted to a vote at a
23 stockholders' meeting, the meeting notice (or where no
24 approval of the corporate action is required pursuant to
25 Section 10A-2A-11.04(j), the offer made pursuant to Section
26 10A-2A-11.04(j)), must state that the corporation has
27 concluded that appraisal rights are, are not or may be

1 available under this Article 13. If the corporation concludes
2 that appraisal rights are or may be available, a copy of this
3 Article 13 must accompany the meeting notice or offer sent to
4 those record stockholders entitled to exercise appraisal
5 rights.

6 (b) In a merger pursuant to Section 10A-2A-11.05,
7 the parent entity shall notify in writing all record
8 stockholders of the subsidiary who are entitled to assert
9 appraisal rights that the corporate action became effective.
10 The notice shall be sent within 10 days after the corporate
11 action became effective and include the materials described in
12 Section 10A-2A-13.22.

13 (c) Where any corporate action specified in Section
14 10A-2A-13.02(a) is to be approved by written consent of the
15 stockholders pursuant to Section 10A-2A-7.04:

16 (1) written notice that appraisal rights are, are
17 not or may be available shall be sent to each record
18 stockholder from whom a consent is solicited at the time
19 consent of each stockholder is first solicited and, if the
20 corporation has concluded that appraisal rights are or may be
21 available, the notice must be accompanied by a copy of this
22 Article 13; and

23 (2) written notice that appraisal rights are, are
24 not or may be available must be delivered together with the
25 notice to nonconsenting and nonvoting stockholders required by
26 Section 10A-2A-7.04(e) and (f), may include the materials
27 described in Section 10A-2A-13.22 and, if the corporation has

1 concluded that appraisal rights are or may be available, must
2 be accompanied by a copy of this Article 13.

3 (d) Where corporate action described in Section
4 10A-2A-13.02(a) is proposed, or a merger pursuant to Section
5 10A-2A-11.05 is effected, the notice referred to in subsection
6 (a) or (c), if the corporation concludes that appraisal rights
7 are or may be available, and in subsection (b) must be
8 accompanied by:

9 (1) financial statements of the corporation that
10 issued the stock that may be subject to appraisal, consisting
11 of a balance sheet as of the end of a fiscal year ending not
12 more than 16 months before the date of the notice, an income
13 statement for that year, and a cash flow statement for that
14 year; provided that, if the financial statements are not
15 reasonably available, the corporation shall provide reasonably
16 equivalent financial information; and

17 (2) the latest interim financial statements of the
18 corporation, if any.

19 (e) The right to receive the information described
20 in subsection (d) may be waived in writing by a stockholder
21 before or after the corporate action.

22 §10A-2A-13.21. Notice of intent to demand payment
23 and consequences of voting or consenting.

24 (a) If a corporate action specified in Section
25 10A-2A-13.02(a) is submitted to a vote at a stockholders'
26 meeting, a stockholder who wishes to assert appraisal rights
27 with respect to any class or series of stock:

1 (1) shall deliver to the corporation, before the
2 vote is taken, written notice of the stockholder's intent to
3 demand payment if the proposed action is effectuated; and

4 (2) shall not vote, or cause or permit to be voted,
5 any stock of the class or series in favor of the proposed
6 action.

7 (b) If a corporate action specified in Section
8 10A-2A-13.02(a) is to be approved by written consent, a
9 stockholder who wishes to assert appraisal rights with respect
10 to any class or series of stock shall not sign a consent in
11 favor of the proposed action with respect to that class or
12 series of stock.

13 (c) If a corporate action specified in Section
14 10A-2A-13.02(a) does not require stockholder approval pursuant
15 to Section 10A-2A-11.04(j), a stockholder who wishes to assert
16 appraisal rights with respect to any class or series of stock
17 (i) shall deliver to the corporation before the stock is
18 purchased pursuant to the offer written notice of the
19 stockholder's intent to demand payment if the proposed action
20 is effected; and (ii) shall not tender, or cause or permit to
21 be tendered, any stock of the class or series in response to
22 the offer.

23 (d) A stockholder who fails to satisfy the
24 requirements of subsection (a), (b), or (c) is not entitled to
25 payment under this Article 13.

26 §10A-2A-13.22. Appraisal notice and form.

1 (a) If a corporate action requiring appraisal rights
2 under Section 10A-2A-13.02(a) becomes effective, the
3 corporation shall deliver a written appraisal notice and form
4 required by subsection (b) to all stockholders who satisfy the
5 requirements of Section 10A-2A-13.21(a), (b), or (c). In the
6 case of a merger under Section 10A-2A-11.05, the parent shall
7 deliver an appraisal notice and form to all record
8 stockholders who may be entitled to assert appraisal rights.

9 (b) The appraisal notice shall be delivered no
10 earlier than the date the corporate action specified in
11 Section 10A-2A-13.02(a) became effective, and no later than 10
12 days after that date, and must:

13 (1) supply a form that (i) specifies the first date
14 of any announcement to stockholders made before the date the
15 corporate action became effective of the principal terms of
16 the proposed corporate action, (ii) if the announcement was
17 made, requires the stockholder asserting appraisal rights to
18 certify whether beneficial ownership of those shares of stock
19 for which appraisal rights are asserted was acquired before
20 that date, and (iii) requires the stockholder asserting
21 appraisal rights to certify that the stockholder did not vote
22 for or consent to the transaction as to the class or series of
23 stock for which appraisal is sought;

24 (2) state:

25 (i) where the form shall be sent and where
26 certificates for certificated stock shall be deposited and the
27 date by which those certificates must be deposited, which date

1 may not be earlier than the date by which the corporation must
2 receive the required form under subsection (b) (2) (ii);

3 (ii) a date by which the corporation shall receive
4 the form, which date may not be fewer than 40 nor more than 60
5 days after the date the subsection (a) appraisal notice is
6 sent, and state that the stockholder shall have waived the
7 right to demand appraisal with respect to the stock unless the
8 form is received by the corporation by the specified date;

9 (iii) the corporation's estimate of the fair value
10 of the stock;

11 (iv) that, if requested in writing, the corporation
12 will provide, to the stockholder so requesting, within 10 days
13 after the date specified in subsection (b) (2) (ii) the number
14 of stockholders who return the forms by the specified date and
15 the total number of shares of stock owned by them; and

16 (v) the date by which the notice to withdraw under
17 Section 10A-2A-13.23 shall be received, which date shall be
18 within 20 days after the date specified in subsection
19 (b) (2) (ii); and

20 (3) be accompanied by a copy of this Article 13.

21 §10A-2A-13.23. Perfection of rights;
22 right to withdraw.

23 (a) A stockholder who receives notice pursuant to
24 Section 10A-2A-13.22 and who wishes to exercise appraisal
25 rights shall sign and return the form sent by the corporation
26 and, in the case of certificated stock, deposit the
27 stockholder's certificates in accordance with the terms of the

1 notice by the date referred to in the notice pursuant to
2 Section 10A-2A-13.22(b)(2)(ii). In addition, if applicable,
3 the stockholder shall certify on the form whether the
4 beneficial owner of the stock acquired beneficial ownership of
5 the stock before the date required to be set forth in the
6 notice pursuant to Section 10A-2A-13.22(b)(1)(i). If a
7 stockholder fails to make this certification, the corporation
8 may elect to treat the stockholder's stock as after-acquired
9 stock under Section 10A-2A-13.25. Once a stockholder deposits
10 the certificates or, in the case of uncertificated stock,
11 returns the signed forms, that stockholder loses all rights as
12 a stockholder, unless the stockholder withdraws pursuant to
13 subsection (b).

14 (b) A stockholder who has complied with subsection
15 (a) may nevertheless decline to exercise appraisal rights and
16 withdraw from the appraisal process by so notifying the
17 corporation in writing by the date set forth in the appraisal
18 notice pursuant to Section 10A-2A-13.22(b)(2)(v). A
19 stockholder who fails to so withdraw from the appraisal
20 process may not thereafter withdraw without the corporation's
21 written consent.

22 (c) A stockholder who does not sign and return the
23 form and, in the case of certificated stock, deposit that
24 stockholder's stock certificates where required, each by the
25 date set forth in the notice described in Section
26 10A-2A-13.22(b), shall not be entitled to payment under this
27 Article 13.

1 §10A-2A-13.24. Payment.

2 (a) Except as provided in Section 10A-2A-13.25,
3 within 30 days after the form required by Section
4 10A-2A-13.22(b) (2) (ii) is due, the corporation shall pay in
5 cash to those stockholders who complied with Section
6 10A-2A-13.23(a) the amount the corporation estimates to be the
7 fair value of their stock, plus interest.

8 (b) The payment to each stockholder pursuant to
9 subsection (a) must be accompanied by:

10 (1) (i) financial statements of the corporation that
11 issued the stock to be appraised, consisting of a balance
12 sheet as of the end of a fiscal year ending not more than 16
13 months before the date of payment, an income statement for
14 that year, and a cash flow statement for that year; provided
15 that, if the annual financial statements are not reasonably
16 available, the corporation shall provide reasonably equivalent
17 financial information, and (ii) the latest interim financial
18 statements of the corporation, if any;

19 (2) a statement of the corporation's estimate of the
20 fair value of the stock, which estimate shall equal or exceed
21 the corporation's estimate given pursuant to Section
22 10A-2A-13.22(b) (2) (iii); and

23 (3) a statement that stockholders described in
24 subsection (a) have the right to demand further payment under
25 Section 10A-2A-13.26 and that if any stockholder does not do
26 so within the time period specified in Section
27 10A-2A-13.26(b), the stockholder shall be deemed to have

1 accepted the payment under subsection (a) in full satisfaction
2 of the corporation's obligations under this Article 13.

3 §10A-2A-13.25. After-acquired stock.

4 (a) A corporation may elect to withhold payment
5 required by Section 10A-2A-13.24 from any stockholder who was
6 required to, but did not certify that beneficial ownership of
7 all of the stockholder's stock for which appraisal rights are
8 asserted was acquired before the date set forth in the
9 appraisal notice sent pursuant to Section 10A-2A-13.22(b)(1).

10 (b) If the corporation elects to withhold payment
11 under subsection (a), it shall, within 30 days after the form
12 required by Section 10A-2A-13.22(b)(2)(ii) is due, notify all
13 stockholders who are described in subsection (a):

14 (1) of the information required by Section
15 10A-2A-13.24(b)(1);

16 (2) of the corporation's estimate of fair value
17 pursuant to Section 10A-2A-13.24(b)(2);

18 (3) that they may accept the corporation's estimate
19 of fair value, plus interest, in full satisfaction of their
20 demands or demand appraisal under Section 10A-2A-13.26;

21 (4) that those stockholders who wish to accept the
22 offer shall so notify the corporation of their acceptance of
23 the corporation's offer within 30 days after receiving the
24 offer; and

25 (5) that those stockholders who do not satisfy the
26 requirements for demanding appraisal under Section

1 10A-2A-13.26 shall be deemed to have accepted the
2 corporation's offer.

3 (c) Within 10 days after receiving the stockholder's
4 acceptance pursuant to subsection (b) (4), the corporation
5 shall pay in cash the amount it offered under subsection
6 (b) (2) plus interest to each stockholder who agreed to accept
7 the corporation's offer in full satisfaction of the
8 stockholder's demand.

9 (d) Within 40 days after delivering the notice
10 described in subsection (b), the corporation shall pay in cash
11 the amount it offered to pay under subsection (b) (2) plus
12 interest to each stockholder described in subsection (b) (5).

13 §10A-2A-13.26. Procedure if stockholder dissatisfied
14 with payment or offer.

15 (a) A stockholder paid pursuant to Section
16 10A-2A-13.24 who is dissatisfied with the amount of the
17 payment shall notify the corporation in writing of that
18 stockholder's estimate of the fair value of the stock and
19 demand payment of that estimate (less any payment under
20 Section 10A-2A-13.24) plus interest. A stockholder offered
21 payment under Section 10A-2A-13.25 who is dissatisfied with
22 that offer shall reject the offer and demand payment of the
23 stockholder's stated estimate of the fair value of the stock
24 plus interest.

25 (b) A stockholder who fails to notify the
26 corporation in writing of that stockholder's demand to be paid
27 the stockholder's stated estimate of the fair value plus

1 interest under subsection (a) within 30 days after receiving
2 the corporation's payment or offer of payment under Section
3 10A-2A-13.24 or Section 10A-2A-13.25, respectively, waives the
4 right to demand payment under this section and shall be
5 entitled only to the payment made or offered pursuant to those
6 respective sections.

7 Division C. JUDICIAL APPRAISAL OF STOCK.

8 §10A-2A-13.30. Court action.

9 (a) If a stockholder makes demand for payment under
10 Section 10A-2A-13.26 which remains unsettled, the corporation
11 shall commence a proceeding within 60 days after receiving the
12 payment demand and petition the court to determine the fair
13 value of the stock and accrued interest. If the corporation
14 does not commence the proceeding within the 60-day period, it
15 shall pay in cash to each stockholder the amount the
16 stockholder demanded pursuant to Section 10A-2A-13.26 plus
17 interest.

18 (b) The corporation shall commence the proceeding in
19 the circuit court of the county where the corporation's
20 principal office, or, if none in this state, its registered
21 office, is located.

22 (c) The corporation shall make all stockholders
23 (regardless of whether they are residents of this state) whose
24 demands remain unsettled parties to the proceeding as in an
25 action against their stock, and all parties shall be served
26 with a copy of the petition. Nonresidents may be served by

1 registered or certified mail or by publication as provided by
2 law.

3 (d) The jurisdiction of the court in which the
4 proceeding is commenced under subsection (b) is plenary and
5 exclusive. The court may appoint one or more persons as
6 appraisers to receive evidence and recommend a decision on the
7 question of fair value. The appraisers shall have the powers
8 described in the order appointing them, or in any amendment to
9 it. The stockholders demanding appraisal rights are entitled
10 to the same discovery rights as parties in other civil
11 proceedings. There shall be no right to a jury trial.

12 (e) Each stockholder made a party to the proceeding
13 is entitled to judgment (i) for the amount, if any, by which
14 the court finds the fair value of the stockholder's stock
15 exceeds the amount paid by the corporation to the stockholder
16 for the stock, plus interest, or (ii) for the fair value, plus
17 interest, of the stockholder's stock for which the corporation
18 elected to withhold payment under Section 10A-2A-13.25.

19 §10A-2A-13.31. Court costs and expenses.

20 (a) The court in an appraisal proceeding commenced
21 under Section 10A-2A-13.30 shall determine all court costs of
22 the proceeding, including the reasonable compensation and
23 expenses of appraisers appointed by the court. The court shall
24 assess the court costs against the corporation, except that
25 the court may assess court costs against all or some of the
26 stockholders demanding appraisal, in amounts which the court
27 finds equitable, to the extent the court finds the

1 stockholders acted arbitrarily, vexatiously, or not in good
2 faith with respect to the rights provided by this Article 13.

3 (b) The court in an appraisal proceeding may also
4 assess the expenses of the respective parties in amounts the
5 court finds equitable:

6 (1) against the corporation and in favor of any or
7 all stockholders demanding appraisal if the court finds the
8 corporation did not substantially comply with the requirements
9 of Section 10A-2A-13.20, Section 10A-2A-13.22, Section
10 10A-2A-13.24, or Section 10A-2A-13.25; or

11 (2) against either the corporation or a stockholder
12 demanding appraisal, in favor of any other party, if the court
13 finds the party against whom expenses are assessed acted
14 arbitrarily, vexatiously, or not in good faith with respect to
15 the rights provided by this Article 13.

16 (c) If the court in an appraisal proceeding finds
17 that the expenses incurred by any stockholder were of
18 substantial benefit to other stockholders similarly situated
19 and that the expenses should not be assessed against the
20 corporation, the court may direct that the expenses be paid
21 out of the amounts awarded the stockholders who were
22 benefited.

23 (d) To the extent the corporation fails to make a
24 required payment pursuant to Section 10A-2A-13.24, Section
25 10A-2A-13.25, or Section 10A-2A-13.26, the stockholder may sue
26 directly for the amount owed, and to the extent successful,

1 shall be entitled to recover from the corporation all expenses
2 of the suit.

3 Division D. OTHER REMEDIES.

4 §10A-2A-13.40. Other remedies limited.

5 (a) The legality of a proposed or completed
6 corporate action described in Section 10A-2A-13.02(a) may not
7 be contested, nor may the corporate action be enjoined, set
8 aside or rescinded, in a legal or equitable proceeding by a
9 stockholder after the stockholders have approved the corporate
10 action.

11 (b) Subsection (a) does not apply to a corporate
12 action that:

13 (1) was not authorized and approved in accordance
14 with the applicable provisions of:

15 (i) Article 9, 10, 11, or 12 of this chapter or
16 Article 8 of Chapter 1;

17 (ii) the certificate of incorporation or bylaws; or

18 (iii) the resolution of the board of directors
19 authorizing the corporate action;

20 (2) was procured as a result of fraud, a material
21 misrepresentation, or an omission of a material fact necessary
22 to make statements made, in light of the circumstances in
23 which they were made, not misleading;

24 (3) is an interested transaction, unless it has been
25 recommended by the board of directors in the same manner as is
26 provided in Section 10A-2A-8.60 and has been approved by the
27 stockholders in the same manner as is provided in Section

1 10A-2A-8.60 as if the interested transaction were a director's
2 conflicting interest transaction; or

3 (4) is approved by less than unanimous consent of
4 the voting stockholders pursuant to Section 10A-2A-7.04 if:

5 (i) the challenge to the corporate action is brought
6 by a stockholder who did not consent and as to whom notice of
7 the approval of the corporate action was not effective at
8 least 10 days before the corporate action was effected; and

9 (ii) the proceeding challenging the corporate action
10 is commenced within 10 days after notice of the approval of
11 the corporate action is effective as to the stockholder
12 bringing the proceeding.

13 ARTICLE 14. DISSOLUTION.

14 Division A. VOLUNTARY DISSOLUTION.

15 §10A-2A-14.01. Dissolution by incorporators or
16 initial directors.

17 A majority of the incorporators or initial directors
18 of a corporation that has not issued stock or has not
19 commenced business may dissolve the corporation by delivering
20 to the Secretary of State for filing a certificate of
21 dissolution that sets forth:

22 (a) the name of the corporation;

23 (b) the date of its incorporation;

24 (c) either (i) that none of the corporation's stock
25 has been issued or (ii) that the corporation has not commenced
26 business;

27 (d) that no debt of the corporation remains unpaid;

1 (e) that the net assets of the corporation remaining
2 after winding up have been distributed to the stockholders, if
3 stock was issued; and

4 (f) that a majority of the incorporators or initial
5 directors authorized the dissolution.

6 §10A-2A-14.02. Dissolution by board of directors and
7 stockholders.

8 (a) The board of directors may propose dissolution
9 for submission to the stockholders by first adopting a
10 resolution authorizing the dissolution.

11 (b) For a proposal to dissolve to be adopted, it
12 shall then be approved by the stockholders. In submitting the
13 proposal to dissolve to the stockholders for approval, the
14 board of directors shall recommend that the stockholders
15 approve the dissolution, unless (i) the board of directors
16 determines that because of conflict of interest or other
17 special circumstances it should make no recommendation or (ii)
18 Section 10A-2A-8.26 applies. If either (i) or (ii) applies,
19 the board of directors shall inform the stockholders of the
20 basis for its so proceeding.

21 (c) The board of directors may set conditions for
22 the approval of the proposal for dissolution by stockholders
23 or the effectiveness of the dissolution.

24 (d) If the approval of the stockholders is to be
25 given at a meeting, the corporation shall notify each
26 stockholder, regardless of whether entitled to vote, of the
27 meeting of stockholders at which the dissolution is to be

1 submitted for approval. The notice must state that the
2 purpose, or one of the purposes, of the meeting is to consider
3 dissolving the corporation.

4 (e) Unless the certificate of incorporation or the
5 board of directors acting pursuant to subsection (c) requires
6 a greater vote, a greater quorum, or a vote by voting groups,
7 adoption of the proposal to dissolve shall require the
8 approval of the stockholders at a meeting at which a quorum
9 exists consisting of a majority of the votes entitled to be
10 cast on the proposal to dissolve.

11 (f) Dissolution of a corporation may also be
12 authorized without action of the directors if all the
13 stockholders entitled to vote thereon shall consent in writing
14 and a certificate of dissolution shall be delivered to the
15 Secretary of State for filing pursuant to Section
16 10A-2A-14.03.

17 §10A-2A-14.03. Certificate of dissolution.

18 (a) At any time after dissolution is authorized, the
19 corporation may dissolve by delivering to the Secretary of
20 State for filing a certificate of dissolution setting forth:

21 (1) the name of the corporation;

22 (2) the date that dissolution was authorized; and

23 (3) if dissolution was approved by the stockholders,
24 a statement that the proposal to dissolve was duly approved by
25 the stockholders in the manner required by this chapter and by
26 the certificate of incorporation.

1 (b) The certificate of dissolution shall take effect
2 at the effective date determined in accordance with Article 4
3 of Chapter 1. A corporation is dissolved upon the effective
4 date of its certificate of dissolution.

5 (c) For purposes of this Division A of this Article
6 14, "dissolved corporation" means a corporation whose
7 certificate of dissolution has become effective and includes a
8 successor entity to which the remaining assets of the
9 corporation are transferred subject to its liabilities for
10 purposes of liquidation.

11 §10A-2A-14.04. Revocation of dissolution;
12 reinstatement.

13 (a) A corporation may revoke its dissolution within
14 120 days after its effective date and be reinstated.

15 (b) Revocation of dissolution and reinstatement
16 shall be authorized in the same manner as the dissolution was
17 authorized unless that authorization permitted revocation and
18 reinstatement by action of the board of directors alone, in
19 which event the board of directors may revoke the dissolution
20 and effect the reinstatement without stockholder action.

21 (c) After the revocation of dissolution and
22 reinstatement is authorized, the corporation may revoke the
23 dissolution and effect the reinstatement by delivering to the
24 Secretary of State for filing a certificate of revocation of
25 dissolution and reinstatement, together with a copy of its
26 certificate of dissolution, that sets forth:

27 (1) the name of the corporation;

1 (2) the effective date of the dissolution that was
2 revoked;

3 (3) the date that the revocation of dissolution and
4 reinstatement was authorized;

5 (4) if the corporation's board of directors (or
6 incorporators) revoked the dissolution and effected the
7 reinstatement, a statement to that effect;

8 (5) if the corporation's board of directors revoked
9 a dissolution and effected the reinstatement as authorized by
10 the stockholders, a statement that revocation and
11 reinstatement was permitted by action by the board of
12 directors alone pursuant to that authorization; and

13 (6) if stockholder action was required to revoke the
14 dissolution and effect the reinstatement, a statement that the
15 revocation and reinstatement was duly approved by the
16 stockholders in the manner required by this chapter and by the
17 certificate of incorporation.

18 (d) The certificate of revocation of dissolution and
19 reinstatement shall take effect at the effective date
20 determined in accordance with Article 4 of Chapter 1.
21 Revocation of dissolution and reinstatement is effective upon
22 the effective date of the certificate of revocation of
23 dissolution and reinstatement.

24 (e) (1) Subject to subsection (2), upon revocation
25 and reinstatement, the corporation shall be deemed for all
26 purposes to have continued its business as if dissolution had
27 never occurred; and each right inuring to, and each debt,

1 obligation, and liability incurred by, the corporation after
2 the dissolution shall be determined as if the dissolution had
3 never occurred.

4 (2) The rights of persons acting in reliance on the
5 dissolution before those persons had notice of the revocation
6 and reinstatement shall not be adversely affected by the
7 revocation and reinstatement.

8 (f) If the corporation is listed in the Secretary of
9 State's records as a corporation that has been dissolved, then
10 the name of the corporation following revocation and
11 reinstatement shall be that corporation name at the time of
12 revocation and reinstatement if that corporation name complies
13 with Article 5 of Chapter 1 at the time of revocation and
14 reinstatement. If that corporation name does not comply with
15 Article 5 of Chapter 1, the name of the corporation following
16 revocation and reinstatement shall be that corporation name
17 followed by the word "reinstated."

18 §10A-2A-14.05. Effect of dissolution.

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

23 (1) collecting its assets;

24 (2) disposing of its properties that will not be
25 distributed in kind to stockholders;

26 (3) discharging or making provisions for discharging
27 its liabilities;

1 (4) distributing its remaining property among its
2 stockholders according to their interests; and

3 (5) doing every other act necessary to wind up and
4 liquidate its business and affairs.

5 (b) In winding up its business and affairs, a
6 corporation may:

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

9 (2) prosecute, defend, or settle actions or
10 proceedings whether civil, criminal, or administrative;

11 (3) transfer the corporation's assets;

12 (4) resolve disputes by mediation or arbitration;

13 (5) merge or convert in accordance with Article 9 or
14 11 of this chapter or Article 8 of Chapter 1; and

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

17 (c) Dissolution of a corporation does not:

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

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

20 (3) subject its directors or officers to standards
21 of conduct different from those prescribed in Article 8;

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

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

26 (iii) provisions for amending its bylaws;

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

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

6 (7) terminate the authority of the registered agent
7 of the corporation.

8 (d) A distribution in liquidation under this section
9 may only be made by a dissolved corporation. For purposes of
10 determining the stockholders entitled to receive a
11 distribution in liquidation, the board of directors may fix a
12 record date for determining stockholders entitled to a
13 distribution in liquidation, which date may not be
14 retroactive. If the board of directors does not fix a record
15 date for determining stockholders entitled to a distribution
16 in liquidation, the record date is the date the board of
17 directors authorizes the distribution in liquidation.

18 §10A-2A-14.06. Known claims against dissolved
19 corporation.

20 (a) A dissolved corporation 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 corporation.

24 (b) A dissolved corporation may give written notice
25 of the dissolution to the holder of any known claim. The
26 notice must:

27 (1) identify the dissolved corporation;

1 (2) describe the information required to be included
2 in a claim;

3 (3) provide a mailing address to which the claim is
4 to be sent;

5 (4) state the deadline, which may not be fewer than
6 120 days from the effective date of the notice, by which the
7 dissolved corporation must receive the claim; and

8 (5) state that if not sooner barred, the claim will
9 be barred if not received by the deadline.

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

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

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

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

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

1 §10A-2A-14.07. Other claims against dissolved
2 corporation.

3 (a) A dissolved corporation may publish notice of
4 its dissolution and request that persons with claims against
5 the dissolved corporation 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 of
9 general circulation in the county in which the dissolved
10 corporation's principal office is located or, if it has none
11 in this state, in the county in which the corporation's
12 registered office is or was last located;

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

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

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

1 (1) a claimant who was not given notice under
2 Section 10A-2A-14.06;

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

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

10 (d) A claim that is not barred under this section,
11 any other statute limiting actions, or Section 10A-2A-14.06
12 may be enforced:

13 (1) against a dissolved corporation, to the extent
14 of its undistributed assets; and

15 (2) except as provided in subsection (h), if the
16 assets of a dissolved corporation have been distributed after
17 dissolution, against each stockholder to the extent of the
18 stockholder's proportionate share of the claim or of the
19 assets distributed to that stockholder after dissolution,
20 whichever is less, but a stockholder's total liability for all
21 claims under subsection (d) may not exceed the total amount of
22 assets distributed to that stockholder after dissolution of
23 the corporation.

24 (e) A dissolved corporation that published a notice
25 under this section may file an application with the circuit
26 court in the county in which the dissolved corporation's
27 principal place of business is located and if the corporation

1 does not have a principal place of business within this state,
2 in the county in which the dissolved corporation's most recent
3 registered office is located, for a determination of the
4 amount and form of security to be provided for payment of
5 claims that are contingent or have not been made known to the
6 dissolved corporation or that are based on an event occurring
7 after the effective date of the dissolution of the corporation
8 but that, based on the facts known to the dissolved
9 corporation, are reasonably estimated to arise after the
10 effective date of the dissolution of the corporation.
11 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 corporation 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 corporation.

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

1 corporation, or are based on an event occurring after the
2 effective date of the dissolution of the corporation, and
3 those claims may not be enforced against a stockholder to whom
4 assets have been distributed by the dissolved corporation
5 after the effective date of the dissolution of the
6 corporation.

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

9 (j) If a claim has been satisfied, disposed of, or
10 barred under Section 10A-2A-14.06, this section, or other law,
11 the person or persons designated to wind up the affairs of a
12 corporation, and the stockholders receiving assets from the
13 dissolved corporation, shall not be liable for that claim.

14 §10A-2A-14.08. Director duties.

15 (a) Directors shall cause the dissolved corporation
16 to discharge or make reasonable provision for the payment of
17 claims and make distributions in liquidation of assets to
18 stockholders after payment or provision for claims.

19 (b) Directors of a dissolved corporation which has
20 disposed of claims under Section 10A-2A-14.06 or Section
21 10A-2A-14.07 shall not be liable for breach of Section
22 10A-2A-14.08(a) with respect to claims against the dissolved
23 corporation that are barred or satisfied under Section
24 10A-2A-14.06 or Section 10A-2A-14.07.

25 Division B. JUDICIAL DISSOLUTION.

26 §10A-2A-14.10. Grounds for judicial dissolution.

1 (a) The circuit court of the county where the
2 corporation's principal office, or if none in this state, its
3 registered office, is located may dissolve a corporation:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (2) not a covered security, but is held by at least
21 2,000 stockholders.

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

27 §10A-2A-14.11. Procedure for judicial dissolution.

1 (a) Venue for a proceeding by the attorney general
2 to dissolve a corporation lies in circuit court of the county
3 where the corporation's principal office, or if none in this
4 state, its registered office, is located. Venue for a
5 proceeding brought by any other party named in Section
6 10A-2A-14.10(a) lies in circuit court of the county where the
7 corporation's principal office, or if none in this state, its
8 registered office, is located.

9 (b) It is not necessary to make stockholders parties
10 to a proceeding to dissolve a corporation unless relief is
11 sought against them individually.

12 (c) A court in a proceeding brought to dissolve a
13 corporation may issue injunctions, appoint a receiver or
14 custodian during the proceeding with all powers and duties the
15 court directs, take other action required to preserve the
16 corporate assets wherever located, and carry on the business
17 of the corporation until a full hearing can be held.

18 (d) Within 10 days of the commencement of a
19 proceeding to dissolve a corporation under Section
20 10A-2A-14.10(a) (2), the corporation shall deliver to all
21 stockholders, other than the petitioner, a notice stating that
22 the stockholders are entitled to avoid the dissolution of the
23 corporation by electing to purchase the petitioner's stock
24 under Section 10A-2A-14.14 and accompanied by a copy of
25 Section 10A-2A-14.14.

26 §10A-2A-14.12. Receivership or custodianship.

1 (a) Unless an election to purchase has been filed
2 under Section 10A-2A-14.14, a court in a judicial proceeding
3 brought to dissolve a corporation may appoint one or more
4 receivers to wind up and liquidate, or one or more custodians
5 to manage, the business and affairs of the corporation. The
6 court shall hold a hearing, after notifying all parties to the
7 proceeding and any interested persons designated by the court,
8 before appointing a receiver or custodian. The court
9 appointing a receiver or custodian has jurisdiction over the
10 corporation and all of its property wherever located.

11 (b) The court may appoint an individual,
12 corporation, foreign corporation, or eligible entity as a
13 receiver or custodian, which, if a foreign corporation or
14 foreign eligible entity, must be registered to do business in
15 this state. The court may require the receiver or custodian to
16 post bond, with or without sureties, in an amount the court
17 directs.

18 (c) The court shall describe the powers and duties
19 of the receiver or custodian in its appointing order, which
20 may be amended from time to time. Among other powers:

21 (1) the receiver (i) may dispose of all or any part
22 of the assets of the corporation wherever located, at a public
23 or private sale; and (ii) may sue and defend in the receiver's
24 own name as receiver of the corporation in all courts of this
25 state;

26 (2) the custodian may exercise all of the powers of
27 the corporation, through or in place of its board of

1 directors, to the extent necessary to manage the affairs of
2 the corporation in the best interests of its stockholders and
3 creditors. The receiver or custodian shall have such other
4 powers and duties as the court may provide in the appointing
5 order, which may be amended from time to time.

6 (d) The court during a receivership may redesignate
7 the receiver a custodian and during a custodianship may
8 redesignate the custodian a receiver.

9 (e) The court from time to time during the
10 receivership or custodianship may order compensation paid and
11 expenses paid or reimbursed to the receiver or custodian from
12 the assets of the corporation or proceeds from the sale of the
13 assets.

14 §10A-2A-14.13. Decree of dissolution.

15 (a) If after a hearing the court determines that one
16 or more grounds for judicial dissolution described in Section
17 10A-2A-14.10 exist, it may enter a decree dissolving the
18 corporation and specifying the effective date of the
19 dissolution, and the clerk of the court shall deliver a
20 certified copy of the decree to the Secretary of State for
21 filing.

22 (b) After entering the decree of dissolution, the
23 court shall direct the winding-up and liquidation of the
24 corporation's business and affairs in accordance with Section
25 10A-2A-14.05 and the notification of claimants in accordance
26 with Sections 10A-2A-14.06 and 10A-2A-14.07.

1 §10A-2A-14.14. Election to purchase in lieu of
2 dissolution.

