SB112

1JVA3ZL-1

By Senators Givhan, Smitherman

RFD: Fiscal Responsibility and Economic Development

First Read: 20-Feb-24

SYNOPSIS:

Relating to the Alabama Business and Nonprofit Entities Code.

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

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

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

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

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

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

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

A BILL

TO BE ENTITLED

AN ACT

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

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

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

"§10A-1-1.03

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

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

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

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

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

(i) an officer or governing person; or

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

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

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

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

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

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

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

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

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

(8) CERTIFICATE OF FORMATION.

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

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

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

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

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

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

entity:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(31) ENTITY. A domestic or foreign organization.

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

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

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

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

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

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

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

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

(40) GENERAL PARTNER.

(A) Each partner in a general partnership; or

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

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

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

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

(43) GOVERNING DOCUMENTS.

(A) In the case of a domestic entity:

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

formed; and

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

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

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

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

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

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

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

(49) JURISDICTION OF FORMATION.

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

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

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

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

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

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

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

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

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

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

or other legal authorization.

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

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

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

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

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

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

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

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

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

(59) MEMBER.

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

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

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

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

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

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

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

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

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

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

(62) NONPROFIT ASSOCIATION. An unincorporated nonprofit

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

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

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

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

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

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

(68) OWNER.

(A) With respect to a foreign or domestic business

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(76) PRESIDENT.

(A) The individual designated as president of an entity

under the entity's governing documents; or

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

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

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

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

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

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

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

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

(84) SECRETARY.

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

(B) the officer or committee of persons authorized to

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

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

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

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

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

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

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

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

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

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

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

(91) TREASURER.

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

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

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

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

(94) VICE PRESIDENT.

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

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

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

"§10A-1-1.08

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

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

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

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

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

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

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

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

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

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

Law."

"§10A-1-3.32

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

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

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

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

"§10A-1-5.31

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

(1) a registered agent; and

(2) a registered office.

(b) A registered agent:

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

(2) may be:

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

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

registered to transact business in this state; and

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

(c) The registered office:

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

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

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

"§10A-2A-1.40

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

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

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

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

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

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

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

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

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

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

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

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

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

(12) ELIGIBLE INTERESTS means interests or memberships.

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

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

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

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

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

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

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

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

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

(22) INTEREST means either or both of the following

rights under the governing statute governing an unincorporated entity:

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

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

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

(24) KNOWLEDGE is determined as follows:

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

(1) has actual knowledge of it; or

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

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

(1) knows of it;

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

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

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

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

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

corporation's:

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

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

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

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

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

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

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

(25) MEANS denotes an exhaustive definition.

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

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

foreign corporation, or eligible entity.

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

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

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

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

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

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

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

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

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

(36) STOCKHOLDER means a record stockholder.

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

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

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

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

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

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

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

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

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

"§10A-2A-1.48

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

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

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

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

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

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

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

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

"§10A-2A-1.51

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

(b) The certificate of validation must set forth:

(1) the name of the corporation;

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

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

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

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

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

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

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

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

~~(2)~~ (1) if a filing instrument was previously ~~made~~ delivered to a filing officer for filing in respect of the defective corporate action and that filing instrument requires any change to give effect to the ratification of that defective corporate action in accordance with Section 10A-2A-1.47, the certificate of validation must set forth (i) the name, title, and filing date of the filing instrument previously ~~made~~ delivered to a filing officer for filing and any certificate of correction to that filing instrument, ~~and~~ (ii) a statement that a filing instrument containing all of the information required to be included under the applicable section or sections of this chapter to give effect to that defective corporate action is attached as an exhibit to the certificate of validation, and (iii) the date and time that filing instrument is deemed to have become effective; or

~~(3)~~ (2) if a filing instrument was not previously ~~made~~ delivered to a filing officer for filing in respect of the defective corporate action and the defective corporate action ratified under Section 10A-2A-1.47 would have required a filing instrument under any other section of this chapter, the certificate of validation must set forth (i) a statement that a filing instrument containing all of the information required to be included under the applicable section or sections of this chapter to give effect to that defective corporate action is attached as an exhibit to the certificate of validation, and (ii) the date and time that filing instrument is deemed to have become effective."

