

SB 245 -- Redline

Introduced to Engrossed -- Relating to the Alabama Business and Nonprofit Entity Code; to add Chapter 3A to Title 10A, Code of Alabama 1975, by revising the Alabama Nonprofit Corporation Law to reflect the national standards set by the Model Nonprofit Corporation Act of 2021 and the Delaware General Corporation Law; and to make conforming changes throughout the Alabama Business and Nonprofit Entity Code in order to effectuate the changes to the Alabama Nonprofit Corporation Law and conform with the other entities governed by the Alabama Business and Nonprofit Entity Code by amending Sections 10A-1-1.03, 10A-1-1.08, 10A-1-3.32, 10A-1-8.01, 10A-1-8.02, 10A-1-9.01, 10A-2A-1.40, 10A-2A-1.43, 10A-2A-1.51, 10A-2A-2.02, 10A-2A-2.06, 10A-2A-7.04, 10A-2A-7.20, 10A-2A-7.32, 10A-2A-8.10, 10A-2A-8.21, 10A-2A-8.22, 10A-2A-8.24, 10A-2A-10.06, 10A-2A-10.07, 10A-2A-10.08, 10A-2A-11.02, 10A-2A-11.06, 10A-2A-12.02, and 10A-2A-14.13, Code of Alabama 1975; adding Sections 10A-2A-10.00 and 10A-2A-10.10 to the Code of Alabama 1975; and amending Sections 10A-5A-2.03, 10A-5A-10.07, 10A-8A-9.08, 10A-9A-2.02, and 10A-9A-10.08, Code of Alabama 1975.

Deletions ~~struck~~ · Insertions underlined

SB245 ~~INTRODUCED~~ENGROSSED ~~AY49Q7-1~~AY49Q7-2 By Senator Givhan RFD:

25-Apr-23 2023 Regular Session Page 0 ~~AY49Q7-1~~SB245 ~~04/03/2023~~Engrossed ~~KMS2 (L)4~~cr6 ~~2023-1323A~~2~~BILL~~
~~4TO SYNOPSIS~~BE ENTITLED AN ACT Relating to the Alabama Business and Nonprofit Entity Code;

~~This bill would make changes to the Alabama Business and Nonprofit Entity Code by revising the Alabama Nonprofit Corporation Law to reflect the national standards set by the Model Nonprofit Corporation Act of 2021 and the Delaware General Corporation Law, and would make conforming changes throughout the Alabama Business and Nonprofit Entity Code in order to effectuate the changes to the Alabama Nonprofit Corporation Law and conform with the other entities governed by the Alabama Business and Nonprofit Entity Code.~~

~~A BILL TO BE ENTITLED AN ACT Relating to the Alabama Business and Nonprofit Entity Code;~~

and to make conforming changes throughout the Alabama Business and Nonprofit Entity Code in order to effectuate the changes to ~~Page 1 SB245 INTRODUCED~~ the Alabama Nonprofit Corporation Law and conform with the other entities governed by the Alabama Business and Nonprofit Entity Code by amending Sections 10A-1-1.03, 10A-1-1.08, 10A-1-3.32, 10A-1-8.01, 10A-1-8.02, 10A-1-9.01, 10A-2A-1.40, 10A-2A-1.43, 10A-2A-1.51, 10A-2A-2.02, 10A-2A-2.06, 10A-2A-7.04, 10A-2A-7.20, 10A-2A-7.32, 10A-2A-8.10, 10A-2A-8.21, 10A-2A-8.22, 10A-2A-8.24, 10A-2A-10.06, 10A-2A-10.07, 10A-2A-10.08, 10A-2A-11.02, 10A-2A-11.06, 10A-2A-12.02, and 10A-2A-14.13, Code of Alabama 1975;

and amending Sections 10A-5A-2.03, 10A-5A-10.07, 10A-8A-9.08, 10A-9A-2.02, and 10A-9A-10.08, Code of Alabama Page 1 SB245 Engrossed 1975.

and (2) All nonprofit corporations heretofore organized under any act hereby or heretofore repealed, for a purpose or ~~Page 2 SB245 INTRODUCED~~ purposes for which a nonprofit corporation might be organized under this chapter.

Prospectively from May 1, 2004, the YMCA of Mobile shall be entitled to all of the rights and privileges of a Page 2 SB245 Engrossed nonprofit corporation including, but not limited to, the right to amend its charter and bylaws as provided by this chapter.