3 (a) In a proceeding under Section 10A-2A-14.10(a)(2)
4 to dissolve a corporation, the corporation may elect or, if it
5 fails to elect, one or more stockholders may elect to purchase
6 all stock owned by the petitioning stockholder at the fair
7 value of the stock. An election pursuant to this section shall
8 be irrevocable unless the court determines that it is
9 equitable to set aside or modify the election.

10 (b) An election to purchase pursuant to this section
11 may be filed with the court at any time within 90 days after
12 the filing of the petition under Section 10A-2A-14.10(a)(2) or
13 at a later time as the court in its discretion may allow. If
14 the election to purchase is filed by one or more stockholders,
15 the corporation shall, within 10 days thereafter, give written
16 notice to all stockholders, other than the petitioner. The
17 notice must state the name and number of shares of stock owned
18 by the petitioner and the name and number of shares of stock
19 owned by each electing stockholder and must advise the
20 recipients of their right to join in the election to purchase
21 stock in accordance with this section. Stockholders who wish
22 to participate shall file notice of their intention to join in
23 the purchase no later than 30 days after the effectiveness of
24 the notice to them. All stockholders who have filed an
25 election or notice of their intention to participate in the
26 election to purchase thereby become parties to the proceeding
27 and shall participate in the purchase in proportion to their

1 ownership of stock as of the date the first election was
2 filed, unless they otherwise agree or the court otherwise
3 directs. After an election has been filed by the corporation
4 or one or more stockholders, the proceeding under Section
5 10A-2A-14.10(a)(2) may not be discontinued or settled, nor may
6 the petitioning stockholder sell or otherwise dispose of his
7 or her stock, unless the court determines that it would be
8 equitable to the corporation and the stockholders, other than
9 the petitioner, to permit the discontinuance, settlement,
10 sale, or other disposition.

11 (c) If, within 60 days of the filing of the first
12 election, the parties reach agreement as to the fair value and
13 terms of purchase of the petitioner's stock, the court shall
14 enter an order directing the purchase of the petitioner's
15 stock upon the terms and conditions agreed to by the parties.

16 (d) If the parties are unable to reach an agreement
17 as provided for in subsection (c), the court, upon application
18 of any party, shall stay the proceedings under Section
19 10A-2A-14.10(a)(2) and determine the fair value of the
20 petitioner's stock as of the day before the date on which the
21 petition under Section 10A-2A-14.10(a)(2) was filed or as of
22 any other date as the court deems appropriate under the
23 circumstances.

24 (e) Upon determining the fair value of the stock,
25 the court shall enter an order directing the purchase upon
26 terms and conditions as the court deems appropriate, which may
27 include payment of the purchase price in installments, where

1 necessary in the interests of equity, provision for security
2 to assure payment of the purchase price and any additional
3 expenses as may have been awarded, and, if the stock is to be
4 purchased by stockholders, the allocation of stock among them.
5 In allocating the petitioner's stock among holders of
6 different classes or series of stock, the court should attempt
7 to preserve the existing distribution of voting rights among
8 holders of different classes or series insofar as practicable
9 and may direct that holders of a specific class or classes or
10 series shall not participate in the purchase. Interest may be
11 allowed at the rate and from the date determined by the court
12 to be equitable, but if the court finds that the refusal of
13 the petitioning stockholder to accept an offer of payment was
14 arbitrary or otherwise not in good faith, no interest shall be
15 allowed. If the court finds that the petitioning stockholder
16 had probable grounds for relief under Section
17 10A-2A-14.10(a)(2)(ii) or (iv), it may award expenses to the
18 petitioning stockholder.

19 (f) Upon entry of an order under subsection (c) or
20 (e), the court shall dismiss the petition to dissolve the
21 corporation under Section 10A-2A-14.10(a)(2), and the
22 petitioning stockholder shall no longer have any rights or
23 status as a stockholder of the corporation, except the right
24 to receive the amounts awarded by the order of the court which
25 shall be enforceable in the same manner as any other judgment.

1 (g) The purchase ordered pursuant to subsection (e)
2 shall be made within 10 days after the date the order becomes
3 final.

4 (h) Any payment by the corporation pursuant to an
5 order under subsections (c) or (e), other than an award of
6 expenses pursuant to subsection (e), is subject to the
7 provisions of Section 10A-2A-6.40.

8 Division C. MISCELLANEOUS.

9 §10A-2A-14.20. Deposit with State Treasurer.

10 Assets of a dissolved corporation that should be
11 transferred to a creditor, claimant, or stockholder of the
12 corporation who cannot be found or who is not competent to
13 receive them shall be reduced to cash and deposited with the
14 State Treasurer or other appropriate state official for
15 safekeeping. When the creditor, claimant, or stockholder
16 furnishes satisfactory proof of entitlement to the amount
17 deposited, the State Treasurer or other appropriate state
18 official shall pay that person or his or her representative
19 that amount.

20 ARTICLE 15.

21 Division A. GOVERNING LAW.

22 §10A-2A-15.01. Governing law.

23 (a) The law of the jurisdiction of formation of a
24 foreign corporation governs:

25 (1) the incorporation and internal affairs of the
26 foreign corporation;

1 (2) the liability of its stockholders as
2 stockholders for the debts, obligations, or other liabilities
3 of the foreign corporation; and

4 (3) the authority of the directors and officers of
5 the foreign corporation.

6 (b) A foreign corporation is not precluded from
7 registering to do business in this state because of any
8 difference between the law of the foreign corporation's
9 jurisdiction of formation and the law of this state.

10 Division B. ACTING IN A FIDUCIARY CAPACITY.

11 §10A-2A-15.10. Definitions.

12 The term "foreign corporation," as used in this
13 division, shall mean:

14 (1) Any bank or other corporation now or hereafter
15 organized or existing under the laws of any state of the
16 United States other than this state; and

17 (2) Any national banking association or other
18 corporation organized under the laws of the United States
19 having its principal place of business in any state of the
20 United States other than this state.

21 §10A-2-15.11. Authority of foreign corporation to
22 act as fiduciary.

23 (a) Any foreign corporation may act in this state as
24 trustee, personal representative, executor, administrator of
25 any kind, guardian, conservator, or in any other like or
26 similar fiduciary capacity, whether the appointment is by law,
27 will, deed, inter vivos trust, mortgage, deed of trust, court

1 order or otherwise, without the necessity of complying with
2 any law of this state relating to the qualification of foreign
3 corporations to do business in this state or the licensing of
4 foreign corporations to do business in this state and
5 notwithstanding any prohibition, limitation, or restriction
6 contained in any law of this state subject to the following
7 conditions:

8 (1) The foreign corporation is authorized to act in
9 a fiduciary capacity, or capacities, in the state in which it
10 is incorporated or, if the foreign corporation is a national
11 banking association or other corporation organized under the
12 laws of the United States, in the state in which it has its
13 principal place of business.

14 (2) Any bank or other corporation organized under
15 the laws of this state or a national banking association or
16 other corporation organized under the laws of the United
17 States having its principal place of business in this state
18 which is authorized to act in a fiduciary capacity in this
19 state is authorized to act in a like fiduciary capacity in the
20 other state without the necessity of complying with any law of
21 the other state relating to the qualification of a foreign
22 corporation to do business in the other state.

23 (b) Nothing contained in this division shall be
24 construed to prohibit or make unlawful any activity in this
25 state by a bank or other corporation which is not incorporated
26 under the laws of this state, or, if a national bank or other
27 corporation organized under the laws of the United States,

1 which does not have its principal place of business in this
2 state which would be lawful in the absence of this division.

3 §10A-2A-15.12. Filing of verified statement with
4 Commissioner of Revenue by foreign corporation prior to acting
5 as fiduciary.

6 Prior to the time when any foreign corporation acts
7 pursuant to the authority of this article in any fiduciary
8 capacity or capacities in this state, the foreign corporation
9 shall file with the Commissioner of Revenue of this state a
10 verified statement which shall state:

11 (1) The correct corporate name of the foreign
12 corporation;

13 (2) The name of the state under the laws of which it
14 is incorporated or if the foreign corporation is a national
15 banking association or other corporation organized under the
16 laws of the United States shall state that fact;

17 (3) The address of its principal business office;

18 (4) In what fiduciary capacity, or capacities, it
19 desires to act in the State of Alabama;

20 (5) That it is authorized to act in a similar
21 fiduciary capacity or capacities in the state in which it is
22 incorporated or, if it is a national banking association or
23 other corporation organized under the laws of the United
24 States, in which it has its principal place of business; and

25 (6) The statement shall irrevocably appoint the
26 Commissioner of Revenue of Alabama as its true and lawful
27 attorney to receive service of process in any action or

1 proceeding against it relating to or growing out of any trust,
2 estate or matter in respect of which the foreign corporation
3 may act in this state in any fiduciary capacity. The statement
4 shall be verified by an officer of the foreign corporation,
5 and there shall be filed with it the certificates of public
6 officials and copies of documents certified by public
7 officials as may be necessary to show that the foreign
8 corporation is authorized to act in a fiduciary capacity or
9 capacities similar to those in which it desires to act in this
10 state, in the state in which it is incorporated, or, if it is
11 a national banking association or other corporation organized
12 under the laws of the United States, in which it has its
13 principal place of business.

14 §10A-2-15.13. Foreign corporation acting as
15 fiduciary not deemed doing business in this state.

16 A foreign corporation, insofar as it acts in a
17 fiduciary capacity in this state pursuant to the provisions of
18 this division, shall not be deemed to be transacting business
19 in this state, but no foreign corporation acting in a
20 fiduciary capacity in this state pursuant to the provisions of
21 this division without registering to transact business in this
22 state pursuant to this title or other applicable provisions of
23 law shall establish or maintain in this state a place of
24 business, branch office, or agency for the conduct of business
25 as a fiduciary. Nothing contained in this division shall
26 diminish the authority of out-of-state banks and trust
27 companies to establish or acquire and maintain trust offices

1 or representative trust offices, or both, under the provisions
2 of Chapter 11A of Title 5.

3 §10A-2-15.14. Foreign corporation previously acting
4 in fiduciary capacity in state.

5 The provisions of this division shall not prohibit
6 any foreign corporation authorized to act in a fiduciary
7 capacity or capacities in the state in which it is
8 incorporated or any national banking association or other
9 corporation organized under the laws of the United States
10 authorized to act in a fiduciary capacity or capacities in its
11 principal place of business which, prior to April 14, 1956, or
12 in the case of a corporation other than a national banking
13 association, prior to January 1, 1995, was acting or appointed
14 to act in this state in a particular fiduciary capacity or
15 capacities, from continuing in the performance of the
16 fiduciary activity or activities without complying with the
17 provisions of this division.

18 §10A-2-15.15. Service of process on foreign
19 corporation acting in fiduciary capacity.

20 Every foreign corporation acting in a fiduciary
21 capacity in this state pursuant to the terms of this division
22 shall be deemed to consent to service of all legal process in
23 any action or proceeding against it and to service of any
24 notice or demand permitted or required by law relating to or
25 growing out of any trust, estate or matter in respect of which
26 the foreign corporation shall have acted in this state in any
27 fiduciary capacity pursuant to any means of service of process

1 provided in Section 10A-1-5.31, Section 10A-1-5.35, or Section
2 10A-1-5.36.

3 ARTICLE 16. RECORDS AND REPORTS.

4 Division A. RECORDS.

5 §10A-2A-16.01. Corporate records.

6 (a) A corporation shall maintain the following
7 records:

8 (1) its certificate of incorporation as currently in
9 effect;

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

15 (3) its bylaws as currently in effect;

16 (4) all written communications within the past three
17 years to stockholders generally;

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

22 (6) a list of the names and business addresses of
23 its current directors and officers; and

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

26 (b) A corporation shall maintain all annual
27 financial statements prepared for the corporation for its last

1 three fiscal years (or any shorter period of existence) and
2 any audit or other reports with respect to those financial
3 statements.

4 (c) A corporation shall maintain accounting records
5 in a form that permits preparation of its financial
6 statements.

7 (d) A corporation shall maintain a record of its
8 current stockholders in alphabetical order by class or series
9 of stock showing the address of, and the number and class or
10 series of stock held by, each stockholder. Nothing contained
11 in this subsection shall require the corporation to include in
12 that record the electronic mail address or other electronic
13 contact information of a stockholder.

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

17 §10A-2A-16.02. Inspection rights of stockholders.

18 (a) A stockholder of a corporation is entitled to
19 inspect and copy, during regular business hours at the
20 corporation's principal office, any of the records of the
21 corporation described in Section 10A-2A-16.01(a), excluding
22 minutes of meetings of, and records of actions taken without a
23 meeting by, the corporation's board of directors and board
24 committees established under Section 10A-2A-8.25, if the
25 stockholder gives the corporation a signed written notice of
26 the stockholder's demand at least five business days before
27 the date on which the stockholder wishes to inspect and copy.

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

9 (1) the financial statements of the corporation
10 maintained in accordance with Section 10A-2A-16.01(b);

11 (2) accounting records of the corporation;

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

16 (4) the record of stockholders maintained in
17 accordance with Section 10A-2A-16.01(d).

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

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

22 (2) the stockholder's demand describes with
23 reasonable particularity the stockholder's purpose and the
24 records the stockholder desires to inspect; and

25 (3) the records are directly connected with the
26 stockholder's purpose.

1 (d) (1) The corporation may impose reasonable
2 restrictions and conditions on access to and use of the
3 records to be inspected and copied under subsections (a) and
4 (b), including designating information confidential and
5 imposing nondisclosure and safeguarding, and may further keep
6 confidential from its stockholders and other persons, for a
7 period of time as the corporation deems reasonable any
8 information that the corporation reasonably believes to be in
9 the nature of a trade secret or other information the
10 disclosure of which the corporation in good faith believes is
11 not in the best interest of the corporation or could damage
12 the corporation or its business or affairs, or that the
13 corporation is required by law or by agreement with a third
14 party to keep confidential. In any dispute concerning the
15 reasonableness of a restriction under this subsection, the
16 corporation has the burden of proving reasonableness.

17 (2) If a stockholder is entitled to inspect and copy
18 the records described in subsection (a) or having met the
19 requirements of subsection (c) is entitled to inspect and copy
20 the records described in subsection (b), and an officer of the
21 corporation with the authority to bind the corporation who, or
22 a corporation which, without reasonable cause, refuses to
23 allow that stockholder to inspect and copy those records shall
24 be liable to that stockholder for a penalty of an amount not
25 to exceed 10 percent of the value of the shares of stock owned
26 by that stockholder, in addition to any other damages or
27 remedy afforded that stockholder by law. It shall be a defense

1 to an action brought to collect the penalty specified in this
2 section that the stockholder suing therefor has previously
3 sold or offered for sale any list of stockholders of the
4 corporation, or any other corporation or knowingly has aided
5 or abetted any person in procuring any list of stockholders,
6 or improperly has used any information secured through any
7 prior inspection of those records of the corporation, or was
8 not acting in good faith or for a proper purpose in making
9 this demand.

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

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

1 (g) This section does not affect:

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

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

13 (h) For purposes of this section, "stockholder"
14 means a record stockholder, a beneficial stockholder, and an
15 unrestricted voting trust beneficial owner.

16 §10A-2A-16.03. Scope of inspection right.

17 (a) A stockholder may appoint an agent or attorney
18 to exercise the stockholder's inspection and copying rights
19 under Section 10A-2A-16.02.

20 (b) The corporation may, if reasonable, satisfy the
21 right of a stockholder to copy records under Section
22 10A-2A-16.02 by furnishing to the stockholder copies by
23 photocopy or other means chosen by the corporation, including
24 furnishing copies through an electronic transmission.

25 (c) The corporation may comply at its expense with a
26 stockholder's demand to inspect the record of stockholders
27 under Section 10A-2A-16.02(b) (4) by providing the stockholder

1 with a list of stockholders that was compiled no earlier than
2 the date of the stockholder's demand.

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

6 §10A-2A-16.04. Court-ordered inspection.

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

15 (b) If a corporation does not within a reasonable
16 time allow a stockholder who complies with Section
17 10A-2A-16.02(b) to inspect and copy the records required by
18 that section, the stockholder who complies with Section
19 10A-2A-16.02(c) may apply to the circuit court of the county
20 where the corporation's principal office, or, if none in this
21 state, its registered office, is located for an order to
22 permit inspection and copying of the records demanded. The
23 court shall dispose of an application under this subsection on
24 an expedited basis.

25 (c) If the court orders inspection and copying of
26 the records demanded under Section 10A-2A-16.02(b), it may
27 impose reasonable restrictions on their confidentiality, use

1 or distribution by the demanding stockholder and it shall also
2 order the corporation to pay the stockholder's expenses
3 incurred to obtain the order unless the corporation
4 establishes that it refused inspection in good faith because
5 the corporation had:

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

8 (2) required reasonable restrictions on the
9 confidentiality, use or distribution of the records demanded
10 to which the demanding stockholder had been unwilling to
11 agree.

12 §10A-2A-16.05. Inspection rights of directors.

13 (a) A director of a corporation is entitled to
14 inspect and copy the books, records and documents of the
15 corporation at any reasonable time to the extent reasonably
16 related to the performance of the director's duties as a
17 director, including duties as a member of a board committee,
18 but not for any other purpose or in any manner that would
19 violate any duty to the corporation.

20 (b) The circuit court of the county where the
21 corporation's principal office, or, if none in this state, its
22 registered office, is located may order inspection and copying
23 of the books, records and documents at the corporation's
24 expense, upon application of a director who has been refused
25 inspection rights, unless the corporation establishes that the
26 director is not entitled to inspection rights. The court shall

1 dispose of an application under this subsection on an
2 expedited basis.

3 (c) If an order is issued, the court may include
4 provisions protecting the corporation from undue burden or
5 expense, and prohibiting the director from using information
6 obtained upon exercise of the inspection rights in a manner
7 that would violate a duty to the corporation, and may also
8 order the corporation to reimburse the director for the
9 director's expenses incurred in connection with the
10 application.

11 Division B. REPORTS.

12 §10A-2A-16.10. Financial statements for
13 stockholders.

14 (a) Upon the written request of a stockholder, a
15 corporation shall deliver or make available to the requesting
16 stockholder by posting on its website or by other generally
17 recognized means annual financial statements for the most
18 recent fiscal year of the corporation for which annual
19 financial statements have been prepared for the corporation.
20 If financial statements have been prepared for the corporation
21 on the basis of generally accepted accounting principles for
22 that specified period, the corporation shall deliver or make
23 available those financial statements to the requesting
24 stockholder. If the annual financial statements to be
25 delivered or made available to the requesting stockholder are
26 audited or otherwise reported upon by a public accountant, the

1 report shall also be delivered or made available to the
2 requesting stockholder.

3 (b) A corporation shall deliver, or make available
4 and provide written notice of availability of, the financial
5 statements required under subsection (a) to the requesting
6 stockholder within five business days of delivery of the
7 written request to the corporation.

8 (c) A corporation may fulfill its responsibilities
9 under this section by delivering the specified financial
10 statements, or otherwise making them available, in any manner
11 permitted by the applicable rules and regulations of the
12 United States Securities and Exchange Commission.

13 (d) Notwithstanding the provisions of subsections
14 (a), (b), and (c) of this section:

15 (1) as a condition to delivering or making available
16 financial statements to a requesting stockholder, the
17 corporation may require the requesting stockholder to agree to
18 reasonable restrictions on the confidentiality, use and
19 distribution of the financial statements; and

20 (2) the corporation may, if it reasonably determines
21 that the stockholder's request is not made in good faith or
22 for a proper purpose, decline to deliver or make available the
23 financial statements to that stockholder.

24 (e) If a corporation does not respond to a
25 stockholder's request for annual financial statements pursuant
26 to this section in accordance with subsection (b) within five
27 business days of delivery of the request to the corporation:

1 (1) The requesting stockholder may apply to the
2 circuit court of the county where the corporation's principal
3 office, or, if none in this state, its registered office, is
4 located for an order requiring delivery of or access to the
5 requested financial statements. The court shall dispose of an
6 application under this subsection on an expedited basis.

7 (2) If the court orders delivery or access to the
8 requested financial statements, it may impose reasonable
9 restrictions on their confidentiality, use or distribution.

10 (3) In the proceeding, if the corporation has
11 declined to deliver or make available the financial statements
12 because the stockholder had been unwilling to agree to
13 restrictions proposed by the corporation on the
14 confidentiality, use and distribution of the financial
15 statements, the corporation shall have the burden of
16 demonstrating that the restrictions proposed by the
17 corporation were reasonable.

18 (4) In the proceeding, if the corporation has
19 declined to deliver or make available the financial statements
20 pursuant to Section 10A-2A-16.10(d)(2), the corporation shall
21 have the burden of demonstrating that it had reasonably
22 determined that the stockholder's request was not made in good
23 faith or for a proper purpose.

24 (5) If the court orders delivery or access to the
25 requested financial statements it shall order the corporation
26 to pay the stockholder's expenses incurred to obtain the order
27 unless the corporation establishes that it had refused

1 delivery or access to the requested financial statements
2 because the stockholder had refused to agree to reasonable
3 restrictions on the confidentiality, use or distribution of
4 the financial statements or that the corporation had
5 reasonably determined that the stockholder's request was not
6 made in good faith or for a proper purpose.

7 §10A-2A-16.11. Annual report for Secretary of State.

8 (a) Each corporation, and each foreign corporation
9 authorized to transact business in this state, shall deliver
10 to the Secretary of State for filing an annual report that
11 sets forth:

12 (1) The name of the corporation and the state or
13 other jurisdiction under whose law it is incorporated;

14 (2) The address of its registered office and the
15 name of its registered agent at that office in this state;

16 (3) The address of its principal office including,
17 in the case of a foreign corporation, the address of its
18 principal office in the state or other jurisdiction under
19 whose law it is incorporated;

20 (4) The names and respective addresses of its
21 president and secretary; and

22 (5) A brief statement of the character of business
23 in which it is actually engaged in this state.

24 (b) Information in the annual report must be current
25 as of the date the annual report is executed on behalf of the
26 corporation.

1 (c) The first annual report must be delivered to the
2 Secretary of State between January 1 and March 15 of the year
3 following the calendar year in which a domestic corporation
4 was incorporated or a foreign corporation was authorized to
5 transact business. Subsequent annual reports must be delivered
6 to the Secretary of State between January 1 and March 15 of
7 the following calendar years.

8 (d) If an annual report does not contain the
9 information required by this section, the Secretary of State
10 shall promptly notify the reporting domestic or foreign
11 corporation in writing and return the report to it for
12 correction. If the report is corrected to contain the
13 information required by this section and delivered to the
14 Secretary of State within 30 days after the effective date of
15 notice, it is deemed to be timely filed.

16 (e) The public record information filed with the
17 Department of Revenue, pursuant to Chapter 14A of Title 40,
18 shall constitute and be accepted in lieu of the annual report
19 required pursuant to this section, provided that a ten dollar
20 (\$10) fee for the State of Alabama accompany the public record
21 information filed by the corporation annually with the
22 Department of Revenue. The fee for the annual report shall be
23 deposited in the State Treasury to the credit of the Secretary
24 of State Entity Fund as prescribed by Section 10A-1-4.31.

25 ARTICLE 17. TRANSITION PROVISIONS.

26 §10A-2A-17.01. Application to existing corporations.

1 (a) Before January 1, 2021, this chapter governs
2 only:

3 (1) a corporation incorporated on or after January
4 1, 2020; and

5 (2) a corporation incorporated before January 1,
6 2020, which elects, by amending or restating that
7 corporation's certificate of incorporation, to be governed by
8 this chapter.

9 (b) On and after January 1, 2021, this chapter
10 governs all existing corporations incorporated under:

11 (1) any general or special law of this state
12 providing for the incorporation of corporations for a purpose
13 or purposes for which a corporation might be incorporated
14 under this chapter, where the power has been reserved to
15 amend, repeal, or modify the law under which the corporation
16 was incorporated; and

17 (2) any predecessor statute hereto.

18 (c) For purposes of applying this chapter to a
19 corporation incorporated before January 1, 2020:

20 (1) the corporation's incorporation document,
21 whether a certificate of incorporation, certificate of
22 formation, charter, or articles of incorporation is deemed to
23 be the corporation's certificate of incorporation;

24 (2) the corporation's bylaws are deemed to be the
25 corporation's bylaws;

1 (3) any amendment or restatement of a corporation's
2 certificate of incorporation or bylaws on or after January 1,
3 2020, shall conform with this chapter; and

4 (4) all filing instruments to be delivered for
5 filing by or on behalf of a corporation on or after January 1,
6 2020, shall conform with this chapter and shall be delivered
7 for filing to the filing officer in accordance with Article 4
8 of Chapter 1.

9 (d) No corporation may be incorporated after
10 December 31, 2019, pursuant to Sections 10A-2-1.01 to
11 10A-2-17.02, inclusive, of the Code of Alabama 1975.

12 §10A-2A-17.02. Application to existing foreign
13 corporations.

14 A foreign corporation registered or authorized to
15 transact business in this state on the effective date of this
16 chapter is subject to this chapter and is deemed to be
17 registered to transact business in this state, and is not
18 required to renew its registration to transact business under
19 Article 7 of Chapter 1, except as Article 7 of Chapter 1
20 requires.

21 §10A-2A-17.03. Saving provisions.

22 (a) Except as provided in subsection (b), the repeal
23 of a statute by this chapter does not affect:

24 (1) the operation of the statute or any action taken
25 under it before its repeal;

1 (2) any ratification, right, remedy, privilege,
2 obligation, or liability acquired, accrued, or incurred under
3 the statute before its repeal;

4 (3) any violation of the statute, or any penalty,
5 forfeiture, or punishment incurred because of the violation,
6 before its repeal; or

7 (4) any proceeding, reorganization, or dissolution
8 commenced under the statute before its repeal, and the
9 proceeding, reorganization, or dissolution may be completed in
10 accordance with the statute as if it had not been repealed.

11 (b) If a penalty or punishment imposed for violation
12 of a statute repealed by this chapter is reduced by this
13 chapter, the penalty or punishment if not already imposed
14 shall be imposed in accordance with this chapter.

15 §10A-2A-17.04. Severability.

16 If any provision of this chapter or its application
17 to any person or circumstance is held invalid by a court of
18 competent jurisdiction, the invalidity does not affect other
19 provisions or applications of this chapter that can be given
20 effect without the invalid provision or application, and to
21 this end the provisions of this chapter are severable.

22 §10A-2A-17.05. Relation to Electronic Signatures in
23 Global and National Commerce Act.

24 This chapter modifies, limits, and supersedes the
25 federal Electronic Signatures in Global and National Commerce
26 Act, 15 U.S.C. Section 7001 et seq., but does not modify,
27 limit, or supersede Section 101(c) of that act, 15 U.S.C.

1 Section 7001(c), or authorize electronic delivery of any of
2 the notices described in Section 103(b) of that act, 15 U.S.C.
3 Section 7003(b).

4 §10A-2A-17.06. Interstate application.

5 A corporation formed and existing under this chapter
6 may conduct its business and affairs, carry on its operations,
7 and have and exercise the powers granted by this chapter in
8 any state, foreign country, or other jurisdiction.

9 Section 2. Sections 10A-1-1.02, 10A-1-1.03,
10 10A-1-1.08, 10A-1-1.12, 10A-1-3.05, 10A-1-3.06, 10A-1-3.32,
11 10A-1-3.42, 10A-1-4.01, and 10A-1-4.02, Code of Alabama 1975,
12 as amended by Act 2018-125; Sections 10A-1-4.04, 10A-1-4.06,
13 10A-1-4.11, 10A-1-4.13, 10A-1-4.15, 10A-1-4.21, 10A-1-4.23,
14 and 10A-1-4.24, Code of Alabama 1975; Section 10A-1-4.25, Code
15 of Alabama 1975, as amended by Act 2018-125; Section
16 10A-1-4.26, Code of Alabama 1975; Sections 10A-1-4.31,
17 10A-1-5.01, and 10A-1-5.08, Code of Alabama 1975, as amended
18 by Act 2018-125; Section 10A-1-6.01, Code of Alabama 1975;
19 Sections 10A-1-6.02, 10A-1-7.01, 10A-1-7.04, and 10A-1-7.11,
20 Code of Alabama 1975, as amended by Act 2018-125; Section
21 10A-1-7.21, Code of Alabama 1975; Sections 10A-1-7.31,
22 10A-1-8.01, and 10A-1-8.02, Code of Alabama 1975, as amended
23 by Act 2018-125; Sections 10A-1-8.04, 10A-1-9.01, 10A-4-2.02,
24 10A-4-4.01, 10A-4-4.02, 10A-4-5.01, 10A-4-5.04, 10A-5A-10.01,
25 10A-5A-10.03, 10A-5A-10.04, 10A-5A-10.05, and 10A-5A-10.07,
26 Code of Alabama 1975; Section 10A-5A-10.08, Code of Alabama
27 1975, as amended by Act 2018-125; Sections 10A-8A-9.02,

1 10A-8A-9.04, 10A-8A-9.05, 10A-8A-9.06, 10A-8A-9.08, and
2 10A-8A-9.09, as added to the Code of Alabama 1975 by Act
3 2018-125; Sections 10A-9A-10.02, 10A-9A-10.04, 10A-9A-10.05,
4 10A-9A-10.06, and 10A-9A-10.08, Code of Alabama 1975; Section
5 10A-9A-10.09, Code of Alabama 1975, as amended by Act
6 2018-125; and Sections 10A-10-1.09, 10A-10-1.12, 10A-10-1.15,
7 10A-10-1.16, 10A-11-1.01, 10A-11-1.03, 10A-11-1.04,
8 10A-11-1.06, 10A-11-1.12, 10A-30-2.01, 10A-30-2.03,
9 10A-30-2.04, 10A-30-2.05, 10A-30-2.06, 10A-30-2.09,
10 10A-30-2.12, and 10A-30-2.13, Code of Alabama 1975; are
11 amended to read as follows:

12 "§10A-1-1.02.

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

20 "(b) The provisions of this chapter shall apply to
21 entities formed ~~under~~ pursuant to or governed by Chapter 16,
22 Chapter 17, Chapter 20, and Chapter 30 only as provided
23 therein or expressly provided in this chapter.

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

1 "§10A-1-1.03.

2 "As used in this title, unless the context otherwise
3 requires, the following terms mean:

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

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

18 "(A) a domestic or foreign entity or organization
19 for which the person is:

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

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

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

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

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

6 "(3) ASSOCIATION. Includes, but is not limited to,
7 an unincorporated nonprofit association as defined in Chapter
8 17 and an unincorporated professional association as defined
9 in Article 1 of Chapter 30.

10 "(4) BUSINESS CORPORATION. A corporation or foreign
11 corporation as defined in Chapter 2 or Chapter 2A, as
12 applicable.

13 "(5) BUSINESS TRUST. A business trust as defined in
14 Chapter 16.

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

21 "(7) CERTIFICATE OF FORMATION.

22 "(A) the document required to be filed publicly
23 under Article 3, Chapter 2A, Chapter 5A or Chapter 9A to form
24 a filing entity; and

25 "(B) if appropriate, a restated certificate of
26 formation and all amendments of an original or restated
27 certificate of formation.

1 "(8) CERTIFICATE OF OWNERSHIP. An instrument
2 evidencing an ownership interest or membership interest in an
3 entity.

4 "(9) CERTIFICATED OWNERSHIP INTEREST. An ownership
5 interest of a domestic entity represented by a certificate.

6 "(10) CERTIFICATION. Duly authenticated by the
7 proper officer or filing officer of the jurisdiction the laws
8 of which govern the internal affairs of an entity.

9 "(11) CONTRIBUTION. A tangible or intangible benefit
10 that a person transfers to an entity in consideration for an
11 ownership interest in the entity or otherwise in the person's
12 capacity as an owner or a member. A benefit that may
13 constitute a contribution transferred in exchange for an
14 ownership interest or transferred in the transferor's capacity
15 as an owner or member may include cash, property, services
16 rendered, a contract for services to be performed, a
17 promissory note or other obligation of a person to pay cash or
18 transfer property to the entity, or securities or other
19 interests in or obligations of an entity. In either case, the
20 benefit does not include cash or property received by the
21 entity:

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

25 "(B) that the person intends to be a loan to the
26 entity.

27 "(12) CONVERSION.

1 "(A) the continuance of a domestic entity as a
2 foreign entity of any type;

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

5 "(C) the continuance of a domestic entity of one
6 type as a domestic entity of another type.

7 "(13) CONVERTED ENTITY. An entity resulting from a
8 conversion.

9 "(14) CONVERTING ENTITY. An entity as the entity
10 existed before the entity's conversion.

11 "(15) COOPERATIVE. Includes an employee cooperative
12 as defined in Chapter 11.

13 "(16) CORPORATION. Includes a domestic or foreign
14 business corporation as defined in Chapter 2 or Chapter 2A, as
15 applicable, a domestic or foreign nonprofit corporation as
16 defined in Chapter 3, a domestic or foreign professional
17 corporation as defined in Chapter 4, and those entities
18 specified in Chapter 20 as corporate.

19 "(17) COURT. Every court and judge having
20 jurisdiction in a case.

21 "(18) DAY. When used in the computation of time
22 excludes the first day and includes the last day of the period
23 so computed, unless the last day is a Saturday, Sunday, or
24 legal holiday, in which event the period runs until the end of
25 the next day that is not a Saturday, a Sunday, or a legal
26 holiday. When the period of time to be computed is less than 7

1 days, intermediate Saturdays, Sundays, and legal holidays
2 shall be excluded.