"§10A-2A-2.02

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

(a) The certificate of incorporation must set forth:

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

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

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

(4) the name and address of each incorporator.

(b) The certificate of incorporation may set forth:

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

(2) provisions not inconsistent with law regarding:

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) the individual's spouse;

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

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

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

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

(v) a domestic or foreign:

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

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

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

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

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

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

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

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

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

"§10A-2A-6.21

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

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

resolution of the board of directors.

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

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

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

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

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

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

"§10A-2A-6.24

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

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

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

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

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

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

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

transferee or transferees.

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

"§10A-2A-6.31

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

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

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

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

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

"§10A-2A-7.04

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

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

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

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

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

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

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

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

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

"§10A-2A-7.05

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

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

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

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

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

delivered to stockholders.

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

"§10A-2A-10.05

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

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

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

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

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

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

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

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

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

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

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

"§10A-2A-10.07

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

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

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

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

(1) the name of the corporation;

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

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

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

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

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

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

"§10A-2A-10.08

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

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

(1) the name of the corporation;

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

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

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

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

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

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

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

"§10A-2A-12.01

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

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

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

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

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

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

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

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

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

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

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

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

"§10A-2A-13.02

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

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

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

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

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

(4) an amendment of the certificate of incorporation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"§10A-2A-14.05

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

(1) collecting its assets;

(2) disposing of its properties that will not be distributed in kind to stockholders;

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

(4) distributing its remaining property among its stockholders according to their interests; and

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

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

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

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

(3) transfer the corporation's assets;

(4) resolve disputes by mediation or arbitration;

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

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

(c) Dissolution of a corporation does not:

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

(2) prevent transfer of its stock or securities;

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

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

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

(iii) provisions for amending its bylaws;

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

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

(7) terminate the authority of the registered agent of

the corporation.

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

"§10A-3A-1.02

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

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

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

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

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

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

(5) DELIVER or DELIVERY means any method of delivery

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

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

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

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

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

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

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

(12) EMPLOYEE does not include an individual serving as

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

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

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

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

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

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

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

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

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

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

(22) INTEREST means:

(a) a share;

(b) a membership or membership interests; or

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

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

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

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

(24) KNOWLEDGE is determined as follows:

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

(1) has actual knowledge of it; or

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

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

(1) knows of it;

(2) receives notification of it in accordance with Section 10A-3A-1.03;

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

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

(c) A person notifies another of a fact by taking steps reasonably required to inform the other person in ordinary course in accordance with Section 10A-3A-1.03, whether or not the other person knows the fact.

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

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

(2) dissolution, 90 days after a certificate of dissolution under Section 10A-3A-11.05 becomes effective;

(3) conversion or merger under Article 13 or Article 12, 90 days after a statement of conversion or statement of merger becomes effective;

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

(5) revocation of dissolution and reinstatement, 90 days after certificate of revocation of dissolution and reinstatement under Section 10A-3A-11.06 becomes effective.

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

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

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

(25) MEANS denotes an exhaustive definition.

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

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

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

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

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

(31) ORGANIZATIONAL DOCUMENTS means the public organic

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"§10A-3A-1.23

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

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

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

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

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

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

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

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

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

"§10A-3A-1.26

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

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

(b) The certificate of validation must set forth:

(1) the name of the nonprofit corporation;

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

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

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

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

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

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

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

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

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

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

"§10A-3A-2.02

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

(a) The certificate of incorporation must set forth:

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

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

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

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

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

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

(b) The certificate of incorporation may set forth:

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

(2) provisions not inconsistent with law regarding:

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

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

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

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

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

(vi) the distribution of assets on dissolution;

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

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

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

(3) any provision that under this chapter is permitted

to be set forth in the certificate of incorporation or required or permitted to be set forth in the bylaws;

(4) a provision eliminating or limiting the liability of a director or officer to a nonprofit corporation or its members for money damages for any action taken, or any failure to take any action, as a director or officer, except liability for (i) the amount of a financial benefit received by a director or officer to which the director or officer is not entitled, (ii) an intentional infliction of harm on the nonprofit corporation or its members, (iii) in the case of a director, a violation of Section 10A-3A-8.32, ~~or~~ (iv) an intentional violation of criminal law~~;~~, or (v) in the case of an officer, any claim by or in the right of the nonprofit corporation;