After an amendment of the certificate of incorporation or any other document filed under this chapter or Chapter 1 that restates the certificate of incorporation in its entirety, the ~~Page 3 SB245 INTRODUCED~~ certificate of incorporation shall not include any prior documents.

When used with respect to a foreign nonprofit corporation, a business corporation, or a foreign business corporation, the "certificate of ~~95~~-incorporation" of that entity means the document of that entity that is equivalent to the certificate of incorporation Page 3 SB245 Engrossed of a corporation.

(3) BUSINESS CORPORATION, except in the phrase foreign 95 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 ~~Page 4 SB245 INTRODUCED~~ designated.

(7) DISTRIBUTION means a direct or indirect transfer of cash or other property from a nonprofit corporation to a Page 4 SB245 Engrossed 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.

(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 ~~Page 5 SB245 INTRODUCED~~ can be sent or delivered. and state, United States, and foreign Page 5 SB245 Engrossed government.

(19) FUNDAMENTAL TRANSACTION means an amendment of the certificate of incorporation, an amendment to the

bylaws, a ~~Page 6 SB245 INTRODUCED~~ merger, a conversion, a sale of all or substantially all of the assets, or the dissolution of a nonprofit corporation.

or Page 6 SB245 Engrossed (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, foreign business corporation:

or ~~Page 7 SB245 INTRODUCED~~ (2) is deemed to know it under law other than this chapter.

(c) A person notifies another of a fact by taking steps reasonably required to inform the other person in ordinary Page 7 SB245 Engrossed course in accordance with Section 10A-3A-1.03, whether or not the other person knows the fact.

and (5) revocation of dissolution and reinstatement, 90 days after certificate of revocation of dissolution and ~~Page 8 SB245 INTRODUCED~~ reinstatement under Section 10A-3A-11.06 becomes effective.

(26) MEMBER means a person in whose name a membership is registered on the records of the membership nonprofit Page 8 SB245 Engrossed 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.

(30) NONPROFIT CORPORATION, except in the phrase foreign nonprofit corporation, means a nonprofit corporation ~~Page 9 SB245 INTRODUCED~~ incorporated under or existing under this chapter.

(33) PRIVATE ORGANIZATIONAL DOCUMENTS means (i) the bylaws of a nonprofit corporation, foreign nonprofit Page 9 SB245 Engrossed 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.

(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 ~~Page 10 SB245 INTRODUCED~~ entity or foreign unincorporated entity and is required to be filed.

(37) SECRETARY means the corporate officer to whom the certificate of incorporation, bylaws, or board of directors Page 10 SB245 Engrossed 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.

~~Page 11 SB245 INTRODUCED~~ 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 does Page 11 SB245 Engrossed 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.

(a) A notice under this chapter must be in writing ~~Page 12 SB245 INTRODUCED~~ unless oral notice is reasonable in the circumstances.

radio, television, or Page 12 SB245 Engrossed other form of public broadcast communication;

(d) A notice or other communication from a nonprofit corporation to a member may be delivered by electronic mail to the electronic mail address for that member maintained pursuant to Section 10A-3A-4.01(d), unless that member has previously notified the nonprofit corporation in writing that the member objects to receiving notices and other ~~Page 13 SB245 INTRODUCED~~ communications by electronic mail.

(e) A notice or other communication may no longer be Page 13 SB245 Engrossed delivered to an electronic mail address or other electronic transmission address pursuant to subsection (d) if (i) the nonprofit corporation receives notice from the information processing system into which the notice or other communication was entered that two consecutive notices or other communications given by electronic transmission have not been delivered to the electronic mail address or other electronic transmission address to which the notice or other communication was directed, and (ii) the notice of non-delivery becomes known to the secretary or an assistant secretary, or another person responsible for the giving of notices or other communications for the nonprofit corporation;

provided, however, that the inadvertent failure to recognize the notice of non-delivery as a cessation of authority to provide a member with notice by electronic mail or other electronic transmission shall not invalidate any meeting or ~~Page 14 SB245 INTRODUCED~~ other action.

or (ii) in the case of any other recipient, the electronic transmission address at which the recipient has consented to receive notice or other Page 14 SB245 Engrossed communication by electronic transmission;

(i) a member's address included in the record of ~~Page 15 SB245 INTRODUCED~~ members maintained pursuant to Section 10A-3A-4.01(d);

(3) if mailed by United States mail postage prepaid and addressed to a recipient other than a member, at the address of the recipient reflected in the books and records of the nonprofit corporation, the earliest of when it is actually Page 15 SB245 Engrossed received, or:

(j) A notice or other communication may be in the form of an electronic transmission that cannot be directly ~~Page 16 SB245 INTRODUCED~~ reproduced in paper form by the recipient through an automated process used in conventional commercial practice only if (i) the electronic transmission is otherwise retrievable in perceivable form and (ii) the sender and the recipient have consented in writing to the use of that form of electronic transmission.