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

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

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

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

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

18 "(22) DOMESTIC. With respect to an entity, that the
19 entity is formed and exists pursuant to this title.

20 "(23) DOMESTIC ENTITY. An organization formed and
21 existing ~~under~~ pursuant to this title.

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

23 "(25) ELECTRONIC. Relating to technology having
24 electrical, digital, magnetic, wireless, optical,
25 electromagnetic, or similar capabilities.

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

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

11 "(28) ELECTRONIC WRITING. Information that is stored
12 in an electronic or other nontangible medium and is
13 retrievable in paper form through an automated process used in
14 conventional commercial practice.

15 "(29) ENTITY. A domestic entity or foreign entity.

16 "(30) FILING ENTITY. A domestic entity that is a
17 corporation, limited partnership, ~~including a~~ limited
18 liability limited partnership, limited liability company,
19 professional association, employee cooperative corporation, or
20 real estate investment trust.

21 "(31) FILING INSTRUMENT. An instrument, document, or
22 statement that is required or ~~authorized~~ permitted by this
23 title to be ~~filed~~ delivered for filing by or for an entity
24 ~~with the~~ to a filing officer ~~in accordance with Article 4.~~

25 "(32) FILING OFFICER. The officer with whom a filing
26 instrument is required or permitted to be ~~filed under Article~~

1 ~~4 or under any other provision of~~ delivered for filing
2 pursuant to this title.

3 "(33) FOREIGN. With respect to an entity, that the
4 entity is formed and existing under the laws of a jurisdiction
5 other than this state.

6 "(34) FOREIGN ENTITY. An organization formed and
7 existing under the laws of a jurisdiction other than this
8 state.

9 "(35) FOREIGN FILING ENTITY. A foreign entity that
10 registers or is required to register as a foreign entity under
11 Article 7.

12 "(36) FOREIGN GOVERNMENTAL AUTHORITY. A governmental
13 official, agency, or instrumentality of a jurisdiction other
14 than this state.

15 "(37) FOREIGN LIMITED LIABILITY LIMITED PARTNERSHIP.
16 A foreign limited liability limited partnership as defined in
17 Chapter 9A.

18 "(38) FOREIGN LIMITED LIABILITY PARTNERSHIP. A
19 foreign limited liability partnership as defined in Chapter
20 8A.

21 "(39) FOREIGN LIMITED PARTNERSHIP. A foreign limited
22 partnership as defined in Chapter 9A.

23 "(40) FOREIGN NONFILING ENTITY. A foreign entity
24 that is not a foreign filing entity.

25 "(41) FUNDAMENTAL BUSINESS TRANSACTION. A merger,
26 interest exchange, conversion, or sale of all or substantially
27 all of an entity's assets.

1 "(42) GENERAL PARTNER.

2 "(A) each partner in a general partnership; or

3 "(B) a person who is admitted to a limited
4 partnership as a general partner in accordance with the
5 governing documents of the limited partnership.

6 "(43) GENERAL PARTNERSHIP. A partnership as defined
7 in Chapter 8A. The term includes a ~~registered~~ limited
8 liability partnership as defined in Chapter 8A.

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

1 "(45) GOVERNING DOCUMENTS.

2 "(A) in the case of a domestic entity:

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

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

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

16 "(46) GOVERNING PERSON. A person serving as part of
17 the governing authority of an entity.

18 "(47) INDIVIDUAL. A natural person and the estate of
19 an incompetent or deceased natural person.

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

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

26 "(50) JUDGE OF PROBATE. The judge of probate of the
27 county in which a domestic ~~entity's certificate of formation~~

1 ~~is filed, or, with respect to a statement of authority under~~
2 ~~Chapter 8A, which is to be filed in the real property records~~
3 ~~of a particular county, the judge of probate of the county in~~
4 ~~which that statement is filed~~ entity is required or permitted
5 to deliver a filing instrument for filing pursuant to this
6 title.

7 "(51) JURISDICTION OF FORMATION.

8 "(A) in the case of a domestic filing entity, this
9 state;

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

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

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

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

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

8 "(ii) if subparagraph (i) does not apply, the
9 jurisdiction in which the entity has its principal place of
10 business.

11 "(52) LAW. Unless the context requires otherwise,
12 both statutory and common law.

13 "(53) LICENSE. A license, certificate of
14 registration, or other legal authorization.

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

19 "(55) LIMITED LIABILITY COMPANY. A limited liability
20 company as defined in Chapter 5A.

21 "(56) LIMITED LIABILITY LIMITED PARTNERSHIP. A
22 limited liability limited partnership as defined in Chapter
23 9A.

24 "(57) LIMITED LIABILITY PARTNERSHIP. A limited
25 liability partnership as defined in Chapter 8A.

1 "(58) 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 "(59) 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 "(60) MANAGERIAL OFFICIAL. An officer or a governing
12 person.

13 "(61) 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 ~~a~~ 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 "(62) MERGER. The combination of one or more
2 domestic entities with one or more domestic entities or
3 non-code organizations resulting in:

4 "(A) one or more surviving domestic entities or
5 non-code organizations;

6 "(B) the creation of one or more new domestic
7 entities or non-code organizations, or one or more surviving
8 domestic entities or non-code organizations; or

9 "(C) one or more surviving domestic entities or
10 non-code organizations and the creation of one or more new
11 domestic entities or non-code organizations.

12 "(63) NON-CODE ORGANIZATION. An organization other
13 than a domestic entity.

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

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

25 "(66) NONPROFIT CORPORATION. A domestic or foreign
26 nonprofit corporation as defined in Chapter 3.

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

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

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

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

18 "(71) OWNER.

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

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

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

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

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

8 "(73) PARENT ENTITY or PARENT ORGANIZATION. An
9 entity or organization that:

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

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

14 "(74) PARTNER. A limited partner or general partner.

15 "(75) PARTNERSHIP. Includes a general partnership, a
16 limited liability partnership, a foreign limited liability
17 partnership, a limited partnership, a foreign limited
18 partnership, a limited liability limited partnership, and a
19 foreign limited liability limited partnership.

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

1 "(77) PARTY TO THE MERGER. A domestic entity or
2 non-code organization that under a plan of merger is combined
3 by a merger. The term does not include a domestic entity or
4 non-code organization that is not to be combined into or with
5 one or more domestic entities or non-code organizations,
6 regardless of whether ownership interests of the entity are to
7 be issued under the plan of merger.

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

21 "(79) PRESIDENT.

22 "(A) the individual designated as president of an
23 entity under the entity's governing documents; or

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

1 "(80) PROFESSIONAL ASSOCIATION. A professional
2 association as defined in Chapter 30.

3 "(81) PROFESSIONAL CORPORATION. A domestic or
4 foreign professional corporation as defined in Chapter 4.

5 "(82) PROFESSIONAL ENTITY. A professional
6 association and a professional corporation.

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

11 "(84) PROPERTY. Includes all property, whether real,
12 personal, or mixed, or tangible or intangible, or any right or
13 interest therein.

14 "(85) REAL ESTATE INVESTMENT TRUST. An
15 unincorporated trust, association, or other entity as defined
16 in Chapter 10.

17 "(86) SECRETARY.

18 "(A) the individual designated as secretary of an
19 entity under the entity's governing documents; or

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

23 "(87) SECRETARY OF STATE. The Secretary of State of
24 the State of Alabama.

25 "(88) SIGN or SIGNATURE. With the present intent to
26 authenticate or adopt a writing:

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

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

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

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

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

21 "(92) SUBSIDIARY. An entity or organization at least
22 50 percent of:

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

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

27 "(93) TREASURER.

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

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

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

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

11 "(96) VICE PRESIDENT.

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

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

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

24 "§10A-1-1.08.

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

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

5 "(c) Chapter 3 and the provisions of Chapter 1 to
6 the extent applicable to nonprofit corporations may be cited
7 as the Alabama Nonprofit Corporation Law.

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

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

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

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

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

23 "(i) Chapter 11 and the provisions of (A) Chapter 1
24 and (B) Chapter 2 or Chapter 2A, as applicable, to the extent
25 applicable to employee cooperative corporations may be cited
26 as the Alabama Employee Cooperative Corporations Law.

1 "(j) Chapter 17 may be cited as the Alabama
2 Unincorporated Nonprofit Association Law.

3 "§10A-1-1.12.

4 "For entities other than general partnerships, if
5 the formation of an entity does not occur when a certificate
6 of formation or similar instrument filed with the ~~Secretary of~~
7 ~~State or the judge of probate, as the case may be~~ filing
8 officer, or with a foreign governmental authority takes
9 effect, the law governing the entity's formation and internal
10 affairs is the law of the entity's jurisdiction of formation.

11 "§10A-1-3.05.

12 "Unless provided otherwise in a chapter of this
13 title governing a filing entity:

14 "(a) The certificate of formation must state:

15 "(1) the name of the filing entity being formed;

16 "(2) the type of filing entity being formed;

17 "(3) for filing entities other than limited
18 partnerships, the purpose or purposes for which the filing
19 entity is formed, which may be stated to be or include any
20 lawful purpose for that type of entity;

21 "(4) the period of duration, if the entity is not
22 formed to exist perpetually;

23 "(5) the street address and, if different, the
24 mailing address of the initial registered office of the filing
25 entity and the name of the initial registered agent of the
26 filing entity at the office;

27 "(6) the name and address of each:

1 "(A) organizer for the filing entity, unless the
2 entity is formed ~~under a plan~~ pursuant to a statement of
3 conversion or merger; or

4 "(B) general partner, if the filing entity is a
5 limited partnership;

6 "(7) if the filing entity is formed ~~under a plan of~~
7 pursuant to a conversion or merger, a statement to that effect
8 and, if formed ~~under a plan of~~ pursuant to a conversion, the
9 name, mailing address of the principal office, date of
10 formation, prior form of ~~organization~~ entity, and jurisdiction
11 of formation of the converting entity; and

12 "(8) any other information required by this title
13 including, without limitation, any information required by the
14 specific chapter of this title governing the filing entity or
15 by Article 8 to be included in the certificate of formation
16 for the filing entity.

17 "(b) The certificate of formation may contain other
18 provisions not inconsistent with law relating to the
19 organization, ownership, governance, business, or affairs of
20 the filing entity.

21 "(c) Except as provided by Section 10A-1-3.04,
22 Article 4 governs the signing and filing of a certificate of
23 formation for a domestic entity.

24 "§10A-1-3.06.

25 "~~The~~ Unless provided otherwise in a chapter of this
26 title governing an entity, the formation and existence of a
27 domestic entity that is a converted entity in a conversion or

1 that is to be created ~~under~~ pursuant to a plan of merger takes
2 effect and commences on the effectiveness of the conversion or
3 merger, as appropriate.

4 "§10A-1-3.32.

5 "(a) This section applies to entities other than (i)
6 corporations formed ~~under~~ pursuant to or governed by Chapter
7 2, ~~professional corporations formed under~~ Chapter 2A, or
8 Chapter 4, and real estate investment trusts formed pursuant
9 to or governed by Chapter 10, each of which is governed by the
10 separate recordkeeping requirements and record inspections
11 provisions of Chapter 2 or Chapter 2A, as applicable, and (ii)
12 nonprofit corporations formed pursuant to or governed by
13 Chapter 3, limited liability companies formed ~~under~~ pursuant
14 to or governed by Chapter 5A, general partnerships formed
15 pursuant to or governed by Chapter 8A, and limited
16 partnerships formed ~~under~~ pursuant to or governed by Chapter
17 9A, each of which are governed by the separate recordkeeping
18 requirements and record inspection provisions set forth in
19 each entity's respective chapter governing that entity.

20 "(b) With respect to an entity covered by this
21 section, the books and records maintained under the chapter of
22 this title applicable to the entity and any other books and
23 records of the entity, wherever situated, are subject to
24 inspection and copying at the reasonable request, and at the
25 expense of, any owner or member or the owner's or member's
26 agent or attorney during regular business hours. The right of
27 access extends to the legal representative of a deceased owner

1 or member or owner or member under legal disability. The
2 entity shall also provide former owners and members with
3 access to its books and records pertaining to the period
4 during which they were owners or members.

5 "(c) The governing documents of the entity may not
6 unreasonably restrict an owner's or member's right to
7 information or access to books and records.

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

16 "§10A-1-3.42.

17 "(a) A certificated ownership interest in a domestic
18 entity may contain an impression of the seal of the entity, if
19 any. A facsimile of the entity's seal may be printed or
20 lithographed on the certificate.

21 "(b) If a domestic entity is authorized to issue
22 ownership interests of more than one class or series, each
23 certificate representing ownership interests that is issued by
24 the entity must conspicuously state on the front or back of
25 the certificate:

26 "(1) the designations, preferences, limitations, and
27 relative rights of the ownership interests of each class or

1 series to the extent they have been determined and the
2 authority of the governing authority to make those
3 determinations as to subsequent classes or series; or

4 "(2) that the information required by subsection (1)
5 is stated in the domestic entity's governing documents and
6 that the domestic entity, on written request to the entity's
7 principal place of business or registered office, will provide
8 a free copy of that information to the record holder of the
9 certificate.

10 "(c) A certificate representing ownership interests
11 must state on the front of the certificate:

12 "(1) that the domestic entity is organized under the
13 laws of this state;

14 "(2) the name of the person to whom the certificate
15 is issued;

16 "(3) the number and class of ownership interests and
17 the designation of the series, if any, represented by the
18 certificate; and

19 "(4) if the ownership interests are shares, the par
20 value of each share represented by the certificate, or a
21 statement that the shares are without par value.

22 "(d) A certificate representing ownership interests
23 that is subject to a restriction, placed by or agreed to by
24 the domestic entity ~~under~~ pursuant to this title on the
25 transfer or registration of the transfer of the ownership
26 interests must conspicuously note the existence of the
27 restriction on the front or back of the certificate. Even if

1 not so noted, a restriction is enforceable against a person
2 with actual knowledge of the restriction.

3 "(e) Abbreviations may be used in the inscribing of
4 certificates representing ownership interests. Without limit-
5 ing the use of other abbreviations, however, the following or
6 substantially similar abbreviations may be used in the in-
7 scribing of such certificates, and shall be construed as
8 though they were written out in full and shall be accorded the
9 meaning ascribed herein.

10	"Abbreviation:	Meaning:
11	"TEN COM	As tenants in common. As joint tenants with rights of survivorship and no
12	"JTWROS	tenants in common. As joint tenants with rights of survivorship and no
13	"JT TEN	tenants in common.
14	"CUSTODIAN FOR,	As custodian for _____ (name of minor) under the Un-
15	UTMA	Transfers to Minor Act.

16 "§10A-1-4.01.

17 "(a) A filing instrument must be:

18 "(1) signed by the person or persons required by
19 this title or the applicable chapter to execute, and to
20 verify, if required by the applicable chapter, the filing
21 instrument; and

1 "(2) delivered, together with one exact or conformed
2 copy and the additional exact or conformed copies as required
3 by Section 10A-1-4.02(b) or (e) or other provision of this
4 title, to the ~~judge of probate or Secretary of State, as the~~
5 ~~case may be~~ filing officer under the provisions of Section
6 10A-1-4.02, in person or by mail or courier, or, if permitted
7 by the respective filing officer, by facsimile or electronic
8 transmission or any other comparable form of delivery.

9 "(b) A person authorized by this title to sign a
10 filing instrument for an entity is not required to show
11 evidence of the person's authority as a requirement for
12 filing.

13 "(c) The execution of a filing instrument
14 constitutes an affirmation by each person executing the
15 instrument that the facts therein are true, under penalties
16 for perjury prescribed by Section 13A-10-103 or its successor.

17 "(d) If a person required by this title to execute
18 any filing instrument fails or refuses to do so, any person
19 who is adversely affected by the failure or refusal may
20 petition the circuit court for the judicial circuit in which
21 the county is located where ~~under~~, pursuant to this title the
22 filing instrument would be filed, or if it would be filed with
23 the Secretary of State, in the circuit court in the county in
24 which the registered agent is located, and if no registered
25 agent is required, in the circuit court in the county in which
26 the entity has its principal place of business in this state,
27 and if the entity does not have a place of business in this

1 state, in the Circuit Court of Montgomery County, to direct
2 the execution of the filing instrument. If the court finds
3 that it is proper for the filing instrument to be executed and
4 that any person so designated has failed or refused to execute
5 the filing instrument, it shall order the ~~judge of probate of~~
6 ~~the county or the Secretary of State, as the case may be,~~
7 filing officer to record an appropriate filing instrument.

8 "§10A-1-4.02.

9 "(a) The following filing instruments shall be
10 delivered to the judge of probate for filing, except as the
11 chapter applicable to an entity or other provision of this
12 title provides for filing by the Secretary of State or another
13 filing officer:

14 "(1) certificates of formation or any amendments or
15 restatements thereof;

16 "(2) certificates of dissolution, other than a
17 statement of dissolution of a general partnership or a
18 statement of cancellation by a limited liability partnership;

19 "(3) certificates of revocation;

20 "(4) certificates of correction to any filing
21 instrument required to be delivered to the office of the judge
22 of probate for filing; and

23 "(5) any other filing instrument required or
24 permitted ~~under~~ pursuant to this title to be delivered to the
25 judge of probate for filing.

26 "(b) Any of the ~~following~~ filing instruments
27 delivered to the office of the judge of probate for filing in

1 accordance with subsections (a) (1) through (a) (4) shall be
2 accompanied by an additional exact or conformed copy to permit
3 the judge of probate to transmit to the Secretary of State a
4 certified copy thereof as required by subsection ~~(g)~~: (e).

5 ~~"(1) certificates of formation;~~

6 ~~"(2) amendments to certificates of formation that~~
7 ~~alter the name of any entity;~~

8 ~~"(3) restated certificates of formation;~~

9 ~~"(4) certificates of dissolution;~~

10 ~~"(5) certificates of revocation; and~~

11 ~~"(6) certificates of correction correcting any of~~
12 ~~the foregoing filing instruments.~~

13 "(c) The following filing instruments shall be
14 delivered to the Secretary of State for filing:

15 "(1) certificates, articles, or statements of
16 merger, ~~statements of conversion, and articles of share~~
17 exchange;

18 "(2) statements or registrations of a foreign entity
19 for authority to transact business in this state and any
20 statements, notices, or certificates of withdrawal or
21 termination or statements, notices, or certificates evidencing
22 the same or required or authorized under Article 7 of this
23 chapter;

24 "(3) the annual report of a business corporation,
25 which may be made as provided in ~~Section 10A-2-16.22~~ Article
26 16 of Chapter 2, or Article 16 of Chapter 2A, as applicable,
27 by filing with the Department of Revenue the public record

1 information required by Chapter 14A of Title 40, together with
2 the prescribed fee for the annual report;

3 "(4) for (i) corporations created by an act of the
4 Legislature prior to the adoption of the Constitution of
5 Alabama of 1901, ~~or for~~ and (ii) entities or organizations
6 ~~which have resulted from~~ are the converted or surviving
7 entities or organizations of a merger, share exchange, or
8 conversion, all filing instruments required by this title to
9 be delivered to the judge of probate for filing shall be
10 delivered to the Secretary of State for filing, except for (i)
11 certified copies of statements of authority, denial, or
12 cancellation thereof permitted to be delivered to the judge of
13 probate for filing pursuant to Chapter 8A, (ii) any documents
14 permitted to be delivered to the judge of probate for filing
15 pursuant to Chapter 17, and (iii) certified copies of
16 statements of merger or conversion permitted to be delivered
17 to the judge of probate for filing pursuant to Chapter 1,
18 Chapter 2A, Chapter 5A, Chapter 8A or Chapter 9A;

19 "(5) all filing instruments and any other filing
20 ~~instrument document~~ required or permitted under this title to
21 be delivered to the Secretary of State for filing pursuant to
22 Chapter 2 or Chapter 2A;

23 "~~(7)~~ (6) statements and any other document required
24 or permitted to be delivered to the Secretary of State for
25 filing ~~under~~ pursuant to Chapter 8A; ~~and~~

1 "(7) any other filing instruments or document
2 required or permitted to be delivered to the Secretary of
3 State for filing pursuant to this title;

4 "~~(6)~~ (8) articles of correction of any filing
5 instrument required or permitted to be delivered to the
6 Secretary of State for filing; and

7 "~~(8)~~ (9) any other filing instrument or document
8 required or permitted to be filed ~~under~~ pursuant to this title
9 and not expressly required or permitted to be delivered to the
10 Secretary of State or judge of probate or other designated
11 filing office for filing.

12 "~~(d) Certificates, articles, or statements of merger~~
13 ~~or articles of share exchange, and statements of conversion~~
14 ~~delivered to the Secretary of State for filing shall be~~
15 ~~accompanied by the additional number of exact or conformed~~
16 ~~copies of articles as may be required for purposes of~~
17 ~~subsection (f) hereof.~~

18 "~~(e)~~ (d) If the ~~judge of probate or Secretary of~~
19 ~~State, as the case may be,~~ filing officer finds that a filing
20 instrument delivered under this section and Section 10A-1-4.01
21 substantially conforms to the provisions of this title that
22 apply to the entity and that all required fees have been paid,
23 and if, in the case of a certificate of formation or an
24 amendment to a certificate of formation that would change the
25 name of the entity, the ~~judge of probate~~ filing officer finds
26 that the name of the entity has been reserved under Article 5
27 of this chapter, the ~~judge of probate or Secretary of State,~~

1 ~~as the case may be,~~ filing officer shall file it immediately
2 upon delivery by:

3 "(1) endorsing "filed," together with his or her
4 name and official title and the date and time of receipt on
5 the instrument and all copies required hereunder and on the
6 receipt for the filing fee;

7 "(2) accepting it into the filing system adopted by
8 ~~the judge of probate or Secretary of State~~ filing officer and
9 assigning the instrument a date of filing; and

10 "(3) delivering a copy thereof, endorsed as provided
11 in subdivision (1), with the filing fee receipt, or
12 acknowledgment of receipt of the instrument if no filing fee
13 is required, to the entity or its representative.

14 "~~(f)~~(e) In the case of any of the filing instruments
15 described in subsection (b), the judge of probate shall within
16 10 days transmit a certified copy of the filing instrument to
17 the Secretary of State. ~~In the case of certificates, articles,~~
18 ~~or statements of merger, statements of conversion, or articles~~
19 ~~of share exchange, the Secretary of State shall promptly~~
20 ~~transmit a certified copy thereof to the office of the judge~~
21 ~~of probate of the county in which each domestic entity's~~
22 ~~certificate of formation, if any, is filed.~~

23 "~~(g)~~(f) If the ~~judge of probate or Secretary of~~
24 ~~State,~~ ~~as the case may be,~~ filing officer refuses to file a
25 filing instrument, ~~he or she~~ the filing officer shall return
26 it to the domestic or foreign entity or its representative
27 within seven days after the filing instrument was delivered,

1 together with a brief, written explanation of the reason for
2 ~~his or her~~ the refusal.

3 "~~(h)(g)~~ The ~~judge of probate's or Secretary of~~
4 ~~State's~~ duty of the filing officer to file filing instruments
5 under pursuant to this title is ministerial. ~~His or her filing~~
6 Filing or refusing to file a filing instrument by the filing
7 officer does not:

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

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

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

15 "~~(i)(h)~~ The Secretary of State shall keep (1) an
16 alphabetical list of all domestic entities and registered
17 foreign entities, the certificates of formation, the
18 statements under Chapter 8A, or statements or registrations
19 for authority to transact business in this state, for which
20 are filed in his or her office, together with (2) with respect
21 to those domestic entities and registered foreign entities,
22 all filing instruments and any other document required or
23 permitted to be delivered to the Secretary of State for filing
24 pursuant to this title, and (3) the data contained in the
25 those filing instruments.

26 "§10A-1-4.04.

1 "(a) A court, public office, or official body shall
2 accept a certificate issued as provided by this title by the
3 ~~judge of probate or Secretary of State~~ filing officer or a
4 copy of a filing instrument accepted by the ~~judge of probate~~
5 ~~or Secretary of State~~ filing officer for filing as provided by
6 this title that is certified by the ~~judge of probate or~~
7 ~~Secretary of State~~ filing officer as prima facie evidence of
8 the facts stated in the certificate or instrument.

9 "(b) A court, public office, or official body may
10 record a certificate or certified copy described by subsection
11 (a).

12 "(c) A court, public office, or official body shall
13 accept a certificate issued under an official seal by the
14 ~~judge of probate or Secretary of State~~ filing officer as to
15 the existence or nonexistence of facts that relate to an
16 entity that would not appear from a certified copy of a filing
17 instrument as prima facie evidence of the existence or
18 nonexistence of the facts stated in the certificate.

19 "§10A-1-4.06.

20 "Each ~~judge of probate and the Secretary of State~~
21 filing officer shall have the powers reasonably necessary to
22 perform the duties required of him or her by this title.

23 "§10A-1-4.11.

24 "A filing instrument submitted to the ~~Secretary of~~
25 ~~State or judge of probate, as the case may be,~~ filing officer
26 takes effect on filing, except as permitted by Section

1 10A-1-4.12 or as provided by the provisions of this title
2 which apply to the entity making the filing or other law.

3 "§10A-1-4.13.

4 "(a) The parties to a filing instrument may abandon
5 the filing instrument if the instrument has not taken effect.

6 "(b) To abandon a filing instrument the parties to
7 the instrument must file with the filing officer a certificate
8 of abandonment.

9 "(c) A certificate of abandonment must:

10 "(1) be signed on behalf of each entity that is a
11 party to the action or transaction by the person authorized by
12 this title to act on behalf of the entity;

13 "(2) state the nature of the filing instrument to be
14 abandoned, the date of the instrument, and the parties to the
15 instrument; and

16 "(3) state that the filing instrument has been
17 abandoned in accordance with the agreement of the parties.

18 "(d) On the filing of the certificate of
19 abandonment, the action or transaction evidenced by the
20 original filing instrument is abandoned and may not take
21 effect.

22 "(e) If in the interim before a certificate of
23 abandonment is filed, the name of an entity that is a party to
24 the action or transaction becomes indistinguishable on the
25 records of the Secretary of State from the name of another
26 entity already on file or reserved or registered ~~under~~
27 pursuant to this title, the filing officer may not file the

1 certificate of abandonment unless the entity by or for whom
2 the certificate is filed changes its name in the manner
3 provided by this title for that entity.

4 "§10A-1-4.15.

5 "An acknowledgment of filing issued or other action
6 taken by the ~~Secretary of State or judge of probate, as the~~
7 ~~case may be, filing officer~~ affirming the filing of a filing
8 instrument that has a specific delayed effective date must
9 state the date and time at which the instrument takes effect.

10 "§10A-1-4.21.

11 "(a) A filing instrument that has been filed with
12 the ~~Secretary of State or judge of probate, as the case may~~
13 ~~be, filing officer~~ that is an inaccurate record of the event
14 or transaction evidenced in the instrument, that contains an
15 inaccurate or erroneous statement, or that was defectively or
16 erroneously signed, sealed, acknowledged, or verified may be
17 corrected by filing a certificate of correction.

18 "(b) A certificate of correction must be signed by
19 the person authorized by this title to act on behalf of the
20 entity.

21 "§10A-1-4.23.

22 "The certificate of correction must:

23 "(1) state the name of the entity;

24 "(2) identify the filing instrument to be corrected
25 by description and date of filing with the ~~Secretary of State~~
26 ~~or judge of probate, as the case may be filing officer~~;

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

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

5 "§10A-1-4.24.

6 "The certificate of correction shall be filed with
7 and acted on by the ~~Secretary of State or judge of probate, as~~
8 ~~the case may be,~~ filing officer as provided in Section
9 10A-1-4.02.

10 "§10A-1-4.25.

11 "(a) After the ~~Secretary of State or the judge of~~
12 ~~probate, as the case may be,~~ filing officer files the
13 certificate of correction, the filing instrument is considered
14 to have been corrected on the date the filing instrument was
15 originally filed, except as otherwise provided by subsection
16 (b).

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

22 "(c) An acknowledgment of filing or a similar
23 instrument issued by the ~~Secretary of State or judge of~~
24 ~~probate, as the case may be,~~ filing officer before a filing
25 instrument is corrected, with respect to the effect of filing
26 the original filing instrument, applies to the corrected
27 filing instrument as of the date the corrected filing

1 instrument is considered to have been filed under this
2 section.

3 "§10A-1-4.26.

4 "A filing instrument that an entity files with the
5 ~~Secretary of State or the judge of probate, as the case may~~
6 ~~be, filing officer~~ may be amended or supplemented in
7 accordance with the provisions of the chapter that apply to
8 that entity or in accordance with that entity's governing
9 documents. If neither the chapter that applies to that entity
10 nor the governing documents of that entity provides or
11 prohibits a process for the approval and filing of an
12 amendment or supplement to that filing instrument for that
13 entity, then that filing instrument may be amended or
14 supplemented and filed utilizing the same process for approval
15 and filing as was used to approve and file that filing
16 instrument.

17 "§10A-1-4.31.

18 "(a) ~~The judge of probate or the Secretary of State,~~
19 ~~as the case may be, filing officer~~ shall collect the following
20 fees when the filing instruments described in this title are
21 delivered to him or her for filing:

	FEE FOR STATE OF	FEE FOR THE JUDGE
"FILING INSTRUMENT	ALABAMA	OF PROBATE
"(1) Certificate of for-		
mation and restated cer-	\$100	\$50

1	ertificate of formation		
2	<u>(Except for filings pur-</u>		
3	<u>suant to Chapter 2 or</u>		
4	<u>Chapter 2A)</u>		
5	"(2) Amendment <u>Amend-</u>		
6	<u>ments</u> to certificate of		
7	formation <u>(Except for</u>		
8	<u>filings pursuant to</u>		
9	<u>Chapter 2 or Chapter 2A)</u>	\$50	\$25
10	"(3) Name reservations		
11	<u>and notice of transfer</u>		
12	<u>of name reservation</u>	\$25	<u>No fee</u>
13	"A. less than 24 hours	\$25	No fee
14	"B. 24 hours or more	\$10	No fee
15	"(4) Certificate, <u>arti-</u>		
16	<u>cles, or statements</u> of		
17	dissolution (other than		
18	a statement of dissolu-		
19	tion or cancellation un-		
20	der <u>(Except for filings</u>		
21	<u>pursuant to Chapter 2 or</u>		
22	<u>Chapter 2A or Chapter</u>		
23	8A)	\$100	\$50
24	"(5) Certificate, arti-		
25	cles, or statement of	\$100	\$50

1	merger, statement of		
2	conversion, articles of		
3	consolidation or share		
4	exchange		
5	" (6) <u>(5)</u> Foreign entity		
6	registration including a		
7	statement of foreign		
8	limited liability part-		
9	nership	\$150	No fee
10	" (7) <u>(6)</u> Certificate of		
11	existence	<u>\$25</u>	<u>No fee</u>
12	"A. Less than 24 hours	\$25	No fee
13	"B. 24 hours or more	\$10	No fee
14	" <u>(7) Certificates, arti-</u>		
15	<u>cles, or statements, and</u>		
16	<u>any document required or</u>		
17	<u>permitted to be filed</u>		
18	<u>with the Secretary of</u>		
19	<u>State pursuant to Chap-</u>		
20	<u>ter 2 or Chapter 2A</u>	<u>\$100</u>	<u>No fee</u>
21	"(8) Statements and any		
22	document required or		
23	permitted to be filed		
24	with the Secretary of		
25	State under <u>pursuant to</u>	\$100	No fee

1	Chapter 8A		
2	"(9) Certified <u>copy of</u>		
3	statements and any of		
4	<u>authority, denial, and</u>		
5	<u>cancellation thereof,</u>		
6	document required or		
7	permitted to be filed		
8	with the judge of pro-		
9	bate under <u>pursuant to</u>		
10	Chapter 8A	<u>No fee</u>	\$100
11	"(10) <u>Certificates, ar-</u>		
12	<u>ticles, or statements of</u>		
13	<u>merger, conversion, and</u>		
14	<u>share exchange (Except</u>		
15	<u>for filings pursuant to</u>		
16	<u>Chapter 1, Chapter 2,</u>		
17	<u>Chapter 2A, Chapter 5A,</u>		
18	<u>Chapter 8A, and Chapter</u>		
19	<u>9A)</u>	<u>\$100</u>	<u>\$50</u>
20	"(11) <u>Certificates, ar-</u>		
21	<u>ticles, or statements of</u>		
22	<u>merger, conversion, and</u>		
23	<u>share exchange filed</u>		
24	<u>pursuant to Chapter 1,</u>		
25	<u>Chapter 2, Chapter 2A,</u>		
26	<u>Chapter 5A, Chapter 8A,</u>	<u>\$100</u>	<u>No fee</u>

1	<u>and Chapter 9A</u>		
2	<u>"(12) Certified copy of</u>		
3	<u>certificates, articles,</u>		
4	<u>or statements of merger</u>		
5	<u>and conversion filed</u>		
6	<u>pursuant to Chapter 1,</u>		
7	<u>Chapter 2A, Chapter 5A,</u>		
8	<u>Chapter 8A, or Chapter</u>		
9	<u>9A</u>	<u>No fee</u>	<u>\$5</u>
10	<u>"(10) (13) Any other fil-</u>		
11	<u>ing instrument required</u>		
12	<u>or permitted to be filed</u>		
13	<u>under pursuant to this</u>		
14	<u>title</u>	<u>\$25</u>	<u>\$25</u>

15 "~~(b) When appropriate, two checks shall accompany a~~
16 ~~filing instrument delivered to the judge of probate or a~~
17 ~~filing instrument is to be delivered for filing only to the~~
18 ~~Secretary of State, that filing instrument shall be~~
19 ~~accompanied by a check payable to the State of Alabama. When a~~
20 ~~filing instrument is only to be delivered for filing to the~~
21 ~~judge of probate, that filing instrument shall be accompanied~~
22 ~~by a check payable to the judge of probate. When a filing~~
23 ~~instrument is to be delivered for filing to the judge of~~
24 ~~probate, and a copy is to be forwarded to the Secretary of~~
25 ~~State for filing, two checks shall accompany that filing~~

1 instrument and copy, one payable to the judge of probate ~~for~~
2 covering all charges for the judge of probate, and one payable
3 to the State of Alabama covering all charges for the Secretary
4 of State. ~~In the case of any filing instrument delivered for~~
5 ~~filing to the judge of probate accompanied by a check for the~~
6 ~~charges for the Secretary of State, the check for the~~
7 ~~Secretary of State;~~ and the check payable to the State of
8 Alabama shall be forwarded by the judge of probate to the
9 Secretary of State. ~~In the case of any filing instrument~~
10 ~~delivered for filing to the Secretary of State accompanied by~~
11 ~~a check for the judge of probate, the check for the judge of~~
12 ~~probate shall be forwarded by the Secretary of State to the~~
13 ~~judge of probate.~~

14 "(c) There is hereby established in the State
15 Treasury a fund to be known and designated as the Secretary of
16 State Entity Fund. All funds, fees, charges, costs, and
17 collections accruing to or collected by the Secretary of State
18 under the foregoing provisions of this section or any other
19 fees collected by the Secretary of State relating to entities
20 shall be deposited into the State Treasury to the credit of
21 the Secretary of State Entity Fund except as so provided in
22 subsection (e).