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

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

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

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

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

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

(e) As used in this section, "related person" means: (i) the individual's spouse; (ii) a child, stepchild, grandchild, parent, stepparent, grandparent, sibling, stepsibling, half sibling, aunt, uncle, niece, or nephew (or spouse of any such person) of the individual or of the individual's spouse; (iii) a natural person living in the same home as the individual; (iv) an entity (other than the nonprofit corporation or an entity controlled by the nonprofit corporation) controlled by the individual or any person specified above in this definition; (v) a domestic or foreign (A) business or nonprofit corporation (other than the

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

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

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

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

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

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

"§10A-3A-7.04

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

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

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

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

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

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

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

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

"§10A-3A-7.05

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

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

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

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

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

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

"§10A-3A-9.05

Except as otherwise provided in the certificate of incorporation:

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

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

"§10A-3A-9.07

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

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

(2) A nonmembership nonprofit corporation's board of directors may restate its certificate of incorporation at any time without the approval of any person or group of persons specified in the certificate of incorporation to consolidate all amendments into a single document. Unless the certificate of incorporation of a nonmembership nonprofit corporation provides otherwise, the restated certificate of incorporation may amend the certificate of incorporation with those amendments that the board of directors is permitted to adopt in accordance with Section 10A-3A-9.05 without the approval of any person or group of persons specified in the certificate of incorporation. Unless the certificate of incorporation of a nonmembership nonprofit corporation provides otherwise, the restated certificate of incorporation of a nonmembership nonprofit corporation may also amend the certificate of

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

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

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

(1) the name of the nonprofit corporation;

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

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

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

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

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

(e) Unless the certificate of incorporation provides

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

"§10A-3A-10.01

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

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

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

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

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

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

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

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

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

(c) A failure to satisfy the condition in subsection

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

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

"§10A-3A-10.03

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

(a) Unless the certificate of incorporation otherwise provides:

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

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

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

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

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

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

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

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

"§10A-3A-10.04

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

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

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

"§10A-3A-11.07

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

(1) collecting its assets;

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

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

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

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

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

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

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

(3) transfer the nonprofit corporation's assets;

(4) resolve disputes by mediation or arbitration; and

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

(c) Dissolution of a nonprofit corporation does not:

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

(2) subject its directors or officers to standards of

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

(3) change:

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

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

(iii) provisions for amending its bylaws;

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

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

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

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

"§10A-4-1.03

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"§10A-4-2.01

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

"§10A-4-2.02

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

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

(b) A domestic professional ~~business~~ corporation~~, other than~~ that is not a nonprofit professional corporation~~, which is subject to this chapter~~ shall cease being governed by this chapter and shall be governed by the Alabama Business Corporation Law~~, if it is a domestic corporation,~~ if it amends its certificate of ~~formation~~ incorporation to delete the statement that it is organized under this chapter, and conforms its ~~articles~~ certificate of incorporation to the Alabama Business Corporation Law~~ and, if it is a foreign corporation, complies with the provisions of this title applicable to foreign entities~~. A domestic nonprofit professional corporation~~ which is subject to this chapter~~ shall cease being governed by this chapter and shall be governed by the Alabama Nonprofit Corporation Law~~, if it is a domestic corporation,~~ if it amends its certificate of ~~formation~~ incorporation to delete the statement that it is organized under this chapter, and conforms its certificate of incorporation to the Alabama Nonprofit Corporation Law~~ and, if it is a foreign corporation, complies with the provisions of this title applicable to foreign entities~~.

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

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

to this chapter."

"§10A-4-2.03

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

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

"§10A-4-2.04

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

"§10A-4-3.01

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

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

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

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

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

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

"§10A-4-3.02

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the date of disqualification or transfer.

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

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

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

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

"§10A-4-3.03

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

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

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

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

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

"§10A-4-3.05

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

person."