The ~~Page 16 SB245 Engrossed~~ certificate of incorporation or bylaws may authorize or require delivery of notices of meetings of directors by electronic transmission.

(1) notices and communications to members of two ~~Page 17 SB245 INTRODUCED~~ consecutive annual meetings, and all notices and communications of meetings during the period between those two consecutive annual meetings, have been sent to that member at that member's address included in the record of members maintained pursuant to Section 10A-3A-4.01(d) and have been returned undeliverable or could not be delivered;

In addition if any member to which this subsection (m) applies delivers to the nonprofit corporation a written notice ~~Page 17 SB245 Engrossed~~ or communication setting forth that member's then-current address, the requirement that notice and communication be given to that member shall be reinstated.

In the event that the ~~Page 18 SB245 INTRODUCED~~ action taken by the nonprofit corporation requires the filing of a certificate or other filing instrument under any of the other sections of this chapter, the certificate or other filing instrument shall state, if that is the fact and if notice or communication is required, that notice or communication was given to all persons entitled to receive notice or communication except those persons with whom notice to or communication with is unlawful.

(a) Whenever any filing instrument is to be delivered to the Secretary of State for filing in accordance with this ~~Page 18 SB245 Engrossed~~ chapter, the instrument shall be executed as follows:

If any incorporator is not available then any other instrument may be signed, with the same effect as if the incorporator had signed it, by any person for whom or on whose behalf the incorporator, in executing the certificate of incorporation, was acting directly or indirectly as employee or agent, provided that the other instrument shall state that the incorporator is not available and the reason therefor, that the incorporator in executing the certificate of incorporation was acting directly ~~Page 19 SB245 INTRODUCED~~ or indirectly as employee or agent for or on behalf of the person, and that the person's signature on the instrument is otherwise authorized and not wrongful.

or (iii) if it shall appear from the filing instrument ~~Page 19 SB245 Engrossed~~ that there are no authorized officers or directors, then by a majority of the members or by the members as may be designated by a majority of the members.

~~Page 20 SB245 INTRODUCED~~ (1) The manner in which the facts will operate upon the terms of the plan or filing instrument must be set forth in the plan or filing instrument.

(ii) a determination or action by any person or body, including the nonprofit corporation or any other party to a ~~Page 20 SB245 Engrossed~~ plan or filing instrument;

(iv) the effective date and time of a filing instrument ~~Page 21 SB245 INTRODUCED~~ as determined under Article 4 of Chapter 1;

(5) If a provision of a filing instrument is made dependent on a fact ascertainable outside of the filing instrument, and that fact is neither ascertainable by reference to a source described in subsection (c)(2)(i) or a document that is a matter of public record, nor have the affected members, if any, and if none, the affected directors, received notice of the fact from the nonprofit corporation, then the nonprofit corporation shall deliver to the Secretary ~~Page 21 SB245 Engrossed~~ of State for filing a certificate of amendment to the filing instrument setting forth the fact promptly after the time when the fact referred to is first ascertainable or thereafter changes.

A certificate ~~Page 22 SB245 INTRODUCED~~ of existence must state:

and ~~Page 22 SB245 Engrossed~~ (5) other facts of record in the office of the Secretary of State that are specified by the person requesting the certificate.

(3) that the Secretary of State has not revoked the ~~Page 23 SB245 INTRODUCED~~ foreign nonprofit corporation's registration;

(c) Subject to any qualification stated in the certificate, a certificate of existence or certificate of registration issued by the Secretary of State is conclusive evidence that the nonprofit corporation is in existence or the foreign nonprofit corporation is authorized to transact ~~Page 23 SB245 Engrossed~~ business in this state.