23 "(d) All funds now or hereafter deposited in the
24 State Treasury to the credit of the Secretary of State Entity
25 Fund shall not be expended for any purpose whatsoever unless
26 the same shall have been allotted and budgeted in accordance
27 with the provisions of Article 4 of Chapter 4 of Title 41, and

1 only in the amounts and for the purposes provided by the
2 Legislature in the general appropriation bill or this section.

3 "(e) Seventy percent of funds collected by the
4 Secretary of State in relation to entities during the fiscal
5 year shall be deposited to the credit of the State General
6 Fund.

7 "(f) The fees herein imposed for the office of the
8 judge of probate shall be charged and paid into the
9 appropriate county treasury or to the judge of probate as may
10 be authorized or required by law.

11 "(g) The Secretary of State shall collect the
12 following fees for copying and certifying the copy of any
13 filing instrument relating to a domestic or foreign entity:

14 "(1) Two dollars (\$2) a page for copying; and

15 "(2) Ten dollars (\$10) for the certificate.

16 "(h) The judge of probate shall collect the
17 following fees for copying and certifying the copy of any
18 filing instrument relating to an entity:

19 "(1) Two dollars (\$2) a page for copying; and

20 "(2) Ten dollars (\$10) for the certificate.

21 "(i) For requests of immediate expedition of
22 ~~documents to be obtained in less than 24 hours, other than~~
23 ~~name reservations and certificates of existence, by the~~
24 ~~Secretary of State regarding document filings, certifications,~~
25 and certificates to be obtained in less than 24 hours from the
26 Secretary of State, other than documents which may be
27 delivered to, or obtained from, the Secretary of State

1 electronically, in addition to required fees, a one hundred
2 dollar (\$100) surcharge shall be imposed.

3 "§10A-1-5.01.

4 "The filing of a certificate of formation by a
5 filing entity ~~under~~ pursuant to this title, an application for
6 registration or statement of foreign limited liability
7 partnership by a foreign filing entity ~~under~~ pursuant to this
8 title, or an application for reservation or registration of a
9 name ~~under~~ pursuant to this article does not authorize the use
10 of a name in this state in violation of a right of another
11 under:

12 "(1) ~~the~~ The Trademark Act of 1946, as amended, 15
13 U.S.C. Section 1051 et seq.; or

14 "(2) Chapter 12 of Title 8; or

15 "(3) Common law.

16 "§10A-1-5.08.

17 "The name of a domestic professional corporation or
18 of a foreign professional corporation registered to transact
19 business in this state must contain the words "professional
20 corporation" or the abbreviation "P.C." or "PC" and shall
21 otherwise conform to any rule promulgated by a licensing
22 authority having jurisdiction of a professional service
23 described in the certificate of formation of the professional
24 corporation.

25 "§10A-1-6.01.

26 "In this division:

1 "(1) "Delegate" means a person who is serving or who
2 has served as a representative of an enterprise at the request
3 of that enterprise at another enterprise. A person is a
4 delegate to an employee benefit plan if the performance of the
5 person's official duties to the enterprise also imposes duties
6 on or otherwise involves service by the person to the plan or
7 participants in or beneficiaries of the plan.

8 "(2) "Enterprise" means a domestic entity or an
9 organization subject to this article, including a predecessor
10 domestic entity or organization.

11 "(3) "Expenses" includes court costs and attorney's
12 fees. The term does not include a judgment, a penalty, a
13 settlement, a fine, or an excise or similar tax or an excise
14 tax assessed against the person regarding an employee benefit
15 plan.

16 "(4) "Former governing person" means a person who
17 was a governing person of an enterprise.

18 "(5) "Official capacity" means:

19 "(A) with respect to a governing person, the office
20 of the governing person in the enterprise or the exercise of
21 authority by or on behalf of the governing person ~~under~~
22 pursuant to this title or the governing documents of the
23 enterprise; and

24 "(B) with respect to a person other than a governing
25 person, the elective or appointive office, if any, in the
26 enterprise held by the person or the relationship undertaken
27 by the person on behalf of the enterprise.

1 "(6) "Predecessor enterprise" means a sole
2 proprietorship or organization that is a predecessor to an
3 enterprise in:

4 "(A) a merger, conversion, consolidation, or other
5 transaction in which the liabilities of the predecessor
6 enterprise are transferred or allocated to the enterprise by
7 operation of law; or

8 "(B) any other transaction in which the enterprise
9 assumes the liabilities of the predecessor enterprise and the
10 liabilities that are the subject matter of this chapter are
11 not specifically excluded.

12 "(7) "Proceeding" means:

13 "(A) a threatened, pending, or completed action or
14 other proceeding, whether civil, criminal, administrative,
15 arbitrative, or investigative and whether formal or informal;

16 "(B) an appeal of an action or proceeding described
17 by paragraph (A); and

18 "(C) an inquiry or investigation that could lead to
19 an action or proceeding described by paragraph (A).

20 "(8) "Representative" means a person serving as a
21 partner, director, officer, venturer, proprietor, trustee,
22 employee, or agent of an enterprise or serving a similar
23 function for an enterprise.

24 "(9) "Respondent" means a person named as a
25 respondent or defendant in a proceeding.

26 "§10A-1-6.02.

1 ~~"(a) Except as provided by subsection (b), this~~ This
2 article does not apply to ~~a:~~ general partnerships, limited
3 liability partnerships, limited liability companies, limited
4 partnerships, limited liability limited partnerships,
5 nonprofit corporations, and business corporations.

6 ~~"(1) general partnership;~~

7 ~~"(2) limited liability company;~~

8 ~~"(3) limited partnership;~~

9 ~~"(4) nonprofit corporation; and~~

10 ~~"(5) business corporation.~~

11 ~~"(b) The governing documents of a general~~
12 ~~partnership, limited liability company, limited partnership,~~
13 ~~nonprofit corporation, or business corporation may adopt~~
14 ~~provisions of this article or may contain enforceable~~
15 ~~provisions relating to:~~

16 ~~"(1) indemnification;~~

17 ~~"(2) advancement or reimbursement of expenses;~~

18 ~~"(3) insurance; or~~

19 ~~"(4) other arrangements.~~

20 ~~"§10A-1-7.01.~~

21 "(a) (1) For purposes of this Article 7, the terms
22 register, registering, and registered include (i) a foreign
23 entity other than a foreign limited liability partnership
24 delivering to the Secretary of State for filing an application
25 for registration and the Secretary of State filing the
26 application for registration, and (ii) a foreign limited
27 liability partnership delivering to the Secretary of State for

1 filing a statement of foreign limited liability partnership
2 and the Secretary of State filing the statement of foreign
3 limited liability partnership.

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

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

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

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

17 "(2) is a foreign limited liability partnership; or

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

20 "(d) A foreign entity described by subsection (b)
21 must maintain the foreign entity's registration while
22 transacting business in this state.

23 "§10A-1-7.04.

24 "(a) (1) A foreign entity described in Section
25 10A-1-7.01(c), other than a foreign limited liability
26 partnership, registers by delivering to the Secretary of State

1 for filing an application for registration in accordance with
2 the procedures in Article 4.

3 "(2) A foreign limited liability partnership
4 registers by delivering to the Secretary of State for filing a
5 statement of foreign limited liability partnership in
6 accordance with the procedures in Article 4.

7 "(b) The application for registration of a foreign
8 entity described in Section 10A-1-7.01(c) other than a foreign
9 limited liability partnership must state:

10 "(1) the foreign entity's name or, if that name is
11 not available for use in this state or otherwise would not
12 comply with Article 5, a name that satisfies the requirements
13 of Section 10A-1-7.07 under which the foreign entity will
14 transact business in this state;

15 "(2) the foreign entity's type;

16 "(3) the foreign entity's jurisdiction of formation;

17 "(4) the date of the foreign entity's formation;

18 "(5) that the foreign entity exists as a valid
19 foreign entity of the stated type under the laws of the
20 foreign entity's jurisdiction of formation;

21 "(6) the date the foreign entity began or will begin
22 to transact business in this state;

23 "(7) the street address and mailing address, if
24 different, of the principal office of the foreign entity and;

25 "(8) the street address and mailing address, if
26 different, of the initial registered office and the name of

1 the initial registered agent for service of process which
2 Article 5 requires to be maintained at that office.

3 "(c) The statement of foreign limited liability
4 partnership must state:

5 "(1) the foreign limited partnership's name or, if
6 that name is not available for use in this state or otherwise
7 would not comply with Article 5, a name that satisfies the
8 requirements of Section 10A-1-7.07 under which the foreign
9 entity will transact business in this state;

10 "(2) the jurisdiction which governs the foreign
11 limited liability partnership's partnership agreement and
12 under which it is a limited liability partnership;

13 "(3) the date of the foreign limited liability
14 partnership's formation;

15 "(4) that the foreign limited liability partnership
16 exists as a valid foreign limited liability partnership under
17 the laws of the jurisdiction which governs the foreign limited
18 liability partnership's partnership agreement and under which
19 it is a limited liability partnership;

20 "(5) the date the foreign limited liability
21 partnership will begin to transact business in this state;

22 "(6) the street address and mailing address, if
23 different, of the principal office of the foreign limited
24 liability partnership;

25 "(7) the street address and mailing address, if
26 different, of the initial registered office and the name of

1 the initial registered agent for service of process which
2 Article 5 requires to be maintained at that office;

3 "(d) The application for registration of a foreign
4 entity described in Section 10A-1-7.01(c) other than a foreign
5 limited liability partnership shall be executed by one or more
6 persons authorized to execute an application for registration.
7 The statement of foreign limited liability partnership shall
8 be executed by one or more partners authorized to execute a
9 statement of foreign limited liability partnership.

10 "(e) The status of the foreign entity after
11 registration and the liability of its owners, managers,
12 members, or managerial officials shall not be adversely
13 affected by error or subsequent changes in the information
14 stated in the application for registration or statement of
15 foreign limited liability partnership, as applicable.

16 "(f) The fact that an application for registration
17 or a statement of foreign limited liability partnership, as
18 applicable, is on file with the Secretary of State is notice
19 that the foreign entity is authorized to transact business in
20 this state and as notice of all facts required to be set forth
21 in the application for registration or the statement of
22 foreign limited liability partnership, as applicable.

23 "(g) A foreign entity may register regardless of any
24 differences between the law of the foreign entity's
25 jurisdiction and of this state applicable to the governing of
26 the internal affairs or to the liability of an owner, member,
27 or managerial official. Notwithstanding the foregoing, no

1 foreign entity may carry on in this state any business of a
2 character that may not lawfully be carried on by a domestic
3 entity of the same type.

4 "(h) A statement of foreign limited liability
5 partnership is a filing instrument.

6 "§10A-1-7.11.

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

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

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

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

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

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

23 "(5) that the foreign entity:

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

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

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

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

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

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

25 "(d) If the existence or separate existence of a
26 foreign entity registered in this state terminates, a
27 certificate by an authorized governmental official of the

1 entity's jurisdiction of formation that evidences the
2 termination shall be filed with the Secretary of State.

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

7 "§10A-1-7.21.

8 "(a) A foreign entity transacting business in this
9 state, except a corporation or other organization formed ~~under~~
10 pursuant to federal law, may not maintain any action, suit, or
11 proceeding in any court of this state until it has registered
12 in this state.

13 "(b) The failure of a foreign entity to register in
14 this state does not impair the validity of any contract or act
15 of the foreign entity or prevent the foreign entity from
16 defending any action, suit, or proceeding in any court of this
17 state.

18 "(c) A foreign entity, by transacting business in
19 this state without registration, shall be deemed to consent to
20 service of process with respect to causes of action arising
21 out of business transacted in this state, or to service of any
22 notice or demand required or permitted by law, by registered
23 mail addressed to the foreign entity at the office required to
24 be maintained in the state or other jurisdiction where it is
25 organized, or, if not so required, at the principal office of
26 the entity, or by serving the entity by any method permitted
27 under Sections 10A-1-5.35 and 10A-1-5.36.

1 "(d) The liability of an owner or owners of a
2 foreign entity is governed by the laws of the state or other
3 jurisdictions where it is organized, and any limitations on
4 that liability are not waived solely by reason of having
5 transacted business in Alabama without registration.

6 "(e) This division applies to a foreign entity
7 transacting business in this state without registering with
8 the Secretary of State.

9 "§10A-1-7.31.

10 "A foreign entity may not conduct in this state a
11 business, activity, not for profit activity, or any other
12 activity, whether or not for profit, that is not permitted by
13 this title to be transacted by the domestic entity to which it
14 most closely corresponds, unless other law of this state
15 authorizes the foreign entity to conduct the business,
16 activity, not for profit activity, or any other activity,
17 whether or not for profit.

18 "§10A-1-8.01.

19 "(a) A conversion of an entity may be accomplished
20 as provided in this section:

21 "(1) CORPORATIONS.

22 "a. The terms and conditions of a plan of conversion
23 of a corporation, other than a nonprofit corporation, must be
24 approved: (i) for corporations governed by Chapter 2, by all
25 of the corporation's ~~shareholders~~ stockholders or as otherwise
26 provided in the corporation's governing documents, ~~(but in no~~
27 case may the vote required for ~~shareholder~~ stockholder

1 approval be set at less than a majority of the votes entitled
2 to be cast by each voting group entitled by law to vote
3 separately on the conversion); or (ii) for corporations
4 governed by Chapter 2A, in accordance with the procedures and
5 by the stockholder vote required by Article 9 of Chapter 2A.

6 If the governing documents provide for approval of a
7 conversion by less than all of a corporation's ~~shareholders~~
8 stockholders, approval of the conversion shall constitute
9 corporate action subject to dissenter's rights pursuant to
10 Article 13 of Chapter 2 or appraisal rights pursuant to
11 Article 13 of Chapter 2A, as applicable, of the Alabama
12 Business Corporation Law. No conversion of a corporation to a
13 general or limited partnership may be effected without the
14 consent in writing of each ~~shareholder~~ stockholder who will
15 have personal liability with respect to the converted entity,
16 notwithstanding any provision in the governing documents of
17 the converting corporation providing for less than unanimous
18 ~~shareholder~~ stockholder approval for the conversion.

19 "b. The terms and conditions of a plan of conversion
20 of a nonprofit corporation must be approved by all the
21 nonprofit corporation's members entitled to vote thereon, if
22 it is a nonprofit corporation with members with voting rights,
23 or as otherwise provided in the nonprofit corporation's
24 governing documents; but in no case may the governing
25 documents provide for approval by less than a majority of the
26 members entitled to vote thereon. If the converting nonprofit
27 corporation has no members, or no members entitled to vote

1 thereon, the terms and conditions of the plan of conversion
2 must be approved by a unanimous vote of the board of directors
3 of the converting nonprofit corporation, or as otherwise
4 provided in the governing documents; but in no case may the
5 governing documents provide for approval by less than a
6 majority of the board of directors.

7 "(2) LIMITED PARTNERSHIPS, INCLUDING LIMITED
8 LIABILITY LIMITED PARTNERSHIPS. The terms and conditions of a
9 plan of conversion of a limited partnership must be approved
10 by all of the partners or as otherwise provided in the
11 partnership agreement. No conversion of a limited partnership
12 to a general partnership may be effected without the consent
13 in writing of each limited partner who will have personal
14 liability with respect to the converted entity,
15 notwithstanding any provision in the limited partnership
16 agreement of the converting limited partnership providing for
17 approval of the conversion by less than all partners.

18 "(3) LIMITED LIABILITY COMPANIES. The terms and
19 conditions of a plan of conversion of a limited liability
20 company must be approved by all of the limited liability
21 company's members or as otherwise provided in the limited
22 liability company's governing documents. No conversion of a
23 limited liability company to a general or limited partnership
24 may be effected without the consent in writing of each member
25 who will have personal liability with respect to the converted
26 entity, notwithstanding any provision in the governing
27 documents of the converting limited liability company

1 providing for less than unanimous member approval for the
2 conversion.

3 "(4) GENERAL PARTNERSHIPS, INCLUDING LIMITED
4 LIABILITY PARTNERSHIPS. The terms and conditions of a plan of
5 conversion of a general partnership must be approved by all of
6 the partners or as otherwise provided in the partnership
7 agreement. No conversion of a limited liability partnership to
8 a general or limited partnership may be effected without the
9 consent in writing of each partner who will have personal
10 liability with respect to the converted entity,
11 notwithstanding any provision in the partnership agreement of
12 the converting limited liability partnership providing for
13 less than unanimous partner approval for the conversion. If a
14 general partnership is the converting organization and that
15 general partnership does not have an effective statement of
16 partnership, statement of not for profit partnership, or
17 statement of limited liability partnership on file with the
18 Secretary of State, then that general partnership must, before
19 proceeding with a conversion deliver to the Secretary of State
20 for filing, a statement of partnership, statement of not for
21 profit partnership, or statement of limited liability
22 partnership simultaneously with the delivery to the Secretary
23 of State for filing, of a statement of conversion.

24 "(5) REAL ESTATE INVESTMENT TRUST. The terms and
25 conditions of a plan of conversion of a real estate investment
26 trust must be approved by all of the trust's shareholders or
27 as otherwise provided in the trust's declaration of trust; but

1 in no case may the vote required for shareholder approval be
2 set at less than a majority of all the votes entitled to be
3 cast. No conversion of a real estate investment trust to a
4 general or limited partnership may be effected without the
5 consent in writing of each shareholder who will have personal
6 liability with respect to the converted entity,
7 notwithstanding any provision in the declaration of trust of
8 the converting real estate investment trust providing for less
9 than unanimous shareholder approval for the conversion.

10 "(6) OTHER ENTITY. The terms and conditions of a
11 plan of conversion of any entity not specified above must be
12 approved by all owners of the converting entity. No conversion
13 of any entity shall be effected without the consent in writing
14 of any owner of the converting entity who has limited
15 liability and who shall become an owner without limited
16 liability protection of the converted entity.

17 "(7) ENTITY WITHOUT OWNERS. If the converting entity
18 does not have owners, the terms and conditions of the plan of
19 conversion must be unanimously approved by the governing
20 authority of the converting entity.

21 "(b) The plan of conversion must be in writing, and:

22 "(1) must include the following:

23 "a. the name, type of entity, and mailing address of
24 the principal office of the converting entity, and its unique
25 identifying number or other designation as assigned by the
26 Secretary of State, if any, before conversion;

1 "b. the name, type of entity, and mailing address of
2 the principal office of the converted entity after conversion;

3 "c. the terms and conditions of the conversion,
4 including the manner and basis for converting interests in the
5 converting entity into any combination of money, interests in
6 the converted entity, and other consideration allowed in
7 subsection (c); and

8 "d. the organizational documents of the converted
9 entity; and

10 "(2) may include other provisions relating to the
11 conversion not prohibited by law.

12 "(c) In connection with a conversion, rights or
13 securities of or interests in a converting entity may be
14 exchanged for or converted into cash, property, or rights or
15 securities of or interests in the converted entity, or, in
16 addition to or in lieu thereof, may be exchanged for or
17 converted into cash, property, or rights or securities of or
18 interests in another entity or may be cancelled.

19 "(d) After a plan of conversion is approved and
20 before the conversion takes effect, the plan may be amended or
21 abandoned as provided in the plan, or if the plan does not
22 provide for amendment or abandonment, in the same manner as
23 required for the approval of the plan of conversion
24 originally.

25 ~~"(b)(e)~~ (e) After the conversion is approved pursuant to
26 subsection (a), the following documentation and filing
27 requirements apply:

1 ~~"(1) If the conversion is to a corporation, limited~~
2 ~~liability company, limited partnership, real estate investment~~
3 ~~trust, or other entity required to file a certificate of~~
4 ~~formation, the statement of conversion, when filed in~~
5 ~~accordance with Section 10A-1-4.02(c)(1), shall be deemed to:~~

6 ~~"a. constitute a certificate of formation or amended~~
7 ~~and restated certificate of formation, as the case may be, for~~
8 ~~the converted entity; and~~

9 ~~"b. shall satisfy the requirements of Section~~
10 ~~10A-1-4.02(a).~~

11 ~~"(2) In addition to any information or statements~~
12 ~~otherwise required by law to be included in a certificate of~~
13 ~~formation for a filing entity, a statement of conversion shall~~
14 ~~include the following:~~

15 ~~"(1) if the converting entity is a domestic entity,~~
16 ~~the converting entity shall deliver to the Secretary of State~~
17 ~~for filing, a statement of conversion, which must include:~~

18 ~~"a. the name, type of entity, and mailing address of~~
19 ~~the principal office of the converting entity, and its unique~~
20 ~~identifying number or other designation as assigned by the~~
21 ~~Secretary of State, if any, before conversion;~~

22 ~~"b. the date of the filing of the certificate of~~
23 ~~formation of the converting entity, if any, and all prior~~
24 ~~amendments and the filing office or offices, if any, where~~
25 ~~such is filed;~~

26 ~~"c. a statement that the converting entity has been~~
27 ~~converted into the converted entity;~~

1 "d. the name and type of entity of the converted
2 entity and the jurisdiction of its governing statute;

3 "e. the street and mailing address of the principal
4 office of the converted entity;

5 "f. the date the conversion is effective under the
6 governing statute of the converted entity;

7 "g. a statement that the conversion was approved as
8 required by this chapter;

9 "h. a statement that the conversion was approved as
10 required by the governing statute of the converted entity;

11 "i. a statement that a copy of the plan of
12 conversion will be furnished by the converted entity, on
13 request and without cost, to any owner of the converted or
14 converting entity; and

15 "j. if the converted entity is a foreign entity not
16 authorized to conduct activities and affairs in this state,
17 the street and mailing address of an office for the purposes
18 of Section 10A-1-8.04 (b); and

19 "(2) if the converted entity is (I) a domestic
20 filing entity, the converting entity shall deliver to the
21 Secretary of State for filing a certificate of formation or
22 (II) a general partnership, the converting entity shall
23 deliver to the Secretary of State for filing a statement of
24 partnership, a statement of not for profit partnership, or a
25 statement of limited liability partnership, as applicable,
26 which certificate of formation or statement of partnership,
27 statement of not for profit partnership, or statement of

1 limited liability partnership, as applicable, must include, in
2 addition to the information required in the chapter governing
3 the certificate of formation of the converted entity, the
4 following:

5 "a. The name ~~and,~~ mailing address of the principal
6 office of, type of entity ~~of the converted entity,~~ and the
7 jurisdiction of ~~its~~ the governing statute of the converting
8 entity and its unique identifying number or other designation
9 as assigned by the Secretary of State, ~~if any,~~ before
10 conversion;

11 "~~b. The former name of the converting entity.~~

12 "~~c.b.~~ A statement that the converting entity has
13 been converted into the converted entity~~;~~;

14 "~~d.c.~~ The ~~public~~ filing office where the certificate
15 of formation, if any, of the converting entity is filed and
16 the date of the filing thereof~~;~~;

17 "~~e.d.~~ If the converted entity is one in which one or
18 more owners lack limited liability protection, a statement
19 that each owner of the converting entity who is to become an
20 owner without limited liability protection of the converted
21 entity has consented in writing to the conversion as required
22 by this section~~;~~ and

23 "~~f.e.~~ A statement that the conversion was approved
24 pursuant to this section and, if ~~either~~ the converting entity
25 ~~or the converted entity~~ is a foreign entity, that the
26 conversion was approved as required by the governing statute
27 of such foreign entity~~;~~;

1 "(3) if the converting entity is required pursuant
2 to subsections (e) (2) and (e) (3) to deliver to the Secretary
3 of State for filing both (I) a statement of conversion and
4 (II) (A) a certificate of formation or (B) a statement of
5 partnership, statement of not for profit partnership, or
6 statement of limited liability partnership, as applicable,
7 then the converting entity shall deliver the statement of
8 conversion and the certificate of formation or the statement
9 of partnership, statement of not for profit partnership or
10 statement of limited liability partnership, as applicable, to
11 the Secretary of State simultaneously; and

12 "(4) if the converting entity is a general
13 partnership and that partnership does not have an effective
14 statement of partnership, statement of not for profit
15 partnership, or statement of limited liability partnership on
16 file with the Secretary of State, then the converting
17 organization must deliver to the Secretary of State for
18 filing, a statement of partnership, statement of not for
19 profit partnership, or statement of limited liability
20 partnership simultaneously with the delivery to the Secretary
21 of State for filing, of a statement of conversion.

22 "(f) A conversion becomes effective:

23 "(1) if the converted entity is a domestic filing
24 entity, the effective date determined in accordance with
25 Article 4 of this chapter; and

1 "(2) if the converted entity is not a domestic
2 filing entity, as provided by the governing statute of the
3 converted entity.

4 "~~(3)(g)~~ After the conversion has become effective in
5 accordance with subsection ~~(c)(f)~~, then, ~~as provided in~~
6 ~~Section 10A-1-4.02(c)(4)~~ except for (i) certified copies of
7 statements of authority, denial, or cancellation thereof
8 permitted to be delivered to the judge of probate for filing
9 pursuant to Chapter 8A, (ii) any document permitted to be
10 delivered to the judge of probate for filing pursuant to
11 Chapter 17, and (iii) certified copies of statements of merger
12 or conversion permitted to be delivered to the judge of
13 probate for filing pursuant to Chapter 1, Chapter 2A, Chapter
14 5A, Chapter 8A, or Chapter 9A, all filing instruments with
15 respect to the converted entity that would otherwise be
16 required by this title to be delivered to the judge of probate
17 for filing shall instead be delivered to the Secretary of
18 State for filing.

19 "~~(c) A(h)~~ When a conversion takes effect as follows
20 becomes effective:

21 "~~(1) Upon the filing of the statement of conversion~~
22 ~~in accordance with Section 10A-1-4.02(c)(1), except as~~
23 ~~otherwise provided in subdivision (2).~~

24 "~~(2) Upon any delayed effective date if, but only~~
25 ~~if, each of the following requirements is satisfied:~~

26 "~~a. A delayed effective date is specified in the~~
27 ~~statement of conversion; and~~

1 ~~"b. If either the converted entity or the converting~~
2 ~~entity is a foreign entity, then any filing required under the~~
3 ~~governing statute of such foreign entity to effectuate the~~
4 ~~conversion is filed before the effective date specified in the~~
5 ~~statement of conversion.~~

6 ~~"(3) If a delayed effective date is specified, and~~
7 ~~the conditions of subdivision (2) are met, the conversion is~~
8 ~~effective at the close of business, unless a different hour is~~
9 ~~specified, on that date.~~

10 ~~"(d) Conversion has the following effects:~~

11 ~~"(1)a. Any entity that has been converted pursuant~~
12 ~~to this article is for all purposes the same entity that~~
13 ~~existed before the conversion and the conversion shall~~
14 ~~constitute a continuation of the existence of the converting~~
15 ~~entity in the form of the converted entity. The conversion~~
16 ~~shall not be deemed to constitute a dissolution or termination~~
17 ~~of the converting entity.~~

18 ~~"b. If the Secretary of State has assigned a unique~~
19 ~~identifying number or other designation to the converting~~
20 ~~entity, that number or designation shall continue to be~~
21 ~~assigned to the converted entity.~~

22 ~~"(2)a. All (1) all property, real, personal, and~~
23 ~~mixed owned by the converting entity; all rights, immunities,~~
24 ~~and franchises of the converting entity, of a public as well~~
25 ~~as a private nature; and all debts or obligations due the~~
26 ~~converting entity, shall remain owned and held by, vested in,~~
27 ~~and due to, the converted entity, shall not be deemed to have~~

1 ~~been transferred to the converted entity as a consequence of~~
2 ~~the conversion, and and contract rights owned by the~~
3 ~~converting entity remain vested in the converted entity~~
4 ~~without transfer, reversion or impairment, and the title to~~
5 ~~any property vested by deed or otherwise in the converting~~
6 ~~entity shall not revert or be in any way impaired by reason of~~
7 ~~the conversion.;~~

8 "b. ~~A certified copy of the statement of conversion~~
9 ~~may be filed in the office of the judge of probate in any~~
10 ~~county in which the converting entity owned real property, to~~
11 ~~be recorded without payment and without collection by the~~
12 ~~judge of probate of any deed or other transfer tax or fee. The~~
13 ~~judge of probate shall, however, be entitled to collect the~~
14 ~~filing fees prescribed by Section 12-19-90. Any filing shall~~
15 ~~evidence chain of title, but lack of filing shall not affect~~
16 ~~the converted entity's title to the real property.~~

17 "~~(3) All~~(2) ~~all~~ debts, obligations, and or other
18 liabilities of the converting entity ~~shall~~ continue as the
19 debts, obligations, and or other liabilities of the converted
20 entity and ~~the converted entity shall continue to be~~
21 ~~responsible and liable for all the liabilities and obligations~~
22 ~~of the converting entity. Neither neither the rights of~~
23 ~~creditors, nor any the liens upon the property of the~~
24 ~~converting entity, shall be impaired by the conversion, and an~~
25 ~~owner of the converted entity shall continue to be liable for~~
26 ~~all obligations of the converting entity for which the owner~~
27 ~~was personally liable before the conversion.;~~

1 ~~"(4) Any claim existing or any~~ (3) an action or
2 proceeding of any kind pending by or against the converting
3 entity shall be prosecuted or continued continues as if the
4 conversion had not occurred and the name of the converted
5 entity may, but need not, be substituted for the name of the
6 converting entity in any pending action or proceeding;

7 "(4) except as prohibited by law other than this
8 chapter, all of the rights, privileges, immunities, powers,
9 and purposes of the converting entity remain vested in the
10 converted entity;

11 "(5) except as otherwise provided in the statement
12 of conversion, the terms and conditions of the statement of
13 conversion take effect;

14 "(6) except as otherwise agreed, for all purposes of
15 the laws of this state, the converting entity shall not be
16 required to wind up its affairs or pay its liabilities and
17 distribute its assets, and the conversion shall not be deemed
18 to constitute a dissolution of the converting entity;

19 "(7) for all purposes of the laws of this state, the
20 rights, privileges, powers, interests in property, debts,
21 liabilities and duties of the converting entity, shall be the
22 rights, privileges, powers, interests in property, debts,
23 liabilities and duties of the converted entity, and shall not
24 be deemed as a consequence of the conversion, to have been
25 transferred to the converted entity;

26 "(8) if the converted entity is a domestic entity,
27 for all purposes of the laws of this state, the converted

1 entity shall be deemed to be the same entity as the converting
2 entity, and the conversion shall constitute a continuation of
3 the existence of the converting entity in the form of the
4 converted entity;

5 "(9) if the converting entity is a domestic entity,
6 the existence of the converted entity shall be deemed to have
7 commenced on the date the converting entity commenced its
8 existence in the jurisdiction in which the converting entity
9 was first created, formed, organized, incorporated, or
10 otherwise came into being;

11 "(10) the conversion shall not affect the choice of
12 law applicable to matters arising prior to conversion;

13 (11) if the Secretary of State has assigned a unique
14 identifying number or other designation to the converting
15 entity and (i) the converted entity is formed pursuant to the
16 laws of this state or (ii) the converted entity is, within 30
17 days after the effective date of the conversion, registered to
18 transact business in this state, then that unique identifying
19 number or other designation shall continue to be assigned to
20 the converted entity; and

21 "(5)a. (12)a. An owner with limited liability
22 protection remains liable, if at all, for an obligation
23 incurred by the converting entity before the conversion takes
24 effect only to the extent, if any, the owner would have been
25 liable if the conversion had not occurred.