"§10A-4-3.06

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

"§10A-4-4.01

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

"§10A-4-4.02

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

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

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

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

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

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

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

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

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

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

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

"§10A-4-5.01

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

"§10A-4-5.02

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

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

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

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

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

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

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

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

"§10A-4-5.03

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

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

"§10A-4-5.04

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

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

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

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

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

"§10A-4-5.05

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

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

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

"§10A-4-5.06

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

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

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

"§10A-4-5.08

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

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

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

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

"§10A-5A-1.08

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

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

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

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

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

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

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

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

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

consequences; ~~and~~

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

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

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

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

(c) A limited liability company agreement may not:

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

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

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

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

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

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

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

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

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

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

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

(12) vary the requirement to wind up a limited

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

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

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

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

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

"§10A-5A-2.01

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

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

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

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

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

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

(6) any other matters the members determine to include

therein.

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

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

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

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

"§10A-5A-2.02

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

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

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

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

amendment shall state:

(1) the name of the limited liability company;

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

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

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

(1) be designated as such in the heading;

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

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

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

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

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

of formation shall remain unchanged.

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

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

"§10A-5A-3.02

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

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

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

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

"§10A-5A-8.01

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

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

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

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

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

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

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

"§10A-8A-1.08

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

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

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

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

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

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

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

(4) A partnership agreement may provide that:

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

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

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

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

partnership, subordinating the partner's or transferee's transferable interest to that of non-defaulting partners or transferees, forcing a sale of that transferable interest, forfeiting the defaulting partner's or transferee's transferable interest, the lending by other partners or transferees of the amount necessary to meet the defaulting partner's or transferee's commitment, a fixing of the value of the defaulting partner's or transferee's transferable interest by appraisal or by formula and redemption or sale of the transferable interest at that value, or other penalty or consequence.

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

(c) A partnership agreement may not:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"§10A-8A-10.02

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

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

(c) Except as otherwise provided in subsection (b), the personal liability of a partner of any limited liability partnership engaged in providing professional services shall be governed by Section 10A-8A-3.06.

(d) ~~The~~ Except as otherwise provided in subsection (b), the personal liability of a partner or employee of a foreign limited liability partnership engaged in providing professional services shall be determined under the law of the jurisdiction which governs the foreign limited liability

partnership.

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

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

(g) A partner's transferable interest in a limited liability partnership organized to render professional services may be voluntarily transferred only to a qualified person."

"§10A-9A-1.08

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

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

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

(b)(1) To the extent that, at law or in equity, a partner or other person has duties, including fiduciary

duties, to a limited partnership or to another partner or to another person that is a party to or is otherwise bound by a partnership agreement, the partner's or other person's duties may be expanded or restricted or eliminated by provisions in a written partnership agreement, but the implied contractual covenant of good faith and fair dealing may not be eliminated.

(2) A written partnership agreement may provide for the limitation or elimination of any and all liabilities for breach of contract and breach of duties, including fiduciary duties, of a partner or other person to a limited partnership or to another partner or to another person that is a party to or is otherwise bound by a partnership agreement, but a partnership agreement may not limit or eliminate liability for any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing.

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

(4) A partnership agreement may provide ~~that~~ any of the following:

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

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

(C) subject to Section 10A-9A-1.08(c), an act or transaction under the partnership agreement by the partnership, a partner, a dissociated partner, or a transferee is void or voidable.

(5) A penalty or consequence that may be specified under paragraph (4) of this subsection may include and take the form of reducing or eliminating the defaulting partner's or transferee's proportionate interest in a limited partnership, subordinating the partner's or transferee's transferable interest to that of non-defaulting partners or transferees, forcing a sale of that transferable interest, forfeiting the defaulting partner's or transferee's transferable interest, the lending by other partners or transferees of the amount necessary to meet the defaulting partner's or transferee's commitment, a fixing of the value of the defaulting partner's or transferee's transferable interest by appraisal or by formula and redemption or sale of the transferable interest at that value, or other penalty or consequence.