26 "b. An owner with limited liability protection who
27 becomes an owner without limited liability protection is

1 liable for an obligation of the converted entity incurred
2 after conversion to the extent provided for by the laws
3 applicable to the converted entity.

4 ~~"(6)(13)~~ An owner without limited liability
5 protection who as a result of a conversion becomes an owner of
6 a converted entity with limited liability protection remains
7 liable for an obligation incurred by the converting entity
8 before the conversion takes effect only to the extent, if any,
9 the owner would have been liable if the conversion had not
10 occurred.

11 "(i) If:

12 "(1) the converting entity is a filing entity, a
13 general partnership with an effective statement of
14 partnership, statement of not for profit partnership, or
15 statement of limited liability partnership on file with the
16 Secretary of State, a foreign filing entity registered to
17 transact business or not for profit activity in this state or
18 a qualified foreign limited liability partnership;

19 "(2) the converted entity will be a filing entity, a
20 general partnership with an effective statement of
21 partnership, statement of not for profit partnership, or
22 statement of limited liability partnership on file with the
23 Secretary of State, a foreign filing entity registered to
24 transact business or not for profit activity in this state or
25 a qualified foreign limited liability partnership;

1 "(3) the name of the converting entity and the
2 converted entity are to be the same, other than words,
3 phrases, or abbreviations indicating the type of entity; and

4 "(4) the name of the converted entity complies with
5 Division A of Article 5 of Chapter 1 or Section 10A-1-7.07, as
6 the case may be;

7 "then, notwithstanding Division B of Article 5 of
8 Chapter 1, no name reservation shall be required and the
9 converted entity shall for all purposes of this title be
10 entitled to utilize the name of the converting entity without
11 any further action by the converting entity or the converted
12 entity.

13 "(j) A certified copy of the statement of conversion
14 may be delivered to the office of the judge of probate in any
15 county in which the converting entity owned real property, to
16 be recorded without payment and without collection by the
17 judge of probate of any deed or other transfer tax or fee. The
18 judge of probate shall, however, be entitled to collect a
19 filing fee of five dollars (\$5). Any filing shall evidence
20 chain of title, but lack of filing shall not affect the
21 converted entity's title to the real property.

22 "§10A-1-8.02.

23 ~~"(a) Pursuant to an approved plan of merger, a~~
24 ~~corporation, limited partnership, limited liability company,~~
25 ~~general partnership, real estate investment trust, or any~~
26 ~~other entity may merge with any other entity or A merger of~~
27 ~~two or more entities, whether the other entity or entities are~~

1 the same or another form of entity, may be accomplished as
2 provided in this section.

3 ~~"(b) A plan of merger shall include the following:~~

4 ~~"(1) The name of each entity that is a party to the~~
5 ~~merger.~~

6 ~~"(2) The name of the surviving entity into which the~~
7 ~~other entity or entities will merge.~~

8 ~~"(3) The form of the surviving entity and the status~~
9 ~~in the surviving entity of each owner of an entity that is a~~
10 ~~party to the merger.~~

11 ~~"(4) The terms and conditions of the merger.~~

12 ~~"(5) The manner and basis of converting the~~
13 ~~interests of each party to the merger into interests or~~
14 ~~obligations of the surviving entity, or into money or other~~
15 ~~property in whole or part.~~

16 ~~"(c) A plan of merger may set forth:~~

17 ~~"(1) Amendments to the certificate of formation of~~
18 ~~the surviving entity.~~

19 ~~"(2) Other provisions relating to the merger.~~

20 ~~"(d) A plan of merger shall be approved as follows:~~

21 ~~"(1) CORPORATIONS.~~

22 ~~"a. In the case of a corporation, other than a~~
23 ~~nonprofit corporation, that is a party to a merger, ~~the~~ a plan~~
24 ~~of merger must be approved in accordance with the procedures~~
25 ~~and by the ~~shareholder~~ stockholder vote required by ~~Section~~~~
26 ~~~~10A-2-11.03~~ or ~~Section 10A-2-11.04~~ Article 11 of Chapter 2 or~~
27 ~~Article 11 of Chapter 2A, as applicable. If the governing~~

1 documents of the corporation provide for approval of a merger
2 by less than all of the corporation's ~~shareholders~~
3 stockholders, approval of the merger shall constitute
4 corporate action subject to dissenter's rights pursuant to
5 Article 13 of Chapter 2, or appraisal rights pursuant to
6 Article 13 of Chapter 2A, as applicable. No merger of a
7 corporation into a general or limited partnership may be
8 effected without the consent in writing of each ~~shareholder~~
9 stockholder who will have personal liability with respect to
10 the ~~resulting or~~ surviving entity, notwithstanding any
11 provision in the governing documents of the corporation that
12 is a party to the merger providing for less than unanimous
13 ~~shareholder~~ stockholder approval for the conversion.

14 "b. In the case of a nonprofit corporation, that is
15 a party to the merger, a plan of merger must be approved by
16 all the nonprofit corporation's members entitled to vote
17 thereon, if it is a nonprofit corporation with members with
18 voting rights, or as otherwise provided in the nonprofit
19 corporation's governing documents; but in no case may the
20 governing documents provide for approval by less than a
21 majority of the members entitled to vote thereon. If the
22 nonprofit corporation has no members, or no members entitled
23 to vote thereon, the plan of merger must be approved by a
24 unanimous vote of the board of directors of the nonprofit
25 corporation, except as otherwise provided in the governing
26 documents; but in no case may the governing documents provide

1 for approval by less than a majority of the board of
2 directors.

3 "(2) LIMITED PARTNERSHIPS. In the case of a limited
4 partnership that is a party to the merger, ~~the~~ a plan of
5 merger must be approved in writing by all of the partners or
6 as otherwise provided in the partnership agreement. No merger
7 of a limited partnership with a general partnership in which
8 the general partnership is the surviving ~~or resulting~~ entity
9 may be effected without the consent in writing of each limited
10 partner who will have personal liability with respect to the
11 surviving ~~or resulting~~ entity, notwithstanding any provision
12 in the limited partnership agreement of the merging limited
13 partnership providing for approval of the merger by less than
14 all partners.

15 "(3) LIMITED LIABILITY COMPANIES. In the case of a
16 limited liability company that is a party to the merger, ~~the~~ a
17 plan of merger must be approved in writing by all of the
18 limited liability company's members or as otherwise provided
19 in the limited liability company's governing documents. No
20 merger of a limited liability company with a general or
21 limited partnership that is the surviving ~~or resulting~~ entity
22 may be effected without the consent in writing of each member
23 who will have personal liability with respect to the surviving
24 ~~or resulting~~ entity, notwithstanding any provision in the
25 governing documents of the merging limited liability company
26 providing for less than unanimous ~~shareholder~~ member approval
27 for a merger.

1 "(4) GENERAL PARTNERSHIPS, INCLUDING LIMITED
2 LIABILITY PARTNERSHIPS. In the case of a general partnership
3 that is a party to the merger, ~~the~~ a plan of merger must be
4 approved in writing by all of the partners or as otherwise
5 provided in the partnership agreement. No merger of a limited
6 liability partnership into a general or limited partnership
7 may be effected without the consent in writing of each partner
8 who will have personal liability with respect to the surviving
9 ~~or resulting~~ entity, notwithstanding any provision in the
10 partnership agreement of the limited liability partnership
11 providing for less than unanimous partner approval for a
12 merger. All general partnerships, other than a general
13 partnership that is created pursuant to the merger, that are
14 parties to a merger must have on file with the Secretary of
15 State a statement of partnership, statement of not for profit
16 partnership, or statement of limited liability partnership
17 prior to delivering the statement of merger to the Secretary
18 of State for filing.

19 "(5) REAL ESTATE INVESTMENT TRUST. In the case of a
20 real estate investment trust that is a party to the merger,
21 ~~the~~ a plan of merger must be approved in writing by all of the
22 trust's shareholders or as otherwise provided in the trust's
23 declaration of trust, but in no case may the vote required for
24 shareholder approval be set at less than a majority of all the
25 votes entitled to be cast. No merger of a real estate
26 investment trust with a general or limited partnership that is
27 to be the surviving ~~or resulting~~ entity may be effected

1 without the consent in writing of each shareholder who will
2 have personal liability with respect to the surviving ~~or~~
3 ~~resulting business~~ entity, notwithstanding any provision in
4 the declaration of trust of the converting real estate
5 investment trust providing for less than unanimous shareholder
6 approval for the merger.

7 "(6) OTHER ENTITY. In the case of an entity other
8 than a corporation, limited partnership, limited liability
9 company, general partnership, or real estate investment trust
10 that is a party to the merger, ~~by approval~~ a plan of merger
11 must be approved in writing ~~of~~ by all owners of the entity. No
12 merger of any entity shall be effected without the consent in
13 writing of any owner who has limited liability as an owner of
14 an entity party to the merger, and who will have personal
15 liability with respect to the surviving ~~or resulting~~ entity.

16 "(b) The plan of merger must be in writing, and:

17 "(1) must include the following:

18 "a. the name, type of entity, and mailing address of
19 the principal office of each entity that is a party to the
20 merger, the jurisdiction of the governing statute of each
21 entity that is a party to the merger, and the respective
22 unique identifying number or other designation as assigned by
23 the Secretary of State, if any, of each entity that is a party
24 to the merger;

25 "b. the name, type of entity, and mailing address of
26 the principal office of the surviving entity and, if the

1 surviving entity is to be created pursuant to the merger, the
2 surviving entity's organizational documents;

3 "c. the terms and conditions of the merger,
4 including the manner and basis for converting the interests in
5 each entity that is a party to the merger into any combination
6 of money, interests in the surviving entity, and other
7 consideration as allowed by subsection (c); and

8 "d. if the surviving entity is not to be created
9 pursuant to the merger, any amendments to be made by the
10 merger to the surviving entity's organizational documents; and

11 "(2) may include other provisions relating to the
12 merger not prohibited by law.

13 "(c) In connection with a merger, rights or
14 securities of or interests in a merged entity may be exchanged
15 for or converted into cash, property, or rights or securities
16 of or interests in the surviving entity, or, in addition to or
17 in lieu thereof, may be exchanged for or converted into cash,
18 property, or rights or securities of or interests in another
19 entity or may be cancelled.

20 "(d) After a plan of merger is approved and before
21 the merger takes effect, the plan may be amended or abandoned
22 as provided in the plan, or if the plan does not provide for
23 amendment or abandonment, in the same manner as required for
24 the approval of the plan of merger originally.

25 ~~"(e) After a plan of merger is approved and before~~
26 ~~the merger takes effect, the plan may be amended or abandoned~~
27 ~~as provided in the plan, or if the plan does not provide for~~

1 ~~amendment or abandonment, in the same manner as required for~~
2 ~~the approval of the plan of merger originally.~~

3 ~~"(f) The merger takes effect as follows:~~

4 ~~"(1) Upon the filing of the statement of merger in~~
5 ~~accordance with Section 10A-1-4.02(c)(1), except as otherwise~~
6 ~~provided in subdivision (2).~~

7 ~~"(2) Upon any delayed effective date if, but only~~
8 ~~if, each of the following requirements is satisfied:~~

9 ~~"a. A delayed effective date is specified in the~~
10 ~~statement of merger.~~

11 ~~"b. If either the converted entity or the merging~~
12 ~~entity is a foreign entity, then any filing required under the~~
13 ~~governing statute of such foreign entity to effectuate the~~
14 ~~merger is filed before the effective date specified in the~~
15 ~~statement of merger.~~

16 ~~"(3) If a delayed effective date is specified and~~
17 ~~the conditions of subdivision (2) are met, the merger is~~
18 ~~effective at the close of business, unless a different hour is~~
19 ~~specified, on that date in accordance with and subject to~~
20 ~~Section 10A-1-4.12.~~

21 ~~"(g) The certificate of merger shall include the~~
22 ~~following:~~

23 ~~"(1) The names of each of the entities which are to~~
24 ~~merge and their respective unique identifying numbers or other~~
25 ~~designations as assigned by the Secretary of State, if any.~~

1 ~~"(2) The public office where the certificate of~~
2 ~~formation, if any, of each of the parties to the merger is~~
3 ~~filed.~~

4 ~~"(3) A statement that a plan of merger has been~~
5 ~~approved by each of the entities which are to merge in the~~
6 ~~manner set forth in this article.~~

7 ~~"(4) If the surviving or resulting entity is one in~~
8 ~~which one or more owners lack limited liability protection, a~~
9 ~~statement that each owner of an entity party to the merger who~~
10 ~~is to be an owner of the surviving or resulting entity without~~
11 ~~limited liability protection has consented in writing to the~~
12 ~~merger as required by this article.~~

13 ~~"(5) The name of the surviving or resulting entity.~~

14 ~~"(6) The date, or date and time, on which the merger~~
15 ~~becomes effective if it is not to be effective upon the filing~~
16 ~~of the certificate of merger.~~

17 ~~"(7) That the plan of merger is on file at a place~~
18 ~~of business of the surviving or resulting entity, and shall~~
19 ~~state the address thereof.~~

20 ~~"(8) That a copy of the plan of merger will be~~
21 ~~furnished by the surviving or resulting entity, on request and~~
22 ~~without cost, to any owner of any entity which is a party to~~
23 ~~the merger.~~

24 ~~"(9) If the plan of merger includes any amendments~~
25 ~~to the certificate of formation of the surviving or resulting~~
26 ~~entity, a statement of all such amendments.~~

1 ~~"(h) The certificate of merger shall be filed with~~
2 ~~the Secretary of State in accordance with Section 10A-1-4.02.~~

3 ~~"(i) The merger shall have the following effects:~~

4 ~~"(1) Every other entity party to the merger merges~~
5 ~~into the surviving entity which shall be deemed to be the~~
6 ~~resulting entity of the merger and the separate existence of~~
7 ~~every entity, other than the surviving or resulting entity,~~
8 ~~ceases.~~

9 ~~"(2) All property, real, personal, and mixed owned~~
10 ~~by each of the merged entities; all rights, immunities, and~~
11 ~~franchises of the merged entities, of a public as well as a~~
12 ~~private nature; and all debts and obligations due the merged~~
13 ~~entities, are taken and deemed to be transferred and vested in~~
14 ~~the surviving or resulting entity without the necessity of any~~
15 ~~deed or other instrument of conveyance to the surviving or~~
16 ~~resulting entity and without payment and without collection by~~
17 ~~any filing officer of any deed or other transfer tax or fee. A~~
18 ~~certified copy of the certificate of merger may be filed in~~
19 ~~the real estate records in the office of the judge of probate~~
20 ~~in any county in which any entity a party to the merger owned~~
21 ~~real property, to be recorded without payment and without~~
22 ~~collection by the judge of probate of any deed or other~~
23 ~~transfer tax or fee. The judge of probate shall, however, be~~
24 ~~entitled to collect the filing fees prescribed by Section~~
25 ~~12-19-90. Any filing shall evidence chain of title, but lack~~
26 ~~of filing does not affect the resulting entity's title to any~~
27 ~~real property.~~

1 ~~"(3) The surviving or resulting entity shall be~~
2 ~~responsible and liable for all the liabilities and obligations~~
3 ~~of the entities that are parties to the merger; however,~~
4 ~~neither the rights of creditors nor any liens upon the~~
5 ~~property of the entities that are parties to the merger shall~~
6 ~~be impaired by the merger.~~

7 ~~"(4) Any claim existing or action or proceeding, of~~
8 ~~any kind, pending by or against an entity that is a party to~~
9 ~~the merger may be prosecuted or continued as if the merger had~~
10 ~~not occurred, or the surviving or resulting entity may be~~
11 ~~substituted as a party to the action or proceeding.~~

12 "(e) After each entity has approved the plan of
13 merger, the entities must deliver to the Secretary of State
14 for filing a statement of merger signed on behalf of each
15 entity as provided by its governing statute which must
16 include:

17 "(1) the name, type of entity, and mailing address
18 of the principal office of each entity that is a party to the
19 merger, the jurisdiction of the governing statute of each
20 entity that is a party to the merger, and the respective
21 unique identifying number or other designation as assigned by
22 the Secretary of State, if any, of each entity that is a party
23 to the merger;

24 "(2) the name, type of entity, and mailing address
25 of the principal office of the surviving entity, the unique
26 identifying number or other designation as assigned by the
27 Secretary of State, if any, of the surviving entity, the

1 jurisdiction of the governing statute of the surviving entity,
2 and, if the surviving entity is created pursuant to the
3 merger, a statement to that effect;

4 "(3) for each entity other than a general
5 partnership, the date of the filing of the certificate of
6 formation, if any, and all prior amendments and the filing
7 office or offices, if any, where such is filed;

8 "(4) for each general partnership, the date of the
9 filing of the statement of partnership, statement of not for
10 profit partnership, or statement of limited liability
11 partnership, if any, and all prior amendments and the filing
12 office or offices, if any, where such is filed;

13 "(5) the date the merger is effective under the
14 governing statute of the surviving entity;

15 "(6) if the surviving entity is to be created
16 pursuant to the merger, (i) if it will be a filing entity, its
17 certificate of formation; or (ii) if it will be a non-filing
18 entity, any document that creates the entity that is required
19 to be in a public writing or in the case of a general
20 partnership, its statement of partnership, statement of not
21 for profit partnership, or statement of limited liability
22 partnership, as applicable;

23 "(7) if the surviving entity is a domestic entity
24 that exists before the merger, any amendments provided for in
25 the plan of merger for the organizational documents that
26 created the domestic entity that are required to be in a
27 public writing, or in the case of a general partnership, its

1 statement of partnership, statement of not for profit
2 partnership, or statement of limited liability partnership, as
3 applicable;

4 "(8) a statement as to each entity that the merger
5 was approved as required by the entity's governing statute;

6 "(9) a statement that a copy of the plan of merger
7 will be furnished by the surviving entity, on request and
8 without cost, to any owner of any entity which is a party to
9 the merger;

10 "(10) if the surviving entity is a foreign entity
11 not authorized to conduct activities and affairs in this
12 state, the street and mailing address of an office for the
13 purposes of Section 10A-1-8.04; and

14 "(11) any additional information required by the
15 governing statute of any entity that is a party to the merger.

16 "(f) Prior to the statement of merger being
17 delivered for filing to the Secretary of State in accordance
18 subsection (e), all parties to the merger that are general
19 partnerships, other than a general partnership that is created
20 pursuant to the merger, must have on file with the Secretary
21 of State a statement of partnership, statement of not for
22 profit partnership, or statement of limited liability
23 partnership.

24 "(g) If all of the entities that are parties to the
25 merger are domestic entities, the merger becomes effective on
26 the effective date determined in accordance with Article 4 of
27 Chapter 1. If one or more parties to the merger is a foreign

1 entity, or a foreign entity created by the merger is the
2 surviving entity, the merger shall become effective at the
3 later of:

4 "(1) when all documents required to be filed in
5 foreign jurisdictions to effect the merger have become
6 effective, or

7 "(2) the effective date determined in accordance
8 with Article 4 of Chapter 1.

9 "(h) After the merger has become effective in
10 accordance with subsection (g), then, except for (i) copies of
11 certified statements of authority, denial, or cancellation
12 thereof permitted to be delivered to the judge of probate for
13 filing pursuant to Chapter 8A, (ii) any documents permitted to
14 be delivered to the judge of probate for filing pursuant to
15 Chapter 17, and (iii) certified copies of statements of merger
16 or conversion permitted to be delivered to the judge of
17 probate for filing pursuant to Chapter 1, Chapter 2A, Chapter
18 5A, Chapter 8A, or Chapter 9A, all filing instruments with
19 respect to the surviving entity that would otherwise be
20 required by this title to be delivered to the judge of probate
21 for filing shall instead be delivered to the Secretary of
22 State for filing.

23 "(i) When a merger becomes effective:

24 "(1) the surviving entity continues or, in the case
25 of a surviving entity created pursuant to the merger, comes
26 into existence;

1 "(2) each entity that merges into the surviving
2 entity ceases to exist as a separate entity;

3 "(3) except as provided in the plan of merger, all
4 property owned by, and every contract right possessed by, each
5 merging entity that ceases to exist vests in the surviving
6 entity without transfer, reversion, or impairment and the
7 title to any property and contract rights vested by deed or
8 otherwise in the surviving entity shall not revert, be in any
9 way impaired, or be deemed to be a transfer by reason of the
10 merger;

11 "(4) all debts, obligations and other liabilities of
12 each merging entity, other than the surviving entity, are
13 debts, obligations and liabilities of the surviving entity,
14 and neither the rights of creditors, nor any liens upon the
15 property of any entity that is a party to the merger, shall be
16 impaired by the merger;

17 "(5) an action or proceeding, pending by or against
18 any merging entity that ceases to exist continues as if the
19 merger had not occurred and the name of the surviving entity
20 may, but need not be substituted in any pending proceeding for
21 the name of any merging entity whose separate existence ceased
22 in the merger;

23 "(6) except as prohibited by law other than this
24 chapter or as provided in the plan of merger, all the rights,
25 privileges, franchises, immunities, powers, and purposes of
26 each merging entity, other than the surviving entity, vest in
27 the surviving entity;

1 "(7) except as otherwise provided in the plan of
2 merger, the terms and conditions of the plan of merger take
3 effect;

4 "(8) except as otherwise agreed, if a merged entity
5 ceases to exist, the merger does not dissolve the merged
6 entity;

7 "(9) if the surviving entity is created pursuant to
8 the merger:

9 "(i) if it is a general partnership, the statement
10 of partnership, statement of not for profit partnership, or
11 statement of limited liability partnership becomes effective;
12 or

13 "(ii) if it is an organization other than a
14 partnership, the organizational documents that create the
15 entity become effective;

16 "(10) the interests in a merging entity that are to
17 be converted in accordance with the terms of the merger into
18 interests, obligations, rights to acquire interests, cash,
19 other property, or any combination of the foregoing, are
20 converted as provided in the plan of merger, and the former
21 holders of interests are entitled only to the rights provided
22 to them by those terms or to any appraisal or dissenters'
23 rights they may have under the governing statute governing the
24 merging entity;

25 "(11) if the surviving entity exists before the
26 merger:

1 "(i) except as provided in the plan of merger, all
2 the property and contract rights of the surviving entity
3 remain its property and contract rights without transfer,
4 reversion, or impairment;

5 "(ii) the surviving entity remains subject to all
6 its debts, obligations, and other liabilities; and

7 "(iii) except as provided by law other than this
8 chapter or the plan of merger, the surviving entity continues
9 to hold all of its rights, privileges, franchises, immunities,
10 powers and purposes.

11 "~~(5)~~ (12) Service of process in an action or
12 proceeding against a surviving ~~or resulting~~ foreign entity to
13 enforce an obligation of a domestic entity that is a party to
14 a merger may be made by registered mail addressed to the
15 surviving entity at the address set forth in the ~~certificate~~
16 statement of merger or by any method provided by the Alabama
17 Rules of Civil Procedure. Any notice or demand required or
18 permitted by law to be served on a domestic entity may be
19 served on the surviving ~~or resulting~~ foreign entity by
20 registered mail addressed to the surviving entity at the
21 address set forth in the ~~certificate~~ statement of merger or in
22 any other manner similar to the procedure provided by the
23 Alabama Rules of Civil Procedure for the service of process.

24 "~~(6)~~ (13)a. An owner of an entity with limited
25 liability protection remains liable, if at all, for an
26 obligation incurred prior to the merger by an entity that
27 ceases to exist as a result of the merger only to the extent,

1 if any, that the owner would have been liable under the laws
2 applicable to owners of the form of entity that ceased to
3 exist if the merger had not occurred.

4 "b. An owner with limited liability protection who,
5 as a result of the merger, becomes an owner without limited
6 liability protection of the surviving ~~or resulting~~ entity is
7 liable for an obligation of the surviving ~~or resulting~~ entity
8 incurred after merger to the extent provided for by the laws
9 applicable to the surviving ~~or resulting~~ entity.

10 "~~(7)~~ (14) An owner without limited liability
11 protection of an entity that ceases to exist as a result of a
12 merger and who as a result of the merger becomes an owner of a
13 surviving ~~or resulting~~ entity with limited liability
14 protection remains liable for an obligation of the entity that
15 ceases to exist incurred before the merger takes effect only
16 to the extent, if any, that the owner would have been liable
17 if the merger had not occurred.

18 "(j) A certified copy of the statement of merger
19 required to be filed under this section may be filed in the
20 real estate records in the office of the judge of probate in
21 any county in which any merged entity owned real property,
22 without payment and without collection by the judge of probate
23 of any deed or other transfer tax or fee. The judge of
24 probate, however, shall be entitled to collect the filing fee
25 of five dollars (\$5). Any such filing shall evidence chain of
26 title, but lack of filing shall not affect the surviving
27 entity's title to such real property.

1 "§10A-1-8.04.

2 "(a) One or more foreign entities may merge with one
3 or more domestic entities in accordance with Section
4 10A-1-8.02, and a foreign entity may convert to a domestic
5 entity, or a domestic entity may convert to a foreign entity
6 in accordance with Section 10A-1-8.01 only if:

7 "(1) The merger or conversion is permitted by the
8 law of the state or country under whose law each foreign
9 entity is formed and each foreign entity complies with that
10 law in effecting the merger or conversion.

11 "(2) In the case of a conversion, the foreign entity
12 complies with ~~subsection (b)~~ the requirements of Section
13 10A-1-8.01.

14 "(3) In the case of a merger, the foreign entity
15 complies with ~~subsection (g)~~ the requirements of Section
16 10A-1-8.02 ~~if it is the surviving entity of the merger.~~

17 "(b) Upon the merger or conversion taking effect,
18 the surviving foreign entity of a merger and the foreign
19 converted entity ~~resulting from~~ in a conversion is deemed:

20 "(1) To consent that service of process in a
21 proceeding to enforce any obligation or any appraisal or
22 dissenter's rights of owners of each domestic entity a party
23 to the merger or conversion may be made by registered mail
24 addressed to the surviving or converted entity at the address
25 set forth in the ~~certificate~~ statement of merger or statement
26 of conversion, as the case may be, or by any method provided
27 by the Alabama Rules of Civil Procedure. Any notice or demand

1 required or permitted by law to be served on the domestic
2 entity may be served on the surviving or converted foreign
3 entity by registered mail addressed to the surviving or
4 converted entity at the address set forth in the plan of
5 merger or statement of conversion, as the case may be, or in
6 any other manner similar to the procedure provided by the
7 Alabama Rules of Civil Procedure for the service of process;
8 and

9 "(2) To consent to the jurisdiction of the courts of
10 this state to enforce any debt, obligation, or other liability
11 for which a converting or merging entity is liable if, before
12 the conversion or merger, the converting or merging entity was
13 subject to suit in this state on the debt, obligation, or
14 other liability. If the foreign entity fails to designate or
15 maintain a registered agent, or the designated registered
16 agent cannot with reasonable diligence be served, then service
17 of process on that foreign entity for the purposes of
18 enforcing a debt, obligation, or other liability under this
19 subsection may be made in the same manner and has the same
20 consequences as provided in Section 10A-1-5.35; and

21 ~~"(2)~~(3) To agree that it will promptly pay to
22 dissenting owners with appraisal or dissenter's rights, of
23 each domestic entity that is a party to the merger or
24 conversion the amount, if any, to which they are entitled
25 under Alabama law.

26 "§10A-1-9.01.

1 "This article does not apply to business
2 corporations, limited liability companies, general
3 partnerships, and limited partnerships.

4 "§10A-4-2.02.

5 "(a) Any corporation whose certificate of formation
6 includes as a stated purpose the performance of professional
7 services may be incorporated under this chapter by stating in
8 its certificate of formation that it is incorporated under
9 this chapter.

10 "(b) A professional business corporation, other than
11 a nonprofit professional corporation, which is subject to this
12 chapter shall cease being governed by this chapter and shall
13 be governed by the Alabama Business Corporation Law, ~~Section~~
14 ~~10A-2-1.01 et seq.~~, if it is a domestic corporation, if it
15 amends its certificate of formation to delete the statement
16 that it is organized under this chapter, and conforms its
17 articles to the Alabama Business Corporation Law and, if it is
18 a foreign corporation, complies with the provisions of this
19 title applicable to foreign entities. A domestic nonprofit
20 professional corporation which is subject to this chapter
21 shall cease being governed by this chapter and shall be
22 governed by the Alabama Nonprofit Corporation Law, ~~Section~~
23 ~~10A-3-1.01 et seq.~~, if it is a domestic corporation, if it
24 amends its certificate of formation to delete the statement
25 that it is organized under this chapter, and conforms its
26 certificate to the Alabama Nonprofit Corporation Law and, if

1 it is a foreign corporation, complies with the provisions of
2 this title applicable to foreign entities.

3 "(c) Any corporation which is not subject to this
4 chapter may become subject to this chapter, if it is a
5 domestic corporation, by conforming its articles to this
6 chapter.

7 "(d) Any foreign professional corporation which
8 renders professional services in Alabama shall be subject to
9 this chapter.

10 "§10A-4-4.01.

11 "Administrators, executors, guardians, conservators,
12 or receivers of the estates of shareholders of a domestic
13 professional corporation who hold all of the outstanding
14 shares of the corporation may amend the certificate of
15 formation by signing a written consent to the amendment and
16 delivering the amendment for filing to the judge of probate of
17 the county in which the corporation's certificate of formation
18 was filed in accordance with Article 4 of Chapter 1. The
19 certificate of amendment shall set forth, in addition to the
20 information required to be included in the certificate of
21 amendment by ~~Sections 10A-1-3.13 and 10A-2-10.06~~ the Alabama
22 Business Corporation Law, a statement that the administrators,
23 executors, guardians, conservators, or receivers own all the
24 outstanding shares.

25 "§10A-4-4.02.

26 "(a) A domestic professional corporation may convert
27 to or merge ~~or consolidate~~ with another corporation, ~~or~~

1 professional corporation, or another type of entity, domestic
2 or foreign, under ~~Article 11 of Chapter 2~~ the Alabama Business
3 Corporation Law, or may merge with or convert to another type
4 of entity as permitted by Article 8 of Chapter 1. Upon the
5 merger, consolidation, or conversion, if the surviving or new
6 corporation or converted entity, as the case may be, is to
7 render professional services in Alabama, it shall comply with
8 the provisions of this chapter.

9 "(b) An unincorporated professional association
10 organized under Article 1 of Chapter 30 may merge or
11 consolidate with a professional corporation organized under
12 this chapter. In the merger, the procedure specified in
13 ~~Article 11 of Chapter 2~~ the Alabama Business Corporation Law
14 shall apply, provided that:

15 "(1) The surviving corporation shall be a domestic
16 professional corporation,

17 "(2) The following terms, when used in ~~Article 11~~
18 the Alabama Business Corporation Law to refer to an
19 unincorporated professional association, shall have the
20 following meanings:

21 "a. "Board of directors" shall mean "board of
22 governors,"

23 "b. "Corporation" shall mean "unincorporated
24 association,"

25 "c. "Shares or securities" in the case of an
26 unincorporated professional association which is a nonstock

1 organization, shall mean the undivided interests of the
2 members in the assets of the association,

3 "d. "Shareholder" in the case of an unincorporated
4 association which is a nonstock organization, shall mean
5 "member."

6 "(3) The plan of merger or plan of ~~consolidation~~
7 conversion shall be approved by a vote of two thirds of the
8 members of the professional association.

9 "§10A-4-5.01.

10 "The Attorney General may institute proceedings to
11 involuntarily dissolve a domestic professional corporation
12 ~~under Section 10A-2-14.30, or, in the case of a domestic~~
13 ~~nonprofit professional corporation, to involuntarily dissolve~~
14 ~~it under the provisions of the Alabama Nonprofit Corporation~~
15 ~~Law.~~ A licensing authority may request that the Attorney
16 General institute such proceedings.

17 "§10A-4-5.04.

18 "(a) Every professional corporation, domestic or
19 foreign, ~~which~~ is required to file an annual report under
20 ~~Section 10A-2-16.22~~ the Alabama Business Corporation Law, and
21 shall include in the annual report, in addition to the items
22 required by ~~Section 10A-2-16.22~~ the Alabama Business
23 Corporation Law:

24 "(1) A statement that all the shareholders, at least
25 one director, and the president of the corporation are
26 qualified persons with respect to the corporation, and

1 "(2) In the case of a foreign professional
2 corporation, the name or names of the Alabama licensed
3 professional or professionals through whom the foreign
4 professional corporation will render professional services in
5 Alabama.

6 "(b) Financial information contained in the annual
7 report of a professional corporation, other than the amount of
8 stated capital of the corporation, shall not be open to public
9 inspection nor shall the licensing authority disclose any
10 facts or information obtained therefrom except insofar as its
11 official duty may require the same to be made public or in the
12 event the information is required for evidence in any criminal
13 proceedings or in any other action by the State of Alabama.

14 "§10A-5A-10.01.

15 "(a) An organization other than a limited liability
16 company may convert to a limited liability company, and a
17 limited liability company may convert to an organization other
18 than a limited liability company pursuant to this section,
19 Sections 10A-5A-10.02 through 10A-5A-10.03, and a plan of
20 conversion, if:

21 "(1) the governing statute of the organization that
22 is not a limited liability company authorizes the conversion;

23 "(2) the law of the jurisdiction governing the
24 converting organization and the converted organization does
25 not prohibit the conversion; and

26 "(3) the converting organization and the converted
27 organization each comply with the governing statute and

1 organizational documents applicable to that organization in
2 effecting the conversion.

3 "(b) A plan of conversion must be in writing and
4 must include:

5 "(1) the name, type of organization, and mailing
6 address of the principal office of the converting
7 organization, and its unique identifying number or other
8 designation as assigned by the Secretary of State, if any,
9 before conversion;

10 "(2) the name, type of organization, and mailing
11 address of the principal office of the converted organization
12 after conversion;

13 "(3) the terms and conditions of the conversion,
14 including the manner and basis for converting interests in the
15 converting organization into any combination of money,
16 interests in the converted organization, and other
17 consideration allowed in Section 10A-5A-10.01(c); and

18 "(4) the organizational documents of the converted
19 organization.

20 "(c) In connection with a conversion, rights or
21 securities of or interests in the converting organization may
22 be exchanged for or converted into cash, property, or rights
23 or securities of or interests in the converted organization,
24 or, in addition to or in lieu thereof, may be exchanged for or
25 converted into cash, property, or rights or securities of or
26 interests in another organization or may be cancelled.

27 "§10A-5A-10.03.

1 "(a) After a plan of conversion is approved:

2 "(1) if the converting organization is an
3 organization formed under, or its internal affairs are
4 governed by, the laws of this state, the converting
5 organization shall file a statement of conversion in
6 accordance with subsection (c), which statement of conversion
7 must be signed in accordance with Section 10A-5A-2.04(a) and
8 which must include:

9 "(A) the name, type of organization, and mailing
10 address of the principal office of the converting
11 organization, and its unique identifying number or other
12 designation as assigned by the Secretary of State, if any,
13 before conversion;

14 "(B) the date of the filing of the certificate of
15 formation of the converting organization, if any, and all
16 prior amendments and the filing office or offices, if any,
17 where such is filed;

18 "(C) a statement that the converting organization
19 has been converted into the converted organization;

20 "(D) the name and type of organization of the
21 converted organization and the jurisdiction of its governing
22 statute;

23 "(E) the street and mailing address of the principal
24 office of the converted organization;

25 "(F) the date the conversion is effective under the
26 governing statute of the converted organization;

1 "(G) a statement that the conversion was approved as
2 required by this chapter;

3 "(H) a statement that the conversion was approved as
4 required by the governing statute of the converted
5 organization; and

6 "(I) a statement that a copy of the plan of
7 conversion will be furnished by the converted organization, on
8 request and without cost, to any owner of the converting
9 organization; and

10 "~~(I)~~(J) if the converted organization is a foreign
11 organization not authorized to conduct activities and affairs
12 in this state, the street and mailing address of an office for
13 the purposes of Section 10A-5A-10.04(b); and

14 "(2) if the converted organization is a limited
15 liability company, the converting organization shall ~~file~~
16 deliver for filing a certificate of formation in accordance
17 with subsection (d), which certificate of formation must
18 include, in addition to the information required by Section
19 10A-5A-2.01(a):

20 "(A) a statement that the limited liability company
21 was converted from the converting organization;

22 "(B) the name and type of organization of the
23 converting organization, ~~and~~ the jurisdiction of the
24 converting organization's governing statute, and the
25 converting organization's unique identifying number or other
26 designation as assigned by the Secretary of State, if any; and

1 "(C) a statement that the conversion was approved in
2 a manner that complied with the converting organization's
3 governing statute.

4 "(b) A conversion becomes effective:

5 "(1) if the converted organization is a limited
6 liability company, when the certificate of formation takes
7 effect; and

8 "(2) if the converted organization is not a limited
9 liability company, as provided by the governing statute of the
10 converted organization.

11 "(c) If the converting organization is an
12 organization formed under, or its internal affairs are
13 governed by, the laws of this state, then the converting
14 organization shall ~~file~~ deliver for filing the statement of
15 conversion required under subsection (a) (1) ~~with to~~ the
16 Secretary of State ~~in accordance with Section~~
17 ~~10A-1-4.02(c)(1)~~.

18 "(d) If the converted organization is a limited
19 liability company, ~~then notwithstanding Section 10A-1-4.02(b),~~
20 the converting organization shall ~~file~~ deliver for filing the
21 certificate of formation required under subsection (a) (2) ~~with~~
22 to the Secretary of State ~~in accordance with Section~~
23 ~~10A-1-4.02(c)(5), along with the fees specified in Section~~
24 ~~10A-1-4.31 subject to subsection (f)(3)~~.

25 "(e) If the converting organization is required to
26 ~~file~~ deliver for filing a statement of conversion and a
27 certificate of formation ~~with to~~ the Secretary of State, then

1 the converting organization shall ~~file~~ deliver for filing the
2 statement of conversion and the certificate of formation ~~with~~
3 to the Secretary of State simultaneously.

4 ~~"(f) In the case of a statement of conversion that~~
5 ~~is to be filed with the Secretary of State pursuant to~~
6 ~~subsection (c):~~

7 ~~"(1) if the converting organization has a~~
8 ~~certificate of formation filed with the judge of probate, the~~
9 ~~Secretary of State shall within 10 days transmit a certified~~
10 ~~copy of the statement of conversion to the office of the judge~~
11 ~~of probate in the county in which the certificate of formation~~
12 ~~for such converting organization was filed along with the~~
13 ~~proper fee for the judge of probate.~~

14 ~~"(2) if the converting organization did not file its~~
15 ~~certificate of formation with the judge of probate, but rather~~
16 ~~in accordance with this title filed its certificate of~~
17 ~~formation with the Secretary of State, the Secretary of State~~
18 ~~shall not transmit a certified copy of the statement of~~
19 ~~conversion to the office of the judge of probate and shall not~~
20 ~~collect any fee for the judge of probate.~~

21 ~~"(3) if the converting organization, immediately~~
22 ~~prior to the conversion becoming effective, is an organization~~
23 ~~described in Section 10A-1-4.02(c)(4), but is not required~~
24 ~~under this title to file its organizational documents with the~~
25 ~~judge of probate, the Secretary of State shall not transmit a~~
26 ~~certified copy of the statement of the statement of conversion~~

1 ~~to the office of the judge of probate and shall not collect~~
2 ~~any fee for the judge of probate.~~

3 ~~"(g) In the case of a certificate of formation that~~
4 ~~is to be filed with the Secretary of State pursuant to~~
5 ~~subsection (d), the Secretary of State shall not transmit a~~
6 ~~certified copy of the certificate of formation to the office~~
7 ~~of the judge of probate and shall not collect any fee for the~~
8 ~~judge of probate, but shall collect the fee provided for the~~
9 ~~Secretary of State in Section 10A-1-4.31(a)(1).~~

10 ~~"(h)(f) After a conversion becomes effective, if the~~
11 ~~converted organization is a limited liability company,~~ then,
12 except for certified copies of documents permitted to be
13 delivered to the judge of probate for filing pursuant to
14 subsection (h) all filing instruments required to be filed
15 under this title regarding that converted organization shall
16 be filed with the Secretary of State.

17 ~~"(i)(g) If:~~

18 ~~"(1) the converting organization is a filing entity~~
19 ~~or a foreign filing entity registered to conduct activities~~
20 ~~and affairs in this state;~~

21 ~~"(2) the converted organization will be a filing~~
22 ~~entity or a foreign filing entity registered to conduct~~
23 ~~activities and affairs in this state;~~

24 ~~"(3) the name of the converting organization and the~~
25 ~~converted organization are to be the same, other than words,~~
26 ~~phrases, or abbreviations indicating the type of entity; and~~

1 "(4) the name of the converted organization complies
2 with Division A of Article 5 of Chapter 1 or
3 Section 10A-1-7.07, as the case may be; then notwithstanding
4 Division B of Article 5 of Chapter 1, no name reservation
5 shall be required and the converted organization shall for all
6 purpose of this title be entitled to utilize the name of the
7 converting organization without any further action by the
8 converting organization or the converted organization.

9 "~~(j)~~(h) A certified copy of any document required to
10 be filed under this section may be filed in the real estate
11 records in the office of the judge of probate in any county in
12 which the converting organization owned real property, without
13 payment and without collection by the judge of probate of any
14 deed or other transfer tax or fee. The judge of probate shall,
15 however, be entitled to collect a filing fee of five dollars
16 (\$5). Any such filing shall evidence chain of title, but lack
17 of filing shall not affect the converted organization's title
18 to such real property.

19 "~~(k)~~(i) A statement of conversion ~~shall be~~ is a
20 filing instrument under Chapter 1.

21 "~~(l)~~(j) ~~Except as set forth in subsection (f)(2),~~
22 ~~the~~ The filing fees for a statement of conversion shall be ~~the~~
23 ~~same fee as provided in Section 10A-1-4.31(a)(5)~~ as set forth
24 in Chapter 1.

25 "§10A-5A-10.04.

26 "(a) When a conversion takes effect:

1 "(1) all property and contract rights owned by the
2 converting organization, or series thereof, remains vested in
3 the converted organization without ~~reservation~~ transfer,
4 reversion, or impairment and the title to any property vested
5 by deed or otherwise in the converting organization shall not
6 revert or be in any way impaired by reason of the conversion;

7 "(2) all debts, obligations, or other liabilities of
8 the converting organization, or series thereof, continue as
9 debts, obligations, or other liabilities of the converted
10 organization and neither the rights of creditors, nor the
11 liens upon the property of the converting organization shall
12 be impaired by the conversion;

13 "(3) an action or proceeding pending by or against
14 the converting organization, or series thereof, continues as
15 if the conversion had not occurred and the name of the
16 converted entity may, but need not, be substituted for the
17 name of the converting entity in any pending action or
18 proceeding;

19 "(4) except as prohibited by law other than this
20 chapter, all of the rights, privileges, immunities, powers,
21 and purposes of the converting organization, or series
22 thereof, remain vested in the converted organization;

23 "(5) except as otherwise provided in the plan of
24 conversion, the terms and conditions of the plan of conversion
25 take effect;

26 "(6) except as otherwise agreed, for all purposes of
27 the laws of this state, the converting organization, and any

1 series thereof, shall not be required to wind up its affairs
2 or pay its liabilities and distribute its assets, and the
3 conversion shall not be deemed to constitute a dissolution of
4 the converting organization, or series thereof;

5 "(7) for all purposes of the laws of this state, the
6 rights, privileges, powers, interests in property, debts,
7 liabilities, and duties of the converting organization, and
8 all series thereof, shall be the rights, privileges, powers,
9 interests in property, debts, liabilities, and duties of the
10 converted organization, and shall not be deemed as a
11 consequence of the conversion, to have been transferred to the
12 converted organization;

13 "(8) if the converted organization is a limited
14 liability company, for all purposes of the laws of this state,
15 the limited liability company shall be deemed to be the same
16 organization as the converting organization, and the
17 conversion shall constitute a continuation of the existence of
18 the converting organization in the form of a limited liability
19 company;

20 "(9) if the converted organization is a limited
21 liability company, the existence of the limited liability
22 company shall be deemed to have commenced on the date the
23 converting organization commenced its existence in the
24 jurisdiction in which the converting organization was first
25 created, formed, organized, incorporated, or otherwise came
26 into being;

1 "(10) the conversion shall not affect the choice of
2 law applicable to matters arising prior to conversion; and

3 "(11) If the Secretary of State has assigned a
4 unique identifying number or other designation to the
5 converting organization and (i) the converted organization is
6 formed pursuant to, or its internal affairs are governed by,
7 the laws of this state or (ii) the converted organization is,
8 within 30 days after the effective date of the conversion,
9 registered to transact business in this state, then that
10 unique identifying number or other designation shall continue
11 to be assigned to the converted organization.

12 "(b) A converted organization that is a foreign
13 entity consents to the jurisdiction of the courts of this
14 state to enforce any debt, obligation, or other liability for
15 which the converting limited liability company, or series
16 thereof, is liable if, before the conversion, the converting
17 limited liability company was subject to suit in this state on
18 the debt, obligation, or other liability. If a converted
19 organization that is a foreign entity fails to designate or
20 maintain a registered agent, or the designated registered
21 agent cannot with reasonable diligence be served, then service
22 of process on that converted organization for the purposes of
23 enforcing a debt, obligation, or other liability under this
24 subsection may be made in the same manner and has the same
25 consequences as provided in Section 10A-1-5.35.

26 "§10A-5A-10.05.

1 "(a) A limited liability company may merge with one
2 or more other constituent organizations pursuant to this
3 section, Sections 10A-5A-10.06 through 10A-5A-10.08, and a
4 plan of merger, if:

5 "(1) the governing statute of each of the other
6 organizations authorizes the merger;

7 "(2) the merger is not prohibited by the law of a
8 jurisdiction that enacted any of those governing statutes; and

9 "(3) each of the other organizations complies with
10 its governing statute in effecting the merger.

11 "(b) A plan of merger must be in writing and must
12 include:

13 "(1) the name, type of organization, and mailing
14 address of the principal office of each constituent
15 organization, the jurisdiction of the governing statute of
16 each constituent organization, and the respective unique
17 identifying number or other designation as assigned by the
18 Secretary of State, if any, of each constituent organization;

19 "(2) the name, type of organization, and mailing
20 address of the principal office of the surviving organization, the
21 unique identifying number or other designation as assigned
22 by the Secretary of State, if any, of the surviving
23 organization, the jurisdiction of the governing statute of the
24 surviving organization, and, if the surviving organization is
25 to be created pursuant to the merger, a statement to that
26 effect;

1 "(3) the terms and conditions of the merger,
2 including the manner and basis for converting the interests in
3 each constituent organization into any combination of money,
4 interests in the surviving organization, and other
5 consideration as allowed by subsection (c);

6 "(4) if the surviving organization is to be created
7 pursuant to the merger, the surviving organization's
8 organizational documents; and

9 "(5) if the surviving organization is not to be
10 created pursuant to the merger, any amendments to be made by
11 the merger to the surviving organization's organizational
12 documents.

13 "(c) In connection with a merger, rights or
14 securities of or interests in a constituent organization may
15 be exchanged for or converted into cash, property, or rights
16 or securities of or interests in the surviving organization,
17 or, in addition to or in lieu thereof, may be exchanged for or
18 converted into cash, property, or rights or securities of or
19 interests in another organization or may be cancelled.

20 "§10A-5A-10.07.

21 "(a) After each constituent organization has
22 approved the plan of merger, a statement of merger must be
23 signed on behalf of:

24 "(1) each constituent limited liability company, as
25 provided in Section 10A-5A-2.04(a); and

26 "(2) each other constituent organization, as
27 provided by its governing statute.

1 "(b) A statement of merger under this section must
2 include:

3 "(1) the name, type of organization, and mailing
4 address of the principal office of each constituent
5 organization, ~~and~~ the jurisdiction of ~~its~~ the governing
6 statute of each constituent organization, and the respective
7 unique identifying number or other designation as assigned by
8 the Secretary of State, if any, if any of each constituent
9 organization;

10 "(2) the name, type of organization, and mailing
11 address of the principal office of the surviving organization,
12 the unique identifying number or other designation as assigned
13 by the Secretary of State, if any, of the surviving
14 organization, the jurisdiction of ~~its~~ the governing statute of
15 the surviving organization, and, if the surviving organization
16 is created pursuant to the merger, a statement to that effect;

17 "(3) the date of the filing of the certificate of
18 formation, if any, and all prior amendments and the filing
19 office or offices, if any, and where such is filed of each
20 constituent organization which was formed under the laws of
21 this state;

22 "(4) the date the merger is effective under the
23 governing statute of the surviving organization;

24 "(5) if the surviving organization is to be created
25 pursuant to the merger:

26 "(A) if it will be a limited liability company, the
27 limited liability company's certificate of formation; or

1 "(B) if it will be an organization other than a
2 limited liability company, any organizational document that
3 creates the organization that is required to be in a public
4 writing;

5 "(6) if the surviving organization exists before the
6 merger, any amendments provided for in the plan of merger for
7 the organizational document that created the organization that
8 are required to be in a public writing;

9 "(7) a statement as to each constituent organization
10 that the merger was approved as required by the organization's
11 governing statute;

12 "(8) a statement that a copy of the plan of merger
13 will be furnished by the surviving organization, on request
14 and without cost, to any owner of any constituent organization
15 which is a party to the merger;

16 "~~(8)~~(9) if the surviving organization is a foreign
17 organization not authorized to conduct activities and affairs
18 in this state, the street and mailing address of an office for
19 the purposes of Section 10A-5A-10.08 (b); and

20 "~~(9)~~(10) any additional information required by the
21 governing statute of any constituent organization.

22 "(c) The statement of merger shall be delivered for
23 filing to the Secretary of State, ~~in accordance with Section~~
24 ~~10A-1-4.02(c)(1), along with the fees specified in Section~~
25 ~~10A-1-4.31, subject to the last sentence of this subsection~~
26 ~~(c). For each constituent organization which is formed under~~
27 ~~the laws of this state and which is not, immediately prior to~~

1 ~~the merger becoming effective, an organization described in~~
2 ~~Section 10A-1-4.02(c)(4), the Secretary of State shall within~~
3 ~~10 days transmit a certified copy of the statement of merger~~
4 ~~to the office of the judge of probate in the county in which~~
5 ~~the certificate of formation for each such constituent~~
6 ~~organization was filed along with the proper fee for the judge~~
7 ~~of probate. For each constituent organization which is formed~~
8 ~~under the laws of this state and which is, immediately prior~~
9 ~~to the merger becoming effective, an organization described in~~
10 ~~Section 10A-1-4.02(c)(4), but which has a certificate of~~
11 ~~formation filed with the judge of probate, the Secretary of~~
12 ~~State shall transmit a certified copy of the statement of~~
13 ~~merger to the office of the judge of probate in the county in~~
14 ~~which the certificate of formation for each such constituent~~
15 ~~organization was filed along with the proper fee for the judge~~
16 ~~of probate. For each constituent organization which (1) is~~
17 ~~formed under the laws of this state, (2) is, immediately prior~~
18 ~~to the merger becoming effective, an organization described in~~
19 ~~Section 10A-1-4.02(c)(4), and (3) did not file its certificate~~
20 ~~of formation with the judge of probate, but rather in~~
21 ~~accordance with this title filed its certificate of formation~~
22 ~~with the Secretary of State, the Secretary of State shall not~~
23 ~~transmit a certified copy of the statement of merger to the~~
24 ~~office of the judge of probate and shall not collect any fee~~
25 ~~for the judge of probate.~~

26 "(d) A merger becomes effective under this article:

1 "(1) if the surviving organization is a limited
2 liability company, upon the later of:

3 "(A) the filing of the statement of merger with the
4 Secretary of State; or

5 "(B) as specified in the statement of merger; or

6 "(2) if the surviving organization is not a limited
7 liability company, as provided by the governing statute of the
8 surviving organization.

9 "(e) After a merger becomes effective, if the
10 surviving organization is a limited liability company, then,
11 except for certified copies of the statement of merger
12 permitted to be delivered to the judge of probate for filing
13 pursuant to subsection (f), all filing instruments required to
14 be filed under this title regarding that surviving
15 organization shall be ~~filed~~ delivered for filing with to the
16 Secretary of State.

17 "(f) A certified copy of the statement of merger
18 required to be filed under this section may be filed in the
19 real estate records in the office of the judge of probate in
20 any county in which any constituent organization owned real
21 property, without payment and without collection by the judge
22 of probate of any deed or other transfer tax or fee. The judge
23 of probate, however, shall be entitled to collect the filing
24 fee of five dollars (\$5). Any such filing shall evidence chain
25 of title, but lack of filing shall not affect the surviving
26 organization's title to such real property.

1 "(g) A statement of merger ~~shall be~~ is a filing
2 instrument under Chapter 1.

3 "~~(h) Except as provided in the last sentence of~~
4 ~~subsection (c), the~~ The filing fees for a statement of merger
5 shall be ~~the same fees as provided in Section 10A-1-4.31(a)(5)~~
6 as set forth in Chapter 1.

7 "§10A-5A-10.08.

8 "(a) When a merger becomes effective:

9 "(1) the surviving organization continues or, in the
10 case of a surviving organization created pursuant to the
11 merger, comes into existence;

12 "(2) each constituent organization that merges into
13 the surviving organization ceases to exist as a separate
14 entity;

15 "(3) except as provided in the plan of merger, all
16 property owned by, and every contract right possessed by, each
17 constituent organization, or series thereof, that ceases to
18 exist vests in the surviving organization without transfer,
19 reversion, or impairment and the title to any property and
20 contract rights vested by deed or otherwise in the surviving
21 organization shall not revert, be in any way impaired, or be
22 deemed to be a transfer by reason of the merger;

23 "(4) all debts, obligations, and other liabilities
24 of each constituent organization, or series thereof, other
25 than the surviving organization, are debts, obligations, and
26 other liabilities of the surviving organization, and neither

1 the rights of creditors, nor any liens upon the property of
2 any constituent organization, shall be impaired by the merger;

3 "(5) an action or proceeding pending by or against
4 any constituent organization, or series thereof, continues as
5 if the merger had not occurred and the name of the surviving
6 organization may be, but need not be, substituted in any
7 pending proceeding for the name of any constituent
8 organization whose separate existence ceased in the merger;

9 "(6) except as prohibited by law other than this
10 chapter, or ~~the terms of the merger~~ as provided in the plan of
11 merger, all of the rights, privileges, ~~franchise~~ franchises,
12 immunities, powers, and purposes of each constituent
13 organization, or series thereof, other than the surviving
14 organization, vest in the surviving organization;

15 "(7) except as otherwise provided in the plan of
16 merger, the terms and conditions of the plan of merger take
17 effect;

18 "(8) except as otherwise agreed, if a constituent
19 limited liability company ceases to exist, the merger does not
20 dissolve the limited liability company and does not dissolve a
21 series thereof;

22 "(9) if the surviving organization is created
23 pursuant to the merger:

24 "(A) if it is a limited liability company, the
25 certificate of formation becomes effective; or

1 "(B) if it is an organization other than a limited
2 liability company, the organizational documents that create
3 the organization become effective; and

4 "(10) if the surviving organization existed before
5 the merger, any amendments provided for in the statement of
6 merger for the organizational documents ~~that created the~~ of
7 that organization become effective;

8 "(11) the transferable interests of each limited
9 liability company that is a constituent organization to the
10 merger, and the ownership interests of each organization that
11 is not a limited liability company, but is a constituent
12 organization to the merger, that are to be converted in
13 accordance with the terms of the merger into transferable
14 interests, ownership interests, other securities, obligations,
15 rights to acquire transferable interests, ownership interests,
16 or other securities, cash, other property, or any combination
17 of the foregoing, are converted, and the former holder of such
18 transferable interests or ownership interests is entitled only
19 to the rights provided to that former holder by those terms or
20 the statute governing that former holder's constituent
21 organization; and

22 "(12) if the surviving organization exists before
23 the merger:

24 "(i) except as provided in the plan of merger, all
25 property and contract rights of the surviving organization
26 remain its property and contract rights without transfer,
27 reversion, or impairment;

1 "(ii) the surviving organization remains subject to
2 all its debts, obligations, and other liabilities; and

3 "(iii) except as provided by law other than this
4 chapter, or the plan of merger, the surviving organization
5 continues to hold all of its rights, privileges, franchises,
6 immunities, powers, and purposes.

7 "(b) A surviving organization that is a foreign
8 entity consents to the jurisdiction of this state to enforce
9 any debt, obligation, or other liability owed by a constituent
10 organization, if before the merger the constituent
11 organization was subject to suit in this state on the debt,
12 obligation, or other liability. If a surviving organization
13 that is a foreign entity fails to designate or maintain a
14 registered agent, or the designated registered agent cannot
15 with reasonable diligence be served, then the service of
16 process on that surviving organization for the purposes of
17 enforcing a debt, obligation, or other liability under this
18 subsection may be made in the same manner and has the same
19 consequences as provided in Section 10A-1-5.35.

20 "§10A-8A-9.02.

21 "(a) An organization other than a partnership may
22 convert to a partnership, and a partnership may convert to an
23 organization other than a partnership pursuant to this
24 section, Sections 10A-8A-9.03 through 10A-8A-9.05, and a plan
25 of conversion, if:

26 "(1) the governing statute of the organization that
27 is not a partnership authorizes the conversion;

1 "(2) the law of the jurisdiction governing the
2 converting organization and the converted organization does
3 not prohibit the conversion; and

4 "(3) the converting organization and the converted
5 organization each comply with the governing statute and
6 organizational documents applicable to that organization in
7 effecting the conversion.

8 "(b) A plan of conversion must be in writing and
9 must include:

10 "(1) the name, type of organization, and mailing
11 address of the principal office of the converting
12 organization, and its unique identifying number or other
13 designation as assigned by the Secretary of State, if any,
14 before conversion;

15 "(2) the name, type of organization, and mailing
16 address of the principal office of the converted organization
17 after conversion;

18 "(3) the terms and conditions of the conversion,
19 including the manner and basis for converting interests in the
20 converting organization into any combination of money,
21 interests in the converted organization, and other
22 consideration allowed in Section 10A-8A-9.02(c); and

23 "(4) the organizational documents of the converted
24 organization.

25 "(c) In connection with a conversion, rights or
26 securities of or interests in the converting organization may
27 be exchanged for or converted into cash, property, or rights

1 or securities of or interests in the converted organization,
2 or, in addition to or in lieu thereof, may be exchanged for or
3 converted into cash, property, or rights or securities of or
4 interests in another organization or may be cancelled.

5 "(d) If a partnership is the converting organization
6 and that partnership does not have an effective statement of
7 partnership, statement of not for profit partnership, or
8 statement of limited liability partnership on file with the
9 Secretary of State, then that partnership must, before
10 proceeding with a conversion deliver to the Secretary of State
11 for filing, a statement of partnership, statement of not for
12 profit partnership, or statement of limited liability
13 partnership simultaneously with the delivery to the Secretary
14 of State for filing, of a statement of conversion.

15 "(e) If an organization is converting to a
16 partnership, the converting organization must deliver to the
17 Secretary of State for filing a statement of partnership,
18 statement of not for profit partnership, or a statement of
19 limited liability partnership in accordance with Section
20 10A-8A-9.04.

21 "§10A-8A-9.04.

22 "(a) After a plan of conversion is approved:

23 "(1) if the converting organization is an
24 organization formed under, or its internal affairs are
25 governed by, the laws of this state, the converting
26 organization shall file a statement of conversion in
27 accordance with subsection (c), which statement of conversion

1 must be signed in accordance with Section 10A-8A-2.03 and
2 which must include:

3 "(A) the name, type of organization, and mailing
4 address of the principal office of the converting
5 organization, and its unique identifying number or other
6 designation as assigned by the Secretary of State, if any,
7 before conversion;

8 "(B) the date of the filing of the certificate of
9 formation of the converting organization, if any, and all
10 prior amendments and the filing office or offices, if any,
11 where such is filed;

12 "(C) a statement that the converting organization
13 has been converted into the converted organization;

14 "(D) the name and type of organization of the
15 converted organization and the jurisdiction of its governing
16 statute;

17 "(E) the street and mailing address of the principal
18 office of the converted organization;

19 "(F) the date the conversion is effective under the
20 governing statute of the converted organization;

21 "(G) a statement that the conversion was approved as
22 required by this chapter;

23 "(H) a statement that the conversion was approved as
24 required by the governing statute of the converted
25 organization; ~~and~~

26 "(I) a statement that a copy of the plan of
27 conversion will be furnished by the converted organization, on

1 request and without cost, to any owner of the converting
2 organization; and

3 "~~(I)~~ (J) if the converted organization is a foreign
4 organization not authorized to conduct business or not for
5 profit activity in this state, the street and mailing address
6 of an office for the purposes of Section 10A-8A-9.05(b); and

7 "(2) if the converted organization is a partnership,
8 the converting organization shall deliver to the Secretary of
9 State for filing a statement of partnership, statement of not
10 for profit partnership, or statement of limited liability
11 partnership, as applicable, which statement of partnership,
12 statement of not for profit partnership, or statement of
13 limited liability partnership must include, in addition to the
14 information required by Section 10A-8A-2.02 or 10A-8A-10.01,
15 as applicable:

16 "(A) a statement that the partnership was converted
17 from the converting organization;

18 "(B) the name and type of organization of the
19 converting organization, and the jurisdiction of the
20 converting organization's governing statute, and the
21 converting organization's unique identifying number or other
22 designation as assigned by the Secretary of State, if any; and

23 "(C) a statement that the conversion was approved in
24 a manner that complied with the converting organization's
25 governing statute.

26 "(3) if the converting organization is a partnership
27 and that partnership does not have an effective statement of

1 partnership, statement of not for profit partnership, or
2 statement of limited liability partnership on file with the
3 Secretary of State, then the converting organization must
4 deliver to the Secretary of State for filing, a statement of
5 partnership, statement of not for profit partnership, or
6 statement of limited liability partnership simultaneously with
7 the delivery to the Secretary of State for filing, of a
8 statement of conversion.

9 "(b) A conversion becomes effective:

10 "(1) if the converted organization is a partnership,
11 when the statement of partnership, statement of not for profit
12 partnership, or statement of limited liability partnership
13 takes effect; and

14 "(2) if the converted organization is not a
15 partnership, as provided by the governing statute of the
16 converted organization.

17 "(c) If the converting organization is an
18 organization formed under, or its internal affairs are
19 governed by, the laws of this state, then the converting
20 organization shall ~~file~~ deliver for filing the statement of
21 conversion required under subsection (a) (1) and the statement,
22 if any, required under subsection (a) (3) ~~with~~ to the Secretary
23 of State ~~in accordance with Section 10A-1-4.02(c)(1)~~.

24 "(d) If the converted organization is a partnership,
25 ~~then, notwithstanding Section 10A-1-4.02(b),~~ the converting
26 organization shall ~~file~~ deliver for filing a statement of
27 partnership, statement of not for profit partnership, or

1 statement of limited liability partnership required under
2 subsection (a) (2) ~~with to~~ the Secretary of State ~~in accordance~~
3 ~~with Section 10A-1-4.02(c) (5), along with the fees specified~~
4 ~~in Section 10A-1-4.31 subject to subsections (f) (3) and~~
5 ~~(f) (4).~~

6 "(e) If the converting organization is required to
7 ~~file~~ deliver for filing a statement of conversion and a
8 statement of partnership, statement of not for profit
9 partnership, or statement of limited liability partnership
10 ~~with to~~ the Secretary of State, then the converting
11 organization shall ~~file~~ deliver for filing the statement of
12 conversion and the statement of partnership, statement of not
13 for profit partnership, or statement of limited liability
14 partnership ~~with to~~ the Secretary of State simultaneously.

15 ~~"(f) In the case of a statement of conversion that~~
16 ~~is to be filed with the Secretary of State pursuant to~~
17 ~~subsection (c):~~

18 ~~"(1) if the converting organization has a~~
19 ~~certificate of formation filed with the judge of probate, the~~
20 ~~Secretary of State shall within 10 days transmit a certified~~
21 ~~copy of the statement of conversion to the office of the judge~~
22 ~~of probate in the county in which the certificate of formation~~
23 ~~for such converting organization was filed along with the~~
24 ~~proper fee for the judge of probate.~~

25 ~~"(2) if the converting organization did not file its~~
26 ~~certificate of formation with the judge of probate, but rather~~
27 ~~in accordance with this title filed its certificate of~~

1 ~~formation with the Secretary of State, the Secretary of State~~
2 ~~shall not transmit a certified copy of the statement of~~
3 ~~conversion to the office of the judge of probate and shall not~~
4 ~~collect any fee for the judge of probate.~~

5 ~~"(3) if the converting organization is, immediately~~
6 ~~prior to the conversion becoming effective, an organization~~
7 ~~described in Section 10A-1-4.02(c)(4), but is not required~~
8 ~~under this title to file its organizational documents with the~~
9 ~~judge of probate, the Secretary of State shall not transmit a~~
10 ~~certified copy of the statement of conversion to the office of~~
11 ~~the judge of probate and shall not collect any fee for the~~
12 ~~judge of probate.~~

13 ~~"(4) if the converting organization is a~~
14 ~~partnership, the Secretary of State shall not transmit a~~
15 ~~certified copy of the statement of conversion to the office of~~
16 ~~the judge of probate and shall not collect any fee for the~~
17 ~~judge of probate.~~

18 ~~"(g) In the case of a statement of partnership,~~
19 ~~statement of not for profit partnership, or statement of~~
20 ~~limited liability partnership that is to be filed with the~~
21 ~~Secretary of State pursuant to subsection (d), the Secretary~~
22 ~~of State shall not transmit a certified copy of the statement~~
23 ~~of partnership, statement of not for profit partnership, or~~
24 ~~statement of limited liability partnership to the office of~~
25 ~~the judge of probate and shall not collect any fee for the~~
26 ~~judge of probate, but shall collect the fee provided for the~~
27 ~~Secretary of State in Section 10A-1-4.31(a)(1).~~

1 "~~(h)~~(f) After a conversion becomes effective, if the
2 converted organization is a partnership, then, except for (I)
3 certified copies of documents permitted to be delivered to the
4 judge of probate for filing pursuant to subsection (h) and
5 (II) certified copies of statements of authority, denial, and
6 cancellations thereof permitted to be delivered to the judge
7 of probate for filing pursuant to Sections 10A-8A-3.03 and
8 10A-8A-3.04, all filing instruments required to be filed under
9 this title regarding that converted organization shall be
10 filed with the Secretary of State.