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

(c) A partnership agreement may not:

(1) vary the nature of the limited partnership as a

separate legal entity under Section 10A-9A-1.04(a);

(2) vary a limited partnership's power under Section 10A-9A-1.05 to sue, be sued, and defend in its own name;

(3) vary the law applicable to a limited partnership under Section 10A-9A-1.06;

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

(5) vary the requirements of Section 10A-9A-2.03;

(6) vary the information required under Section 10A-9A-1.11 or unreasonably restrict the right to information under Sections 10A-9A-3.04 or 10A-9A-4.07, but the partnership agreement may impose reasonable restrictions on the availability and use of information obtained under those sections and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use;

(7) vary the power of the court under Section 10A-9A-2.04;

(8) eliminate the implied contractual covenant of good faith and fair dealing as provided under Section 10A-9A-1.08(b)(1);

(9) eliminate or limit the liability of a partner or other person for any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing as provided under Section 10A-9A-1.08(b)(2);

(10) waive the requirements of Section 10A-9A-5.02(e);

(11) reduce the limitations period specified under

Section 10A-9A-5.08(d) for an action commenced under other applicable law;

(12) waive the prohibition on issuance of a certificate of a transferable interest in bearer form under Section 10A-9A-7.02(c);

(13) vary the power of a person to dissociate as a general partner under Section 10A-9A-6.04(a) except that the partnership agreement may require that the notice under Section 10A-9A-6.03(1) be in a writing or in a specific form thereof;

(14) vary the power of a court to decree dissolution in the circumstances specified in Section 10A-9A-8.01(f);

(15) vary the requirement to wind up the partnership's activities and affairs as specified in Section 10A-9A-8.02; ~~or~~

(16) vary the rights of a partner under Section 10A-9A-10.10~~.~~; or

(17) vary the provisions of Section 10A-9A-1.15(c), (d), or (e)"

"§10A-9A-2.01

(a) In order to form a limited partnership, a person must deliver a certificate of formation for filing to the Secretary of State. Section 10A-1-3.05 shall not apply to this chapter. Instead, the certificate of formation shall set forth:

(1) the name of the limited partnership, which must comply with Article 5 of Chapter 1;

(2) the street address in this state, including the county, of the registered office required by Article 5 of

Chapter 1;

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

(4) the name and the street and mailing address of each general partner;

(5) whether the limited partnership is a limited liability limited partnership;

(6) any additional information required by Article 8 of Chapter 1 or by Article 10 of this chapter; and

(7) any other matters the partners determine to include therein which comply with Section 10A-9A-1.08.

(b) A limited partnership is formed when the certificate of formation becomes effective in accordance with Article 4 of Chapter 1.

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

(d) A partnership agreement shall be entered into either before, after, or at the time of filing the certificate of formation and, whether entered into before, after, or at the time of filing, may be made effective as of the filing of the certificate of formation or at any other time or date provided in the partnership agreement."

"§10A-9A-2.02

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

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

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

(c) To amend its certificate of formation, a limited partnership must deliver a certificate of amendment for filing to the Secretary of State which certificate of amendment shall state:

(1) the name of the limited partnership;

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

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

(d) Prior to a statement of dissolution being delivered to the Secretary of State for filing, a limited partnership shall promptly deliver a certificate of amendment for filing with the Secretary of State to reflect:

(1) the admission of a new general partner; or

(2) the dissociation of a person as a general partner.

(e) Prior to a statement of dissolution being delivered to the Secretary of State for filing, if a general partner knows that any information in a filed certificate of formation was inaccurate when the certificate of formation was filed or has become inaccurate due to changed circumstances and if ~~such~~ the information is required to be set forth in a newly filed certificate of formation under this chapter, the general partner shall promptly:

(1) cause the certificate of formation to be amended;

or

(2) if appropriate, deliver for filing with the Secretary of State a certificate of correction in accordance with Chapter 1.

(f) A certificate of formation may be amended at any time pursuant to this section for any other proper purpose as determined by the limited partnership. A certificate of formation may also be amended in a statement of merger pursuant to Article 8 of Chapter 1 or Article 10 of this chapter.

(g) In order to restate its certificate of formation, a limited partnership must deliver a restated certificate of formation for filing with the Secretary of State. A restated certificate of formation must:

(1) be designated as such in the heading;

(2) state the name of the limited partnership;

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

(4) set forth any amendment or change effected in connection with the restatement of the certificate of formation. Any such restatement that effects an amendment shall be subject to any other provision of this chapter not inconsistent with this section, which would apply if a separate certificate of amendment were filed to effect the amendment or change;

(5) set forth the text of the restated certificate of formation; and

(6) state that the restated certificate of formation

consolidates all amendments into a single document.