11 "~~(i)~~(g) If:

12 "(1) the converting organization is a filing entity,
13 a partnership with an effective statement of partnership,
14 statement of not for profit partnership, or statement of
15 limited liability partnership on file with the Secretary of
16 State, a foreign filing entity registered to conduct business
17 or not for profit activity in this state or a qualified
18 foreign limited liability partnership;

19 "(2) the converted organization will be a filing
20 entity, a partnership with an effective statement of
21 partnership, statement of not for profit partnership, or
22 statement of limited liability partnership on file with the
23 Secretary of State, a foreign filing entity registered to
24 conduct business or not for profit activity in this state or a
25 qualified foreign limited liability partnership;

1 "(3) the name of the converting organization and the
2 converted organization are to be the same, other than words,
3 phrases or abbreviations indicating the type of entity; and

4 "(4) the name of the converted organization complies
5 with Division A of Article 5 of Chapter 1 or Section
6 10A-1-7.07, as the case may be; then notwithstanding Division
7 B of Article 5 of Chapter 1, no name reservation shall be
8 required and the converted organization shall for all purposes
9 of this title be entitled to utilize the name of the
10 converting organization without any further action by the
11 converting organization or the converted organization.

12 "~~(j)~~(h) A certified copy of any document required to
13 be filed under this section may be filed in the real estate
14 records in the office of the judge of probate in any county in
15 which the converting organization owned real property, without
16 payment and without collection by the judge of probate of any
17 deed or other transfer tax or fee. The judge of probate shall,
18 however, be entitled to collect a filing fee of five dollars
19 (\$5). Any such filing shall evidence chain of title, but lack
20 of filing shall not affect the converted organization's title
21 to such real property.

22 "~~(k)~~(i) A statement of conversion is a filing
23 instrument under Chapter 1.

24 "~~(l)~~(j) ~~Except as set forth in subsections (f) (2),~~
25 ~~(f) (3), and (f) (4), the~~ The filing fees for a statement of
26 conversion shall be ~~the same fee as provided in Section~~
27 ~~10A-1-4.31(a) (5)~~ as set forth in Chapter 1.

1 "§10A-8A-9.05.

2 "(a) When a conversion takes effect:

3 "(1) all property and contract rights owned by the
4 converting organization remains vested in the converted
5 organization without ~~reservation~~ transfer, reversion, or
6 impairment and the title to any property vested by deed or
7 otherwise in the converting organization shall not revert or
8 be in any way impaired by reason of the conversion;

9 "(2) all debts, obligations, or other liabilities of
10 the converting organization continue as debts, obligations, or
11 other liabilities of the converted organization and neither
12 the rights of creditors, nor the liens upon the property of
13 the converting organization shall be impaired by the
14 conversion;

15 "(3) an action or proceeding pending by or against
16 the converting organization continues as if the conversion had
17 not occurred and the name of the converted entity may, but
18 need not, be substituted for the name of the converting entity
19 in any pending action or proceeding;

20 "(4) except as prohibited by law other than this
21 chapter, all of the rights, privileges, immunities, powers,
22 and purposes of the converting organization remain vested in
23 the converted organization;

24 "(5) except as otherwise provided in the plan of
25 conversion, the terms and conditions of the plan of conversion
26 take effect;

1 "(6) except as otherwise agreed, for all purposes of
2 the laws of this state, the converting organization shall not
3 be required to wind up its business or not for profit activity
4 or pay its liabilities and distribute its assets, and the
5 conversion shall not be deemed to constitute a dissolution of
6 the converting organization;

7 "(7) for all purposes of the laws of this state, the
8 rights, privileges, powers, interests in property, debts,
9 liabilities and duties of the converting organization, shall
10 be the rights, privileges, powers, interests in property,
11 debts, liabilities and duties of the converted organization,
12 and shall not be deemed as a consequence of the conversion, to
13 have been transferred to the converted organization;

14 "(8) if the converted organization is a partnership,
15 for all purposes of the laws of this state, the partnership
16 shall be deemed to be the same organization as the converting
17 organization, and the conversion shall constitute a
18 continuation of the existence of the converting organization
19 in the form of a partnership;

20 "(9) if the converted organization is a partnership,
21 the existence of the partnership shall be deemed to have
22 commenced on the date the converting organization commenced
23 its existence in the jurisdiction in which the converting
24 organization was first created, formed, organized,
25 incorporated, or otherwise came into being;

26 "(10) the conversion shall not affect the choice of
27 law applicable to matters arising prior to conversion; and

1 "(11) If the Secretary of State has assigned a
2 unique identifying number or other designation to the
3 converting organization and

4 "(i) the converted organization is formed pursuant
5 to, or its internal affairs are governed by, the laws of this
6 state or

7 "(ii) the converted organization is, within 30 days
8 after the effective date of the conversion, registered to
9 transact business in this state, then that unique identifying
10 number or other designation shall continue to be assigned to
11 the converted organization.

12 "(b) A converted organization that is a foreign
13 entity consents to the jurisdiction of the courts of this
14 state to enforce any debt, obligation, or other liability for
15 which the converting partnership is liable if, before the
16 conversion, the converting partnership was subject to suit in
17 this state on the debt, obligation, or other liability. If a
18 converted organization that is a foreign entity fails to
19 designate or maintain a registered agent, or the designated
20 registered agent cannot with reasonable diligence be served,
21 then service of process on that converted organization for the
22 purposes of enforcing a debt, obligation, or other liability
23 under this subsection may be made in the same manner and has
24 the same consequences as provided in Section 10A-1-5.35.

25 "§10A-8A-9.06.

1 "(a) A partnership may merge with one or more other
2 constituent organizations pursuant to this section, Sections
3 10A-8A-9.07 through 10A-8A-9.09, and a plan of merger, if:

4 "(1) the governing statute of each of the other
5 organizations authorizes the merger;

6 "(2) the merger is not prohibited by the law of a
7 jurisdiction that enacted any of those governing statutes; and

8 "(3) each of the other organizations complies with
9 its governing statute in effecting the merger.

10 "(b) A plan of merger must be in writing and must
11 include:

12 "(1) the name, type of organization, and mailing
13 address of the principal office of each constituent
14 organization, the jurisdiction of the governing statute of
15 each constituent organization, and the respective unique
16 identifying numbers or other designations as assigned by the
17 Secretary of State, if any, of each constituent organization;

18 "(2) the name, type of organization, and mailing
19 address of the principal office of the surviving organization, the
20 unique identifying number or other designation as assigned
21 by the Secretary of State, if any, of the surviving
22 organization, the jurisdiction of the governing statute of the
23 surviving organization, and, if the surviving organization is
24 to be created pursuant to the merger, a statement to that
25 effect;

26 "(3) the terms and conditions of the merger,
27 including the manner and basis for converting the interests in

1 each constituent organization into any combination of money,
2 interests in the surviving organization, and other
3 consideration as allowed by subsection (c);

4 "(4) if the surviving organization is to be created
5 pursuant to the merger, the surviving organization's
6 organizational documents; and

7 "(5) if the surviving organization is not to be
8 created pursuant to the merger, any amendments to be made by
9 the merger to the surviving organization's organizational
10 documents.

11 "(c) In connection with a merger, rights or
12 securities of or interests in a constituent organization may
13 be exchanged for or converted into cash, property, or rights
14 or securities of or interests in the surviving organization,
15 or, in addition to or in lieu thereof, may be exchanged for or
16 converted into cash, property, or rights or securities of or
17 interests in another organization or may be cancelled.

18 "§10A-8A-9.08.

19 "(a) After each constituent organization has
20 approved the plan of merger, a statement of merger must be
21 signed on behalf of:

22 "(1) each constituent partnership, as provided in
23 Section 10A-8A-2.03(a); and

24 "(2) each other constituent organization, as
25 provided by its governing statute.

26 "(b) A statement of merger under this section must
27 include:

1 "(1) the name, type of organization, and mailing
2 address of the principal office of each constituent
3 organization ~~and~~ , the jurisdiction of ~~its~~ the governing
4 statute of each constituent organization, and the respective
5 unique identifying numbers or other designations as assigned
6 by the Secretary of State, if any, of each constituent
7 organization;

8 "(2) the name, type of organization, and mailing
9 address of the principal office of the surviving organization,
10 the unique identifying number or other designation as assigned
11 by the Secretary of State, if any, of the surviving
12 organization, the jurisdiction of ~~its~~ the governing statute of
13 the surviving organization, and, if the surviving organization
14 is created pursuant to the merger, a statement to that effect;

15 "(3) the date of the filing of the certificate of
16 formation, if any, and all prior amendments and the filing
17 office or offices, if any, and where such is filed of each
18 constituent organization which was formed under the laws of
19 this state;

20 "(4) the date of the filing of the statement of
21 partnership, statement of not for profit partnership, or
22 statement of limited liability partnership, if any, and all
23 prior amendments and the filing office or offices, if any, and
24 where such is filed of each constituent organization which is
25 a partnership;

26 "(5) the date the merger is effective under the
27 governing statute of the surviving organization;

1 "(6) if the surviving organization is to be created
2 pursuant to the merger:

3 "(A) if it will be a partnership, the partnership's
4 statement of partnership, statement of not for profit
5 partnership, or statement of limited liability partnership; or

6 "(B) if it will be an organization other than a
7 partnership, any organizational document that creates the
8 organization that is required to be in a public writing;

9 "(7) if the surviving organization exists before the
10 merger, any amendments provided for in the plan of merger for
11 the organizational document that are required to be in a
12 public writing;

13 "(8) a statement as to each constituent organization
14 that the merger was approved as required by the organization's
15 governing statute;

16 "(9) a statement that a copy of the plan of merger
17 will be furnished by the surviving organization, on request
18 and without cost, to any owner of any constituent organization
19 which is a party to the merger;

20 "~~(9)~~(10) if the surviving organization is a foreign
21 organization not authorized to conduct business or not for
22 profit activity in this state, the street and mailing address
23 of an office for the purposes of Section 10A-8A-9.09(b); and

24 "~~(10)~~(11) any additional information required by the
25 governing statute of any constituent organization.

26 "(c) Prior to the statement of merger being
27 delivered for filing to the Secretary of State in accordance

1 subsection (d), all constituent organizations that are
2 partnerships, other than a partnership that is created
3 pursuant to the merger, must have on file with the Secretary
4 of State a statement of partnership, statement of not for
5 profit partnership, or statement of limited liability
6 partnership.

7 "(d) The statement of merger shall be delivered for
8 filing to the Secretary of State ~~in accordance with Section~~
9 ~~10A-1-4.02(c)(1), along with the fees specified in Section~~
10 ~~10A-1-4.31, subject to the last two sentences of this~~
11 ~~subsection (d). For each constituent organization which is~~
12 ~~formed under the laws of this state pursuant to a certificate~~
13 ~~of formation and which is not, immediately prior to the merger~~
14 ~~becoming effective, an organization described in Section~~
15 ~~10A-1-4.02(c)(4), the Secretary of State shall within 10 days~~
16 ~~transmit a certified copy of the statement of merger to the~~
17 ~~office of the judge of probate in the county in which the~~
18 ~~certificate of formation for each such constituent~~
19 ~~organization was filed along with the proper fee for the judge~~
20 ~~of probate. For each constituent organization which is formed~~
21 ~~under the laws of this state pursuant to a certificate of~~
22 ~~formation, which is, immediately prior to the merger becoming~~
23 ~~effective, an organization described in Section~~
24 ~~10A-1-4.02(c)(4), but which has a certificate of formation~~
25 ~~filed with the judge of probate, the Secretary of State shall~~
26 ~~transmit a certified copy of the statement of merger to the~~
27 ~~office of the judge of probate in the county in which the~~

1 ~~certificate of formation for each such constituent~~
2 ~~organization was filed along with the proper fee for the judge~~
3 ~~of probate. For each constituent organization which (1) is~~
4 ~~formed under the laws of this state pursuant to a certificate~~
5 ~~of formation, (2) is, immediately prior to the merger becoming~~
6 ~~effective, an organization described in Section~~
7 ~~10A-1-4.02(c)(4), and (3) did not file its certificate of~~
8 ~~formation with the judge of probate, but rather in accordance~~
9 ~~with this title filed its certificate of formation with the~~
10 ~~Secretary of State, the Secretary of State shall not transmit~~
11 ~~a certified copy of the statement of merger to the office of~~
12 ~~the judge of probate and shall not collect any fee for the~~
13 ~~judge of probate. For each constituent organization which is a~~
14 ~~partnership, the Secretary of State shall not transmit a~~
15 ~~certified copy of the statement of merger to the office of the~~
16 ~~judge of probate and shall not collect any fee for the judge~~
17 ~~of probate.~~

18 "(e) A merger becomes effective under this article:

19 "(1) if the surviving organization is a partnership,
20 upon the later of:

21 "(A) the filing of the statement of merger with the
22 Secretary of State; or

23 "(B) as specified in the statement of merger; or

24 "(2) if the surviving organization is not a
25 partnership, as provided by the governing statute of the
26 surviving organization.

1 "(f) After a merger becomes effective, if the
2 surviving organization is a partnership, then, except (I) the
3 statement of merger permitted to be delivered to the judge of
4 probate for filing pursuant to subsection (g) and (II)
5 certified copies of statements of authority, denial, and
6 cancellations thereof permitted to be delivered to the judge
7 of probate for filing pursuant to Sections 10A-8A-3.03 and
8 10A-8A-3.04 for certified copies of, all filing instruments
9 required to be filed under this title regarding that surviving
10 organization shall be ~~filed~~ delivered for filing with to the
11 Secretary of State.

12 "(g) A certified copy of the statement of merger
13 required to be filed under this section may be filed in the
14 real estate records in the office of the judge of probate in
15 any county in which any constituent organization owned real
16 property, without payment and without collection by the judge
17 of probate of any deed or other transfer tax or fee. The judge
18 of probate, however, shall be entitled to collect the filing
19 fee of five dollars (\$5). Any such filing shall evidence chain
20 of title, but lack of filing shall not affect the surviving
21 organization's title to such real property.

22 "(h) A statement of merger is a filing instrument
23 under Chapter 1.

24 "~~Except as provided in the last two sentences of~~
25 ~~subsection (d), the~~ The filing fees for a statement of merger
26 shall be ~~the same fees as provided in Section 10A-1-4.31(a)(5)~~
27 as set forth in Chapter 1.

1 "§10A-8A-9.09.

2 "(a) When a merger becomes effective:

3 "(1) the surviving organization continues or, in the
4 case of a surviving organization created pursuant to the
5 merger, comes into existence;

6 "(2) each constituent organization that merges into
7 the surviving organization ceases to exist as a separate
8 entity;

9 "(3) except as provided in the plan of merger, all
10 property owned by, and every contract right possessed by, each
11 constituent organization that ceases to exist vests in the
12 surviving organization without transfer, reversion, or
13 impairment and the title to any property and contract rights
14 vested by deed or otherwise in the surviving organization
15 shall not revert, be in any way impaired, or be deemed to be a
16 transfer by reason of the merger;

17 "(4) all debts, obligations, and other liabilities
18 of each constituent organization, other than the surviving
19 organization, are debts, obligations, and other liabilities of
20 the surviving organization, and neither the rights of
21 creditors, nor any liens upon the property of any constituent
22 organization, shall be impaired by the merger;

23 "(5) an action or proceeding pending by or against
24 any constituent organization continues as if the merger had
25 not occurred and the name of the surviving organization may
26 be, but need not be, substituted in any pending proceeding for

1 the name of any constituent organization whose separate
2 existence ceased in the merger;

3 "(6) except as prohibited by law other than this
4 chapter, or ~~the terms~~ as provided in the plan of ~~the~~ merger,
5 all of the rights, privileges, franchises, immunities, powers,
6 and purposes of each constituent organization, other than the
7 surviving organization, vest in the surviving organization;

8 "(7) except as otherwise provided in the plan of
9 merger, the terms and conditions of the plan of merger take
10 effect;

11 "(8) except as otherwise agreed, if a constituent
12 partnership ceases to exist, the merger does not dissolve the
13 partnership;

14 "(9) if the surviving organization is created
15 pursuant to the merger:

16 "(A) if it is a partnership, the statement of
17 partnership, statement of not for profit partnership or
18 statement of limited liability partnership becomes effective;
19 or

20 "(B) if it is an organization other than a
21 partnership, the organizational documents that create the
22 organization become effective;

23 "(10) if the surviving organization existed before
24 the merger, any amendments provided for in the statement of
25 merger for the organizational documents of that organization
26 become effective;

1 "(11) the transferable interests of each partnership
2 that is a constituent organization to the merger, and the
3 ownership interests of each organization that is not a
4 partnership, but is a constituent organization to the merger,
5 that are to be converted in accordance with the terms of the
6 merger into transferable interests, ownership interests, other
7 securities, obligations, rights to acquire transferable
8 interests, ownership interests, or other securities, cash,
9 other property, or any combination of the foregoing, are
10 converted, and the former holder of such transferable
11 interests or ownership interests is entitled only to the
12 rights provided to that former holder by those terms or the
13 statute governing that former holder's constituent
14 organization; and

15 "(12) if the surviving organization exists before
16 the merger:

17 "(i) except as provided in the plan of merger all
18 the property and contract rights of the surviving organization
19 remain its property and contract rights without transfer,
20 reversion, or impairment;

21 "(ii) the surviving organization remains subject to
22 all its debts, obligations, and other liabilities; and

23 "(iii) except as provided by law other than this
24 chapter, or the plan of merger, the surviving organization
25 continues to hold all of its rights, privileges, franchises,
26 immunities, powers, and purposes.

1 "(b) A surviving organization that is a foreign
2 entity consents to the jurisdiction of this state to enforce
3 any debt, obligation, or other liability owed by a constituent
4 organization, if before the merger the constituent
5 organization was subject to suit in this state on the debt,
6 obligation, or other liability. If a surviving organization
7 that is a foreign entity fails to designate or maintain a
8 registered agent, or the designated registered agent cannot
9 with reasonable diligence be served, then the service of
10 process on that surviving organization for the purposes of
11 enforcing a debt, obligation, or other liability under this
12 subsection may be made in the same manner and has the same
13 consequences as provided in Section 10A-1-5.35.

14 "§10A-9A-10.02.

15 "(a) An organization other than a limited
16 partnership may convert to a limited partnership, and a
17 limited partnership may convert to an organization other than
18 a limited partnership pursuant to this section, Sections
19 10A-9A-10.03 through 10A-9A-10.05, and a plan of conversion,
20 if:

21 "(1) the governing statute of the organization that
22 is not a limited partnership authorizes the conversion;

23 "(2) the law of the jurisdiction governing the
24 converting organization and the converted organization does
25 not prohibit the conversion; and

26 "(3) the converting organization and the converted
27 organization each comply with the governing statute and

1 organizational documents applicable to that organization in
2 effecting the conversion.

3 "(b) A plan of conversion must be in writing and
4 must include:

5 "(1) the name, type of organization, and mailing
6 address of the principal office of the converting
7 organization, and its unique identifying number or other
8 designation as assigned by the Secretary of State, if any,
9 before conversion;

10 "(2) the name, type of organization, and mailing
11 address of the principal office of the converted organization
12 after conversion;

13 "(3) the terms and conditions of the conversion,
14 including the manner and basis for converting interests in the
15 converting organization into any combination of money,
16 interests in the converted organization, and other
17 consideration allowed in Section 10A-9A-10.02(c); and

18 "(4) the organizational documents of the converted
19 organization.

20 "(c) In connection with a conversion, rights or
21 securities of or interests in the converting organization may
22 be exchanged for or converted into cash, property, or rights
23 or securities of or interests in the converted organization,
24 or, in addition to or in lieu thereof, may be exchanged for or
25 converted into cash, property, or rights or securities of or
26 interests in another organization or may be cancelled.

27 "§10A-9A-10.04.

1 "(a) After a plan of conversion is approved:

2 "(1) if the converting organization is an
3 organization formed under, or its internal affairs are
4 governed by, the laws of this state, the converting
5 organization shall file a statement of conversion in
6 accordance with subsection (c), which statement of conversion
7 must be signed in accordance with Section 10A-9A-2.03(a) and
8 which must include:

9 "(A) the name, type of organization, and mailing
10 address of the principal office of the converting
11 organization, and its unique identifying number or other
12 designation as assigned by the Secretary of State, if any,
13 before conversion;

14 "(B) the date of the filing of the certificate of
15 formation of the converting organization, if any, and all
16 prior amendments and the filing office or offices, if any,
17 where such is filed;

18 "(C) a statement that the converting organization
19 has been converted into the converted organization;

20 "(D) the name and type of organization of the
21 converted organization and the jurisdiction of its governing
22 statute;

23 "(E) the street and mailing address of the principal
24 office of the converted organization;

25 "(F) the date the conversion is effective under the
26 governing statute of the converted organization;

1 "(G) a statement that the conversion was approved as
2 required by this chapter;

3 "(H) a statement that the conversion was approved as
4 required by the governing statute of the converted
5 organization; and

6 "(I) a statement that a copy of the plan of
7 conversion will be furnished by the converted organization, on
8 request and without cost, to any owner of the converting
9 organization; and

10 "~~(I)~~(J) if the converted organization is a foreign
11 organization not authorized to conduct activities and affairs
12 in this state, the street and mailing address of an office for
13 the purposes of Section 10A-9A-10.05(b); and

14 "(2) if the converted organization is a limited
15 partnership, the converting organization shall ~~file~~ deliver
16 for filing a certificate of formation in accordance with
17 subsection (d), which certificate of formation must include,
18 in addition to the information required by Section
19 10A-9A-2.01(a):

20 "(A) a statement that the limited partnership was
21 converted from the converting organization;

22 "(B) the name and type of organization of the
23 converting organization ~~and,~~ the jurisdiction of the
24 converting organization's governing statute, and the
25 converting organization's unique identifying number or other
26 designation as assigned by the Secretary of State, if any; and

1 "(C) a statement that the conversion was approved in
2 a manner that complied with the converting organization's
3 governing statute.

4 "(b) A conversion becomes effective:

5 "(1) if the converted organization is a limited
6 partnership, when the certificate of formation takes effect;
7 and

8 "(2) if the converted organization is not a limited
9 partnership, as provided by the governing statute of the
10 converted organization.

11 "(c) If the converting organization is an
12 organization formed under, or its internal affairs are
13 governed by, the laws of this state, then the converting
14 organization shall ~~file~~ deliver for filing the statement of
15 conversion required under subsection (a) (1) ~~with to~~ the
16 Secretary of State ~~in accordance with Section~~
17 ~~10A-1-4.02(c)(1)~~.

18 "(d) If the converted organization is a limited
19 partnership, ~~then, notwithstanding Section 10A-1-4.02(b),~~ the
20 converting organization shall ~~file~~ deliver for filing the
21 certificate of formation required under subsection (a) (2) ~~with~~
22 ~~to~~ the Secretary of State ~~in accordance with Section~~
23 ~~10A-1-4.02(c)(5), along with the fees specified in Section~~
24 ~~10A-1-4.31 subject to subsection (f)(3)~~.

25 "(e) If the converting organization is required to
26 ~~file~~ deliver for filing a statement of conversion and a
27 certificate of formation ~~with to~~ the Secretary of State, then

1 the converting organization shall ~~file~~ deliver for filing the
2 statement of conversion and the certificate of formation ~~with~~
3 to the Secretary of State simultaneously.

4 ~~"(f) In the case of a statement of conversion that~~
5 ~~is to be filed with the Secretary of State pursuant to~~
6 ~~subsections (c):~~

7 ~~"(1) if the converting organization has a~~
8 ~~certificate of formation filed with the judge of probate, the~~
9 ~~Secretary of State shall within 10 days transmit a certified~~
10 ~~copy of the statement of conversion to the office of the judge~~
11 ~~of probate in the county in which the certificate of formation~~
12 ~~for such converting organization was filed along with the~~
13 ~~proper fee for the judge of probate.~~

14 ~~"(2) if the converting organization did not file its~~
15 ~~certificate of formation with the judge of probate, but rather~~
16 ~~in accordance with this title filed its certificate of~~
17 ~~formation with the Secretary of State, the Secretary of State~~
18 ~~shall not transmit a certified copy of the statement of~~
19 ~~conversion to the office of the judge of probate and shall not~~
20 ~~collect any fee for the judge of probate.~~

21 ~~"(3) if the converting organization is, immediately~~
22 ~~prior to the conversion becoming effective, an organization~~
23 ~~described in Section 10A-1-4.02(c)(4), but is not required~~
24 ~~under this title to file its organizational documents with the~~
25 ~~judge of probate, the Secretary of State shall not transmit a~~
26 ~~certified copy of the statement of the statement of conversion~~

1 ~~to the office of the judge of probate and shall not collect~~
2 ~~any fee for the judge of probate.~~

3 ~~"(g) In the case of a certificate of formation that~~
4 ~~is to be filed with the Secretary of State pursuant to~~
5 ~~subsection (d), the Secretary of State shall not transmit a~~
6 ~~certified copy of the certificate of formation to the office~~
7 ~~of the judge of probate and shall not collect any fee for the~~
8 ~~judge of probate, but shall collect the fee provided for the~~
9 ~~Secretary of State in Section 10A-1-4.31(a)(1).~~

10 ~~"(h)(f) After a conversion becomes effective, if the~~
11 ~~converted organization is a limited partnership, then, except~~
12 ~~for certified copies of documents permitted to be delivered to~~
13 ~~the judge of probate for filing pursuant to subsection (h),~~
14 ~~all filing instruments required to be filed under this title~~
15 ~~regarding that converted organization shall be filed with the~~
16 ~~Secretary of State.~~

17 ~~"(i)(g) If:~~

18 ~~"(1) the converting organization is a filing entity~~
19 ~~or a foreign filing entity registered to conduct activities~~
20 ~~and affairs in this state;~~

21 ~~"(2) the converted organization will be a filing~~
22 ~~entity or a foreign filing entity registered to conduct~~
23 ~~activities and affairs in this state;~~

24 ~~"(3) the name of the converting organization and the~~
25 ~~converted organization are to be the same, other than words,~~
26 ~~phrases or abbreviations indicating the type of entity; and~~

1 "(4) the name of the converted organization complies
2 with Division A of Article 5 of Chapter 1 or Section
3 10A-1-7.07, as the case may be; then notwithstanding Division
4 B of Article 5 of Chapter 1, no name reservation shall be
5 required and the converted organization shall for all purpose
6 of this title be entitled to utilize the name of the
7 converting organization without any further action by the
8 converting organization or the converted organization.

9 "~~(j)~~(h) A certified copy of any document required to
10 be filed under this section may be filed in the real estate
11 records in the office of the judge of probate in any county in
12 which the converting organization owned real property, without
13 payment and without collection by the judge of probate of any
14 deed or other transfer tax or fee. The judge of probate shall,
15 however, be entitled to collect a filing fee of five dollars
16 (\$5). Any such filing shall evidence chain of title, but lack
17 of filing shall not affect the converted organization's title
18 to such real property.

19 "~~(k)~~(i) A statement of conversion ~~shall be~~ is a
20 filing instrument under Chapter 1.

21 "~~(l)~~(j) ~~Except as set forth in subsection (f) (2),~~
22 ~~the~~ The filing fees for a statement of conversion shall be ~~the~~
23 ~~same fee as provided in Section 10A-1-4.31(a) (5)~~ as set forth
24 in Chapter 1.

25 "§10A-9A-10.05.

26 "(a) When a conversion takes effect:

1 "(1) all property and contract rights owned by the
2 converting organization remains vested in the converted
3 organization without ~~reservation~~ transfer, reversion, or
4 impairment and the title to any property vested by deed or
5 otherwise in the converting organization shall not revert or
6 be in any way impaired by reason of the conversion;

7 "(2) all debts, obligations, or other liabilities of
8 the converting organization continue as debts, obligations, or
9 other liabilities of the converted organization and neither
10 the rights of creditors, nor the liens upon the property of
11 the converting organization shall be impaired by the
12 conversion;

13 "(3) an action or proceeding pending by or against
14 the converting organization continues as if the conversion had
15 not occurred and the name of the converted entity may, but
16 need not, be substituted for the name of the converting entity
17 in any pending action or proceeding;

18 "(4) except as prohibited by law other than this
19 chapter, all of the rights, privileges, immunities, powers,
20 and purposes of the converting organization remain vested in
21 the converted organization;

22 "(5) except as otherwise provided in the plan of
23 conversion, the terms and conditions of the plan of conversion
24 take effect;

25 "(6) except as otherwise agreed, for all purposes of
26 the laws of this state, the converting organization shall not
27 be required to wind up its affairs or pay its liabilities and

1 distribute its assets, and the conversion shall not be deemed
2 to constitute a dissolution of the converting organization;

3 "(7) for all purposes of the laws of this state, the
4 rights, privileges, powers, interests in property, debts,
5 liabilities, and duties of the converting organization, shall
6 be the rights, privileges, powers, interests in property,
7 debts, liabilities, and duties of the converted organization,
8 and shall not be deemed as a consequence of the conversion, to
9 have been transferred to the converted organization;

10 "(8) if the converted organization is a limited
11 partnership, for all purposes of the laws of this state, the
12 limited partnership shall be deemed to be the same
13 organization as the converting organization, and the
14 conversion shall constitute a continuation of the existence of
15 the converting organization in the form of a limited
16 partnership;

17 "(9) if the converted organization is a limited
18 partnership, the existence of the limited partnership shall be
19 deemed to have commenced on the date the converting
20 organization commenced its existence in the jurisdiction in
21 which the converting organization was first created, formed,
22 organized, incorporated, or otherwise came into being;

23 "(10) the conversion shall not affect the choice of
24 law applicable to matters arising prior to conversion; and

25 "(11) if the Secretary of State has assigned a
26 unique identifying number or other designation to the
27 converting organization and (i) the converted organization is

1 formed pursuant to, or its internal affairs are governed by,
2 the laws of this state or (ii) the converted organization is,
3 within 30 days after the effective date of the conversion,
4 registered to transact business in this state, then that
5 unique identifying number or other designation shall continue
6 to be assigned to the converted organization.

7 "(b) A converted organization that is a foreign
8 entity consents to the jurisdiction of the courts of this
9 state to enforce any debt, obligation, or other liability for
10 which the converting limited partnership, or series thereof,
11 is liable if, before the conversion, the converting limited
12 partnership was subject to suit in this state on the debt,
13 obligation, or other liability. If a converted organization
14 that is a foreign entity fails to designate or maintain a
15 registered agent, or the designated registered agent cannot
16 with reasonable diligence be served, then service of process
17 on that converted organization for the purposes of enforcing a
18 debt, obligation, or other liability under this subsection may
19 be made in the same manner and has the same consequences as
20 provided in Section 10A-1-5.35.

21 "§10A-9A-10.06.

22 "(a) A limited partnership may merge with one or
23 more other constituent organizations pursuant to this section,
24 Sections 10A-9A-10.07 through 10A-9A-10.09, and a plan of
25 merger, if:

26 "(1) the governing statute of each of the other
27 organizations authorizes the merger;

1 "(2) the merger is not prohibited by the law of a
2 jurisdiction that enacted any of those governing statutes; and

3 "(3) each of the other organizations complies with
4 its governing statute in effecting the merger.

5 "(b) A plan of merger must be in writing and must
6 include:

7 "(1) the name, type of organization, and mailing
8 address of the principal office of each constituent
9 organization, the jurisdiction of the governing statute of
10 each constituent organization, and the respective unique
11 identifying numbers or other designations as assigned by the
12 Secretary of State, if any, of each constituent organization;

13 "(2) the name, type of organization, and mailing
14 address of the principal office of the surviving organization, and
15 the unique identifying number or other designation as assigned
16 by the Secretary of State, if any, of the surviving
17 organization, the jurisdiction of the governing statute of the
18 surviving organization, and, if the surviving organization is
19 to be created pursuant to the merger, a statement to that
20 effect;

21 "(3) the terms and conditions of the merger,
22 including the manner and basis for converting the interests in
23 each constituent organization into any combination of money,
24 interests in the surviving organization, and other
25 consideration as allowed by subsection (c);

1 "(4) if the surviving organization is to be created
2 pursuant to the merger, the surviving organization's
3 organizational documents; and

4 "(5) if the surviving organization is not to be
5 created pursuant to the merger, any amendments to be made by
6 the merger to the surviving organization's organizational
7 documents.

8 "(c) In connection with a merger, rights or
9 securities of or interests in a constituent organization may
10 be exchanged for or converted into cash, property, or rights
11 or securities of or interests in the surviving organization,
12 or, in addition to or in lieu thereof, may be exchanged for or
13 converted into cash, property, or rights or securities of or
14 interests in another organization or may be cancelled.

15 "§10A-9A-10.08.

16 "(a) After each constituent organization has
17 approved the plan of merger, a statement of merger must be
18 signed on behalf of:

19 "(1) each constituent limited partnership, as
20 provided in Section 10A-9A-2.03(a); and

21 "(2) each other constituent organization, as
22 provided by its governing statute.

23 "(b) A statement of merger under this section must
24 include:

25 "(1) the name, type of organization, and mailing
26 address of the principal office of each constituent
27 organization ~~and,~~ the jurisdiction of ~~its~~ the governing

1 statute of each constituent organization, and the respective
2 unique identifying numbers or other designations as assigned
3 by the Secretary of State, if any, of each constituent
4 organization;

5 "(2) the name, type of organization, and mailing
6 address of the principal office of the surviving organization,
7 the unique identifying number or other designation as assigned
8 by the Secretary of State, if any of the surviving
9 organization, the jurisdiction of ~~its~~ the governing statute of
10 the surviving organization, and, if the surviving organization
11 is created pursuant to the merger, a statement to that effect;

12 "(3) the date of the filing of the certificate of
13 formation, if any, and all prior amendments and the filing
14 office or offices, if any, and where such is filed of each
15 constituent organization which was formed under the laws of
16 this state;

17 "(4) the date the merger is effective under the
18 governing statute of the surviving organization;

19 "(5) if the surviving organization is to be created
20 pursuant to the merger:

21 "(A) if it will be a limited partnership, the
22 limited partnership's certificate of formation; or

23 "(B) if it will be an organization other than a
24 limited partnership, any organizational document that creates
25 the organization that is required to be in a public writing;

26 "(6) if the surviving organization exists before the
27 merger, any amendments provided for in the plan of merger for

1 the organizational document that created the organization that
2 are required to be in a public writing;

3 "(7) a statement as to each constituent organization
4 that the merger was approved as required by the organization's
5 governing statute;

6 "(8) a statement that a copy of the plan of merger
7 will be furnished by the surviving organization, on request
8 and without cost, to any owner of any constituent organization
9 which is a party to the merger;

10 "~~(8)~~(9) if the surviving organization is a foreign
11 organization not authorized to conduct activities and affairs
12 in this state, the street and mailing address of an office for
13 the purposes of Section 10A-9A-10.09(b); and

14 "~~(9)~~(10) any additional information required by the
15 governing statute of any constituent organization.

16 "(c) The statement of merger shall be delivered for
17 filing to the Secretary of State ~~in accordance with Section~~
18 ~~10A-1-4.02(c)(1), along with the fees specified in Section~~
19 ~~10A-1-4.31, subject to the last sentence of this subsection~~
20 ~~(c). For each constituent organization which is formed under~~
21 ~~the laws of this state and which is not, immediately prior to~~
22 ~~the merger becoming effective, an organization described in~~
23 ~~Section 10A-1-4.02(c)(4), the Secretary of State shall within~~
24 ~~10 days transmit a certified copy of the statement of merger~~
25 ~~to the office of the judge of probate in the county in which~~
26 ~~the certificate of formation for each such constituent~~
27 ~~organization was filed along with the proper fee for the judge~~

1 of probate. For each constituent organization which is formed
2 under the laws of this state and which is, immediately prior
3 to the merger becoming effective, an organization described in
4 Section 10A-1-4.02(c)(4), but which has a certificate of
5 formation filed with the judge of probate, the Secretary of
6 State shall transmit a certified copy of the statement of
7 merger to the office of the judge of probate in the county in
8 which the certificate of formation for each such constituent
9 organization was filed along with the proper fee for the judge
10 of probate. For each constituent organization which (1) is
11 formed under the laws of this state, (2) is, immediately prior
12 to the merger becoming effective, an organization described in
13 Section 10A-1-4.02(c)(4), and (3) did not file its certificate
14 of formation with the judge of probate, but rather in
15 accordance with this title filed its certificate of formation
16 with the Secretary of State, the Secretary of State shall not
17 transmit a certified copy of the statement of merger to the
18 office of the judge of probate and shall not collect any fee
19 for the judge of probate.

20 "(d) A merger becomes effective under this article:

21 "(1) if the surviving organization is a limited
22 partnership, upon the later of:

23 "(A) the filing of the statement of merger with the
24 Secretary of State; or

25 "(B) as specified in the statement of merger; or

1 "(2) if the surviving organization is not a limited
2 partnership, as provided by the governing statute of the
3 surviving organization.

4 "(e) After a merger becomes effective, if the
5 surviving organization is a limited partnership, then, except
6 for certified copies of the statement of merger permitted to
7 be delivered to the judge of probate for filing pursuant to
8 subsection (f), all filing instruments required to be filed
9 under this title regarding that surviving organization shall
10 be ~~filed~~ delivered for filing with to the Secretary of State.

11 "(f) A certified copy of the statement of merger
12 required to be filed under this section may be filed in the
13 real estate records in the office of the judge of probate in
14 any county in which any constituent organization owned real
15 property, without payment and without collection by the judge
16 of probate of any deed or other transfer tax or fee. The judge
17 of probate, however, shall be entitled to collect the filing
18 fee of five dollars (\$5). Any such filing shall evidence chain
19 of title, but lack of filing shall not affect the surviving
20 organization's title to such real property.

21 "(g) A statement of merger ~~shall be~~ is a filing
22 instrument under Chapter 1.

23 "~~(h) Except as provided in the last sentence of~~
24 ~~subsection (c), the~~ The filing fees for a statement of merger
25 shall be ~~the same fees as provided in Section 10A-1-4.31(a)(5)~~
26 as set forth in Chapter 1.

27 "§10A-9A-10.09.

1 "(a) When a merger becomes effective:

2 "(1) the surviving organization continues or, in the
3 case of a surviving organization created pursuant to the
4 merger, comes into existence;

5 "(2) each constituent organization that merges into
6 the surviving organization ceases to exist as a separate
7 entity;

8 "(3) except as provided in the plan of merger all
9 property owned by, and every contract right possessed by, each
10 constituent organization that ceases to exist vests in the
11 surviving organization without transfer, reversion, or
12 impairment and the title to any property and contract rights
13 vested by deed or otherwise in the surviving organization
14 shall not revert, be in any way impaired, or be deemed to be a
15 transfer by reason of the merger;

16 "(4) all debts, obligations, and other liabilities
17 of each constituent organization, other than the surviving
18 organization, are debts, obligations, and other liabilities of
19 the surviving organization, and neither the rights of
20 creditors, nor any liens upon the property of any constituent
21 organization, shall be impaired by the merger;

22 "(5) an action or proceeding pending by or against
23 any constituent organization, ~~or series thereof,~~ continues as
24 if the merger had not occurred and the name of the surviving
25 organization may be, but need not be, substituted in any
26 pending proceeding for the name of any constituent
27 organization whose separate existence ceased in the merger;

1 "(6) except as prohibited by law other than this
2 chapter, or ~~the terms~~ as provided in the plan of the merger,
3 all of the rights, privileges, ~~franchise~~ franchises,
4 immunities, powers, and purposes of each constituent
5 organization, other than the surviving organization, vest in
6 the surviving organization;

7 "(7) except as otherwise provided in the plan of
8 merger, the terms and conditions of the plan of merger take
9 effect;

10 "(8) except as otherwise agreed, if a constituent
11 limited partnership ceases to exist, the merger does not
12 dissolve the limited partnership;

13 "(9) if the surviving organization is created
14 pursuant to the merger:

15 "(A) if it is a limited partnership, the certificate
16 of formation becomes effective; or

17 "(B) if it is an organization other than a limited
18 partnership, the organizational documents that create the
19 organization become effective; ~~and~~

20 "(10) if the surviving organization existed before
21 the merger, any amendments provided for in the statement of
22 merger for the organizational documents ~~that created the~~ of
23 that organization become effective;

24 "(11) the transferable interests of each limited
25 partnership that is a constituent organization to the merger,
26 and the ownership interests of each organization that is not a
27 limited partnership, but is a constituent organization to the

1 merger, that are to be converted in accordance with the terms
2 of the merger into transferable interest, ownership interests,
3 other securities, obligations, rights to acquire transferable
4 interest, ownership interests, or other securities, cash,
5 other property, or any combination of the foregoing, are
6 converted, and the former holder of such transferable
7 interests or ownership interests is entitled only to the
8 rights provided to that former holder by those terms or the
9 statute governing that former holder's constituent
10 organization; and

11 "(12) if the surviving organization exists before
12 the merger:

13 "(i) except as provided in the plan of merger, all
14 the property and contract rights of the surviving organization
15 remain its property and contract rights without transfer,
16 reversion, or impairment;

17 "(ii) the surviving organization remains subject to
18 all its debts, obligations, and other liabilities; and

19 "(iii) except as provided by law other than this
20 chapter, or the plan of merger, the surviving organization
21 continues to hold all of its rights, privileges, franchises,
22 immunities, powers, and purposes.

23 "(b) A surviving organization that is a foreign
24 entity consents to the jurisdiction of this state to enforce
25 any debt, obligation, or other liability owed by a constituent
26 organization, if before the merger the constituent
27 organization was subject to suit in this state on the debt,

1 obligation, or other liability. If a surviving organization
2 that is a foreign entity fails to designate or maintain a
3 registered agent, or the designated registered agent cannot
4 with reasonable diligence be served, then the service of
5 process on that surviving organization for the purposes of
6 enforcing a debt, obligation, or other liability under this
7 subsection may be made in the same manner and has the same
8 consequences as provided in Section 10A-1-5.35.

9 "§10A-10-1.09.

10 "A real estate investment trust has the power to:

11 "(1) Unless the declaration of trust provides
12 otherwise, have perpetual existence unaffected by any rule
13 against perpetuities.

14 "(2) Sue, be sued, complain, and defend in all
15 courts.

16 "(3) Transact its business, carry on its operations,
17 and exercise the powers granted by this chapter in any state,
18 territory, district, or possession of the United States and in
19 any foreign country.

20 "(4) Make contracts, incur liabilities, and borrow
21 money.

22 "(5) Sell, mortgage, lease, pledge, exchange,
23 convey, transfer, and otherwise dispose of all or any part of
24 its assets.

25 "(6) Issue bonds, notes, and other obligations, and
26 secure them by mortgage or deed of trust of all or any part of
27 its assets.

1 "(7) Subject to Section 10A-10-1.10, acquire by
2 purchase, or in any other manner, take, receive, own, hold,
3 use, employ, improve, encumber, and otherwise deal with any
4 interest in real and personal property, wherever located.

5 "(8) Purchase, take, receive, subscribe for, or
6 otherwise acquire, own, hold, vote, use, employ, sell,
7 mortgage, loan, pledge, or otherwise dispose of and deal with:

8 "a. Securities, shares, and other interests in any
9 obligations of domestic and foreign corporations, other real
10 estate investment trusts, associations, partnerships, and
11 individuals.

12 "b. Direct and indirect obligations of the United
13 States, any other government, state, territory, government
14 district, and municipality, and any of their
15 instrumentalities.

16 "(9) Elect or appoint trustees, officers, and agents
17 of the trust for the period of time the declaration of trust
18 or bylaws provide, define their duties, and determine their
19 compensation.

20 "(10) Adopt and implement employee or officer
21 benefit plans.

22 "(11) Make and alter bylaws not inconsistent with
23 law or with its declaration of trust to regulate the
24 government of the real estate investment trust and the
25 administration of its affairs.

26 "(12) Exercise these powers, including the power to
27 take, hold, and dispose of the title to real and personal

1 property in the name of the trust or in the name of its
2 trustees, without the filing of any bond.

3 "(13) Generally exercise the powers set forth in its
4 declaration of trust which are not inconsistent with law and
5 are appropriate to promote and attain the purposes set forth
6 in its declaration of trust.

7 "(14) Indemnify or advance expenses to trustees,
8 officers, employees, and agents of the trust to the same
9 extent as permitted for directors, officers, employees, and
10 agents of an Alabama corporation under ~~Sections 10A-2-8.50 to~~
11 ~~10A-2-8.58, inclusive~~ the Alabama Business Corporation Law.

12 "§10A-10-1.12.

13 "A shareholder has the same right to inspect the
14 records of the real estate investment trust as a shareholder
15 of a corporation under ~~Section 10A-2-16.02~~ the Alabama
16 Business Corporation Law.

17 "§10A-10-1.15.

18 "(a) For purposes of this section, the following
19 words shall have the respective meanings ascribed to them:

20 "(1) ALABAMA REAL ESTATE INVESTMENT TRUST. A real
21 estate investment trust organized in compliance with the
22 provisions of this chapter.

23 "(2) BUSINESS TRUST.

24 "a. An entity described in Section 10A-16-1.01.

25 "b. An unincorporated trust or association,
26 including an Alabama real estate investment trust, a
27 common-law trust, or a Massachusetts trust, which is engaged

1 in business and in which property is acquired, held, managed,
2 administered, controlled, invested, or disposed of for the
3 benefit and profit of any person who may become a holder of a
4 transferable unit of beneficial interest in the trust.

5 "(3) DOMESTIC LIMITED LIABILITY COMPANY. A limited
6 liability company formed under the laws of this state.

7 "(4) DOMESTIC LIMITED PARTNERSHIP. A partnership
8 formed by two or more persons under the laws of the state and
9 having one or more general partners and one or more limited
10 partners.

11 "(5) FOREIGN BUSINESS TRUST. A business trust
12 organized under the laws of the United States, another state
13 of the United States, or a territory, possession, or district
14 of the United States.

15 "(6) FOREIGN LIMITED LIABILITY COMPANY. A limited
16 liability company formed under the laws of any state other
17 than the State of Alabama or under the laws of a foreign
18 country.

19 "(7) FOREIGN LIMITED PARTNERSHIP. A partnership
20 formed under the laws of any state other than the State of
21 Alabama or under the laws of a foreign country and having as
22 partners one or more general partners and one or more limited
23 partners.

24 "(b) Unless the declaration of trust provides
25 otherwise, an Alabama real estate investment trust may merge
26 into an Alabama or foreign business trust, into an Alabama or
27 foreign corporation having capital stock, or into a domestic

1 or foreign limited partnership or limited liability company;
2 or one or more business trusts, corporations, domestic or
3 foreign limited partnerships, or limited liability companies
4 may merge into an Alabama real estate investment trust.

5 "(c) A merger shall be approved in the manner
6 provided by this section, except that:

7 "(1) A foreign business trust, an Alabama business
8 trust, other than an Alabama real estate investment trust, a
9 corporation, a domestic or foreign limited partnership, or a
10 domestic or foreign limited liability company party to the
11 merger shall have the merger advised, authorized, and approved
12 in the manner and by the vote required by its declaration of
13 trust, charter, or partnership agreement, and the laws of the
14 place where it is organized.

15 "(2) A merger needs to be approved by an Alabama
16 real estate investment trust successor only by a majority of
17 its entire board of trustees if:

18 "a. The merger does not reclassify or change its
19 outstanding shares or otherwise amend its declaration of
20 trust.

21 "b. The number of shares to be issued or delivered
22 in the merger is not more than 15 percent of the number of its
23 shares of the same class or series outstanding immediately
24 before the merger becomes effective.

25 "(d) The board of trustees of each Alabama real
26 estate investment trust proposing to merge shall:

1 "(1) Adopt a resolution that declares the proposed
2 transaction is advisable in substantially the terms and
3 conditions set forth or referred to in the resolution.

4 "(2) Direct that the proposed transaction be
5 submitted for consideration at either an annual or special
6 meeting of shareholders.

7 "(e) Notice which states that a purpose of a meeting
8 will be to act upon the proposed merger shall be given by each
9 Alabama real estate investment trust in the manner provided
10 for corporations by ~~Chapter 2~~ the Alabama Business Corporation
11 Law, to:

12 "(1) Each of its shareholders entitled to vote on
13 the proposed transaction.

14 "(2) Each of its shareholders not entitled to vote
15 on the proposed transaction, except the shareholders of a
16 successor in a merger if the merger does not alter the
17 contract rights of their shares as expressly set forth in the
18 declaration of trust.

19 "(f) Except as provided in subsection (c) of Section
20 10A-10-1.06, the proposed merger shall be approved by the
21 shareholders of each Alabama real estate investment trust by
22 the affirmative vote of two-thirds of all the votes entitled
23 to be cast on the matter.

24 "(g) Articles of merger containing the information
25 required by ~~Section 10A-2-11.05~~ the Alabama Business
26 Corporation Law, and the other provisions as permitted by that
27 section shall be:

1 "(1) Executed for each party to the articles of
2 merger in the manner required by ~~Article 1 of Chapter 2~~ the
3 Alabama Business Corporation Law.

4 "(2) Filed for the record in the Office of the
5 Secretary of State in accordance with the provisions of
6 Article 4 of Chapter 1.

7 "(h) (1) A proposed merger may be abandoned before
8 the effective date of the articles of merger:

9 "a. If the articles of merger so provide, by
10 majority vote of the entire board of trustees of any one
11 business trust party to the articles or by a majority of the
12 entire board of directors of any one corporation party to the
13 articles.

14 "b. Unless the articles of merger provide otherwise
15 by a majority vote of the entire board of trustees of each
16 Alabama real estate investment trust party to the articles.

17 "c. By unanimous consent of the members of a limited
18 liability company party to the articles of merger.

19 "d. By unanimous consent of the partners of a
20 limited partnership party to the articles of merger.

21 "(2) If the articles of merger have been filed in
22 the Office of the Secretary of State, notice of the
23 abandonment shall be given promptly to the Secretary of State.

24 "(3)a. If the proposed merger is abandoned as
25 provided in this subsection, no legal liability arises under
26 the articles of merger.

1 "b. An abandonment does not prejudice the rights of
2 any person under any other contract made by a business trust,
3 corporation, limited partnership, or limited liability company
4 party to the proposed articles of merger in connection with
5 the proposed merger.

6 "c. Each shareholder of an Alabama real estate
7 investment trust objecting to a merger of the Alabama real
8 estate investment trust shall have the same rights as ~~an~~
9 ~~objecting shareholder~~ a stockholder of an Alabama corporation
10 under Article 13 of Chapter 2A and under the same procedures.

11 "(i) The Secretary of State shall prepare
12 certificates of merger that specify:

13 "(1) The name of each party to the articles of
14 merger.

15 "(2) The name of the successor and the location of
16 its principal office in this state or, if it has none, its
17 principal place of business.

18 "(3) The time the articles of merger are accepted
19 for record by the Secretary of State.

20 "(j) If the successor in a merger is an Alabama real
21 estate investment trust, a merger is effective as of the later
22 of:

23 "(1) The time the Secretary of State accepts the
24 articles of merger for record.

25 "(2) The time established under the articles of
26 merger, not to exceed 30 days after the articles are accepted
27 for record.

1 "(k) (1) If the successor in a merger is a foreign
2 corporation, a foreign limited partnership, a foreign limited
3 liability company, or an Alabama or foreign business trust,
4 other than an Alabama real estate investment trust, the merger
5 is effective as of the later of:

6 "a. The time specified by the law of the place where
7 the successor is organized.

8 "b. The time the Secretary of State accepts the
9 articles of merger for record.

10 "(2) A foreign successor in a merger may file for
11 record with the judge of probate a certificate from the place
12 where it is organized which certifies the date the articles of
13 merger were filed. However, the failure to file this
14 certificate does not invalidate the merger.

15 "(1) (1) Consummation of a merger has the effects
16 provided in this subsection.

17 "(2) The separate existence of each business trust,
18 corporation, limited partnership, or limited liability company
19 party to the articles of merger, except the successor, ceases.

20 "(3) The shares of each business trust party to the
21 articles of merger which are to be converted or exchanged
22 under the terms of the articles cease to exist, subject to the
23 rights of an objecting shareholder under this section.

24 "(4) In addition to any other purposes and powers
25 set forth in the articles, if the articles of merger provide,
26 the successor has the purposes and powers of each party to the
27 articles.

1 "(5)a. The assets of each party to the articles of
2 merger, including any legacies which it would have been
3 capable of taking, transfer to, vest in, and devolve on the
4 successor without further act or deed.

5 "b. Confirmatory deeds, assignments, or similar
6 instruments to evidence the transfer may be executed and
7 delivered at any time in the name of the transferring party to
8 the articles of merger by its last acting officers or trustees
9 or by the appropriate officers or trustees of the successor.

10 "(6)a. The successor is liable for all the debts and
11 obligations of each nonsurviving party to the articles of
12 merger. An existing claim, action, or proceeding pending by or
13 against any nonsurviving party to the articles of merger may
14 be prosecuted to judgment as if the merger had not taken
15 place, or, on motion of the successor or any party, the
16 successor may be substituted as a party and the judgment
17 against the nonsurviving party to the articles of merger
18 constitutes a lien on the property of the successor.

19 "b. A merger does not impair the rights of creditors
20 or any liens on the property of any business trust,
21 corporation, limited partnership, or limited liability company
22 which is a party to the articles of merger.

23 "(m) This section is not exclusive. Real estate
24 investment trusts may merge or exchange their shares in any
25 other manner provided by law, including pursuant to the
26 provisions of Article ~~18~~ of Chapter ~~81~~.

27 "§10A-10-1.16.

1 "(a) A real estate investment trust may terminate
2 its existence by voluntary dissolution and wind up its
3 business and affairs in the manner and on the grounds provided
4 in ~~Article 14 of Chapter 2~~ the Alabama Business Corporation
5 Law.

6 "(b) A real estate investment trust may curtail or
7 cease its trust activities by partially or completely
8 distributing its assets.

9 "(c) (1) The Attorney General may institute
10 proceedings to dissolve a real estate investment trust which
11 has abused, misused, or failed to use its powers. The
12 proceedings shall be brought in the manner and on the grounds
13 provided in ~~Article 14 of Chapter 2 of this title~~ the Alabama
14 Business Corporation Law, with respect to judicial dissolution
15 of a corporation.

16 "(2) The venue of an action under this subsection is
17 in a county where an officer or resident agent of the real
18 estate investment trust is located.

19 "§10A-11-1.01.

20 "This chapter and the provisions of (A) Chapter 1
21 and (B) Chapter 2 or Chapter 2A, as applicable, to the extent
22 applicable to employee cooperative associations may be cited
23 as the "Alabama Employee Cooperative Corporations Law."

24 "§10A-11-1.03.

25 "~~Any corporation organized under Chapter 2~~ governed
26 by the Alabama Business Corporation Law may elect to be
27 governed as an employee cooperative under this chapter, by so

1 stating in its certificate of formation or certificate of
2 amendment filed in accordance with ~~Chapter 2~~ the Alabama
3 Business Corporation Law.

4 "§10A-11-1.04.

5 "An employee cooperative may revoke its election
6 under this chapter by a vote of two-thirds of the members and
7 through articles of amendment filed in accordance with ~~Chapter~~
8 ~~2~~ the Alabama Business Corporation Law.

9 "§10A-11-1.06.

10 "(a) The governing documents shall establish
11 qualifications and the method of acceptance and termination of
12 members. No person may be accepted as a member unless employed
13 by the employee cooperative on a full-time or part-time basis.
14 In order to qualify for membership, part-time employment shall
15 be at least half-time.

16 "(b) An employee cooperative shall issue a class of
17 voting stock designated as "membership shares." Each member
18 shall own only one membership share, and only members may own
19 such shares.

20 "(c) Membership shares shall be issued for a fee as
21 shall be determined by the directors. An employee cooperative
22 may allow for payment of such fee by payroll deduction,
23 installments, or similar methods. A membership share may be
24 issued to a person upon acceptance for membership regardless
25 of whether the membership fee is fully paid.

26 "(d) Members of an employee cooperative shall have
27 all the rights and responsibilities of stockholders of a

1 corporation ~~organized under Chapter 2~~ governed by the Alabama
2 Business Corporation Law, except as otherwise provided in this
3 chapter.

4 "§10A-11-1.12.

5 "(a) When an employee cooperative revokes its
6 election in accordance with Section 10A-11-1.04, the
7 certificate of amendment shall provide for conversion of
8 membership shares and internal capital accounts or their
9 conversion to securities or other property in a manner
10 consistent with ~~Chapter 2~~ the Alabama Business Corporation
11 Law.

12 "(b) An employee cooperative which has not revoked
13 its election under this chapter may not consolidate or merge
14 with another corporation other than an employee cooperative.
15 Two or more employee cooperatives may consolidate or merge in
16 accordance with ~~Article 11 of Chapter 2~~ the Alabama Business
17 Corporation Law.

18 "§10A-30-2.01.

19 "(a) This article applies to all close corporations,
20 as defined in Section 10A-30-2.02.

21 "(b) All provisions of this article shall be
22 applicable to all close corporations as defined in Section
23 10A-30-2.02 except insofar as this article otherwise provides.

24 "(c) Neither election to become, nor operation as, a
25 close corporation shall deprive any shareholder of such
26 corporation of the limitation of liability provided under

1 ~~former Section 10-2A-43 or a successor statute, including~~
2 ~~Section 10A-2-6.22~~ the Alabama Business Corporation Law.

3 "(d) This chapter shall apply only to close
4 corporations formed in accordance with Section 10A-30-2.03
5 before January 1, 1995, or electing to become a close
6 corporation pursuant to Section 10A-30-2.04 before January 1,
7 1995, and which has not voluntarily terminated its status as a
8 close corporation or otherwise ceased to be a close
9 corporation to which the provisions of this article apply
10 before January 1, 1995.

11 "§10A-30-2.03.

12 "A close corporation ~~shall be~~ which was formed in
13 accordance with former Sections 10-2A-90 through 10-2A-96, ~~or~~
14 ~~any successor statute, including Article 2 of Chapter 2,~~
15 ~~except that such formation must be~~ have been authorized by the
16 affirmative vote of all holders of and subscribers to shares
17 of the corporation, and:

18 "(1) The certificate of formation ~~shall contain~~
19 contains a heading stating the name of the corporation and
20 that it is a close corporation; and

21 "(2) The certificate of formation ~~shall contain~~
22 contains the provisions required by Section 10A-30-2.02; and

23 "(3) Each certificate for shares ~~shall~~ conspicuously
24 ~~note~~ notes the fact that the corporation is a close
25 corporation and make reference to the restriction on transfer
26 of shares set forth in the certificate of formation.

27 "§10A-30-2.04.

1 "(a) A corporation may voluntarily terminate its
2 status as a close corporation and cease to be subject to this
3 article by amending its certificate of formation to delete
4 therefrom the additional provisions required or permitted by
5 Section 10A-30-2.02 to be stated in the certificate of
6 formation of close corporations except such provisions as are
7 permitted by ~~Chapter 2~~ the Alabama Business Corporation Law
8 which the corporation chooses to retain. Any such amendment
9 shall be adopted and shall become effective in accordance with
10 ~~Article 10 of Chapter 2~~ the Alabama Business Corporation Law,
11 except that it must be approved by a vote of the holders of
12 record of at least one-third of the shares of each class of
13 stock of the corporation which are outstanding.

14 "(b) The certificate of formation of a close
15 corporation may provide that on any amendment to terminate its
16 status as a close corporation, a vote greater than one-third
17 or a vote of all shares of any class shall be required; and if
18 the certificate of incorporation contains such a provision,
19 that provision shall not be amended, repealed, or modified by
20 any vote less than that required to terminate the
21 corporation's status as a close corporation.

22 "§10A-30-2.05.

23 "(a) If shares of a close corporation are issued or
24 transferred to any person who is not entitled under any
25 provision of the certificate of formation permitted by Section
26 10A-30-2.02 to be a holder of record of shares of the
27 corporation, and if the certificate for shares conspicuously

1 notes the qualifications of the persons entitled to be holders
2 of record thereof, such person is conclusively presumed to
3 have notice of the fact of his or her ineligibility to be a
4 shareholder.

5 "(b) If a certificate for shares of any close
6 corporation conspicuously notes the fact of a restriction on
7 transfer of shares of the corporation and the restriction is
8 one which is permitted by ~~former Section 10-2A-41 or any~~
9 ~~successor statute, including Section 10A-2-6.27~~ the Alabama
10 Business Corporation Law, the transferee of the shares is
11 conclusively presumed to have notice of the fact that he or
12 she has acquired shares in violation of the restriction, if
13 such acquisition violates the restriction.

14 "(c) Whenever any person to whom shares of a close
15 corporation have been issued or transferred has, or is
16 conclusively presumed under this section to have notice either
17 that he or she is a person not eligible to be a holder of
18 shares of the corporation, or that the transfer of shares is
19 in violation of a restriction on transfer of shares, the
20 corporation may, at its option, refuse to register transfer of
21 the shares into the name of the transferee in addition to any
22 remedies which may be available under ~~former Section 10-2A-41~~
23 ~~or any successor statute, including Section 10A-2-6.27 or~~
24 ~~otherwise~~ the Alabama Business Corporation Law.

25 "(d) The provisions of subsection (c) shall not be
26 applicable if the transfer of shares even though otherwise
27 contrary to subsections (a) or (b), has been consented to by

1 all the shareholders of the close corporation, or if the close
2 corporation has amended its certificate of formation in
3 accordance with Section 10A-30-2.04.

4 "(e) The term "transfer," as used in this section,
5 is not limited to a transfer for value.

6 "(f) The provisions of this section do not in any
7 way impair any rights of a transferee regarding any right to
8 rescind the transaction or to recover under any applicable
9 warranty express or implied.

10 "§10A-30-2.06.

11 "If a restriction on transfer of shares of a close
12 corporation is held not to be authorized by ~~former Section~~
13 ~~10-2A-41 or any successor statute, including Section~~
14 ~~10A-2-6.27~~ the Alabama Business Corporation Law, the
15 corporation shall nevertheless have an option for a period of
16 30 days after the judgment setting aside the restriction
17 becomes final, to acquire the restricted shares at a price
18 which is agreed upon by the parties or if no agreement is
19 reached as to price, then at the fair value as determined by
20 the circuit court of the county in which the corporation has
21 its registered office or any court in such place having
22 jurisdiction. In order to determine fair value, the court may
23 appoint an appraiser to receive evidence and report to the
24 court his or her findings and recommendation as to fair value.
25 The appraiser shall have such powers and shall proceed, so far
26 as applicable, in the same manner as appraisers appointed

1 under ~~former Section 10-2A-163 or any successor statute,~~
2 ~~including Section 10A-2-13.30(e)~~ Article 13 of Chapter 2A.

3 "§10A-30-2.09.

4 "(a) The circuit court of the county in which the
5 corporation has its registered office or any court in such
6 place having jurisdiction, upon application of any
7 shareholder, may appoint one or more persons to be custodians,
8 and, if the corporation is insolvent, to be receivers, of any
9 close corporation when:

10 "(1) Pursuant to Section 10A-30-2.08, the business
11 and affairs of the corporation are managed by the shareholders
12 and they are so divided that the business of the corporation
13 is suffering or is threatened with irreparable injury and any
14 remedy with respect to such deadlock provided in the governing
15 documents or in any written agreement of the shareholders has
16 failed; or

17 "(2) The petitioning shareholder has the right to
18 the dissolution of the corporation under a provision of the
19 certificate of formation permitted by Section 10A-30-2.12.

20 "(b) In lieu of appointing a custodian for a close
21 corporation under this section, the court may appoint a
22 provisional director, whose powers and status shall be as
23 provided in Section 10A-30-2.10 if the court determines that
24 it would be in the best interest of the corporation. The
25 appointment shall not preclude any subsequent order of the
26 court appointing a custodian for such corporation.

1 "(c) A custodian appointed under this section shall
2 have all the powers of a receiver or custodian appointed under
3 ~~former Section 10-2A-196 or any successor statute, including~~
4 ~~Section 10A-2-14.32~~ the Alabama Business Corporation Law, but
5 the authority of the custodian is to continue the business of
6 the corporation and not to liquidate its affairs and
7 distribute its assets, except when the court shall otherwise
8 order.

9 "§10A-30-2.12.

10 "(a) The certificate of formation of any close
11 corporation may include a provision granting to any
12 shareholder, or to the holders of any specified number or
13 percentage of shares of any class of shares, an option to have
14 the corporation dissolved at will or upon the occurrence of
15 any specified event or contingency. Whenever any such option
16 to dissolve is exercised, the shareholders exercising the
17 option shall give written notice thereof to all other
18 shareholders. After the expiration of 30 days following the
19 sending of the notice, the dissolution of the corporation
20 shall proceed as if the required number of shareholders having
21 voting power had consented in writing to dissolution of the
22 corporation as provided by ~~Section 10A-2-14.02~~ the Alabama
23 Business Corporation Law.

24 "(b) If the certificate of formation as originally
25 filed does not contain a provision authorized by subsection
26 (a), the certificate of formation may be amended to include
27 such provision if adopted by the affirmative vote of the

1 holders of all the outstanding shares, whether or not entitled
2 to vote, unless the certificate of formation specifically
3 authorizes such an amendment by a vote which shall be not less
4 than two-thirds of all the outstanding shares whether or not
5 entitled to vote.

6 "(c) Each certificate for shares in any corporation
7 whose certificate of formation authorizes dissolution as
8 permitted by this section shall conspicuously note on the face
9 thereof the existence of the provision. Unless noted
10 conspicuously on the face of the certificate for shares the
11 provision is ineffective.

12 "§10A-30-2.13.

13 "This article shall not be deemed to repeal any
14 statute or rule of law which is or would be applicable to any
15 corporation which is ~~organized under the provisions of Chapter~~
16 ~~2~~ governed by the Alabama Business Corporation Law but is not
17 a close corporation."

18 Section 3. All laws or parts of laws which conflict
19 with this act are repealed. Chapter 2 of Title 10A, consisting
20 of Sections 10A-2-1.01 to 10A-2-17.02, inclusive, Code of
21 Alabama 1975, is repealed effective January 1, 2021.

22 Section 4. This act shall become effective January
23 1, 2020, following its passage and approval by the Governor,
24 or its otherwise becoming law.