(h) The original certificate of formation, as theretofore amended, shall be superseded by the restated certificate of formation and thenceforth, the restated certificate of formation, including any further amendment or changes made thereby, shall be the certificate of formation of the limited partnership, but the original effective date of formation shall remain unchanged.

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

(j)(1) An amendment to a certificate of formation takes effect when the filing of the certificate of amendment takes effect as provided by Article 4 of Chapter 1.

(2) An amendment to a certificate of formation does not affect:

(i) an existing cause of action in favor of or against the limited partnership for which the certificate of amendment is sought;

(ii) a pending suit to which the limited partnership is a party; or

(iii) an existing right of a person other than an existing partner.

(3) If the name of a limited partnership is changed by amendment, an action brought by or against the limited partnership in the former name of that limited partnership

does not abate because of the name change.

(k)(1) A restated certificate of formation takes effect when the filing of the restated certificate of formation takes effect as provided by Article 4 of Chapter 1.

(2) On the date and time the restated certificate of formation takes effect, the original certificate of formation and each prior amendment or restatement of the certificate of formation is superseded and the restated certificate of formation is the effective certificate of formation.

(3) Subsections (j)(2) and ~~(3)~~ (j)(3) apply to an amendment effected by a restated certificate of formation.

(l) A restated certificate of formation may omit any information that is not required to be in the certificate of formation under this chapter, including the name and address of the initial registered agent or registered office, if a statement of change is on file with the Secretary of State. Any omission other than the initial registered agent, shall be an amendment to the certificate of formation, which amendment must be approved in accordance with the partnership agreement, and if the partnership agreement does not state the approval required for an amendment of the certificate of formation, then the amendment must be approved by all of the partners."

Section 2. Sections 10A-5A-1.11, 10A-8A-1.14, and 10A-9A-1.15, are added to the Code of Alabama 1975 to read as follows:

§10A-5A-1.11

(a) If a limited liability company agreement provides that an act or transaction is void or voidable when taken,

then that act or transaction may be ratified or waived by:

(1) the members or other persons entitled to ratify or waive that act or transaction under the limited liability company agreement;

(2) if the limited liability company agreement does not specify the approval required for the ratification or waiver, then those members or other persons entitled to approve the amendment of the limited liability company agreement; or

(3) if the limited liability company agreement does not specify the approval required for the amendment of the limited liability company agreement, then all of the members.

(b) If the void or voidable act or transaction was the issuance or transfer of any transferable interest, then for purposes of determining who may ratify or waive any act or transaction, the transferable interest purportedly issued or transferred shall be deemed not to have been issued or transferred.

(c) Any act or transaction ratified, or with respect to which the failure to comply with any requirements of the limited liability company agreement is waived, pursuant to this section shall be deemed validly taken at the time of the act or transaction.

(d) Upon application of the limited liability company, any member, or any person claiming to be substantially and adversely affected by a ratification or waiver pursuant to this section, the designated court, and if none, the circuit court for the county in which the limited liability company's principal office is located in this state, and if none in this

state, in the circuit court for the county in which the limited liability company's most recent registered office is located, may hear and determine the validity and effectiveness of the ratification of, or waiver with respect to, any void or voidable act or transaction effectuated pursuant to this section, and in any such application, the limited liability company shall be named as a party and service of the application upon the registered agent of the limited liability company shall be deemed to be service upon the limited liability company, and no other party need be joined in order for the court to adjudicate the validity and effectiveness of the ratification or waiver, and the court may make such order respecting further or other notice of the application as the court deems proper under the circumstances; provided, that nothing herein limits or affects the right to serve process in any other manner now or hereafter provided by law, and this sentence is an extension of and not a limitation upon the right otherwise existing of service of legal process upon nonresidents.

(e) The provisions of this section shall not be construed to limit the accomplishment of a ratification or waiver of a void or voidable act or transaction by other means permitted by law.

§10A-8A-1.14

(a) If a partnership agreement provides that an act or transaction is void or voidable when taken, then that act or transaction may be ratified or waived by:

(1) the partners or other persons entitled to ratify or

waive that act or transaction under the partnership agreement;

(2) if the partnership agreement does not specify the approval required for the ratification or waiver, then those partners or other persons entitled to approve the amendment of the partnership agreement; or

(3) if the partnership agreement does not specify the approval required for the amendment of the partnership agreement, then all of the partners.

(b) If the void or voidable act or transaction was the issuance or transfer of any transferable interest, then for purposes of determining who may ratify or waive any act or transaction, the transferable interest purportedly issued or transferred shall be deemed not to have been issued or transferred.

(c) Any act or transaction ratified, or with respect to which the failure to comply with any requirements of the partnership agreement is waived, pursuant to this section shall be deemed validly taken at the time of the act or transaction.

(d) Upon application of the partnership, any partner, or any person claiming to be substantially and adversely affected by a ratification or waiver pursuant to this section, the designated court, and if none, the circuit court for the county in which the partnership's principal office is located in this state, and if none in this state, in the circuit court for the county in which the partnership's most recent registered office is located, may hear and determine the validity and effectiveness of the ratification of, or waiver

with respect to, any void or voidable act or transaction effectuated pursuant to this section, and in any such application, the partnership shall be named as a party and service of the application upon the registered agent of the partnership shall be deemed to be service upon the partnership, and no other party need be joined in order for the court to adjudicate the validity and effectiveness of the ratification or waiver, and the court may make such order respecting further or other notice of the application as the court deems proper under the circumstances; provided, that nothing herein limits or affects the right to serve process in any other manner now or hereafter provided by law, and this sentence is an extension of and not a limitation upon the right otherwise existing of service of legal process upon nonresidents.

(e) The provisions of this section shall not be construed to limit the accomplishment of a ratification or waiver of a void or voidable act or transaction by other means permitted by law.

§10A-9A-1.15

(a) If a partnership agreement provides that an act or transaction is void or voidable when taken, then that act or transaction may be ratified or waived by:

(1) the partners or other persons entitled to ratify or waive that act or transaction under the partnership agreement;

(2) if the partnership agreement does not specify the approval required for the ratification or waiver, then those partners or other persons entitled to approve the amendment of

the partnership agreement; or

(3) if the partnership agreement does not specify the approval required for the amendment of the partnership agreement, then all of the partners.

(b) If the void or voidable act or transaction was the issuance or transfer of any transferable interest, then for purposes of determining who may ratify or waive any act or transaction, the transferable interest purportedly issued or transferred shall be deemed not to have been issued or transferred.

(c) Any act or transaction ratified, or with respect to which the failure to comply with any requirements of the partnership agreement is waived, pursuant to this section shall be deemed validly taken at the time of the act or transaction.

(d) Upon application of the partnership, any partner, or any person claiming to be substantially and adversely affected by a ratification or waiver pursuant to this section, the designated court, and if none, the circuit court for the county in which the partnership's principal office is located in this state, and if none in this state, in the circuit court for the county in which the partnership's most recent registered office is located, may hear and determine the validity and effectiveness of the ratification of, or waiver with respect to, any void or voidable act or transaction effectuated pursuant to this section, and in any such application, the partnership shall be named as a party and service of the application upon the registered agent of the

partnership shall be deemed to be service upon the partnership, and no other party need be joined in order for the court to adjudicate the validity and effectiveness of the ratification or waiver, and the court may make such order respecting further or other notice of the application as the court deems proper under the circumstances; provided, that nothing herein limits or affects the right to serve process in any other manner now or hereafter provided by law, and this sentence is an extension of and not a limitation upon the right otherwise existing of service of legal process upon nonresidents.

(e) The provisions of this section shall not be construed to limit the accomplishment of a ratification or waiver of a void or voidable act or transaction by other means permitted by law.

Section 3. Although this bill would have as its purpose or effect the requirement of a new or increased expenditure of local funds, the bill is excluded from further requirements and application under Section 111.05 of the Constitution of Alabama of 2022, because the bill defines a new crime or amends the definition of an existing crime.

Section 4. This act shall become effective on January 1, 2025.