(3) "DEFECTIVE CORPORATE ACTION" means (i) any corporate action purportedly taken that is, and at the time that corporate action was purportedly taken would have been, ~~Page 24 SB245 INTRODUCED~~ within the power of the nonprofit corporation, but is void or voidable due to a failure of authorization, and (ii) an overissue.

(i) membership interests of a class in excess of the ~~Page 24 SB245 Engrossed~~ number, if any, of membership interests of a class the nonprofit corporation has the power to issue under its certificate of incorporation or bylaws at the time of issuance;

(6) "PUTATIVE MEMBERSHIP INTEREST" means a membership interest of any class (including a membership

interest issued upon exercise of rights, options, warrants, or other securities convertible into a membership interest of the nonprofit corporation, or interests with respect to that membership interest) that was created or issued as a result of a defective corporate action, that (i) but for any failure of authorization would constitute a valid membership interest, or (ii) cannot be determined by the board of directors to be a ~~Page 25 SB245 INTRODUCED~~ valid membership interest.

and (ii) the time at which any certificate of validation Page 25 SB245 Engrossed filed in accordance with Section 10A-3A-1.26 becomes effective.

(b) Ratification under Section 10A-3A-1.22 or validation under Section 10A-2A-1.27 shall not be deemed to be the exclusive means of ratifying or validating any defective corporate action, and the absence or failure of ratification in accordance with this Division shall not, of itself, affect the validity or effectiveness of any corporate action properly ~~Page 26 SB245 INTRODUCED~~ ratified under common law or otherwise, nor shall it create a presumption that any such corporate action is or was a defective corporate action or void or voidable.

or (2) the effectiveness of any other corporate action under this article ratifying the authorization, designation, Page 26 SB245 Engrossed or creation of a membership interest.

and (4) that the board of directors approves the ~~Page 27 SB245 INTRODUCED~~ ratification of the defective corporate action.

(2) the earlier of the date on which those persons first took the action or were purported to have been elected Page 27 SB245 Engrossed as the initial board of directors;

(d) If the certificate of incorporation of a nonprofit corporation in effect at the time action under subsection (a) is taken requires the approval of a person or group of persons ~~Page 28 SB245 INTRODUCED~~ specified in the certificate of incorporation or would have required approval of that person or group of persons at the date of the occurrence of the defective corporate action, the ratification of the defective corporate action approved in the action taken by the directors under subsection (a) shall be submitted to that person or group of persons for approval in accordance with Section 10A-3A-1.23.

(e) Unless otherwise provided in the action taken by the board of directors under subsection (a), after the action by the board of directors has been taken and, if required, approved in accordance with subsection (c) or subsection (d), the board of directors may abandon the ratification at any Page 28 SB245 Engrossed time before the validation effective time without further action of the members, if any, or the person or group of persons, if any, specified in the certificate of incorporation.

(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 ~~Page 29 SB245 INTRODUCED~~ for notice of the meeting and as of the date of the occurrence of 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 Page 29 SB245 Engrossed 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.

(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 ~~Page 30 SB245 INTRODUCED~~ present.

(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 Page 30 SB245 Engrossed 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 ~~Page 31 SB245 INTRODUCED~~ certain conditions, shall be brought within 120 days from the applicable validation effective time.

and (ii) the date of the defective corporate action ratified, provided that notice shall not be required to be given to holders of a valid and Page 31 SB245 Engrossed putative membership interest whose identities or addresses for notice cannot be determined from the records of the nonprofit corporation.

(c) In a membership nonprofit corporation, no notice under this section is required with respect to any action ~~Page 32 SB245 INTRODUCED~~ required to be submitted to members for approval under Section 10A-3A-1.22(c) if notice is given in accordance with Section 10A-3A-1.24(b).

(a) Each defective corporate action ratified in accordance with Section 10A-3A-1.22 shall not be void or voidable as a result of the failure of authorization Page 32 SB245 Engrossed identified in the action taken under Section 10A-3A-1.22(a) or (b) and shall be deemed a valid corporate action effective as of the date of the defective corporate action;

~~Page 33 SB245 INTRODUCED~~ Sec.10A-3A-1.26.

Page 33 SB245 Engrossed (b) The certificate of validation must set forth:

(6) a statement that the defective corporate action was ratified in accordance with Section 10A-3A-1.22, including the ~~Page 34 SB245 INTRODUCED~~ 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;

(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 Page 34 SB245 Engrossed 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) if a filing was previously made in respect of the defective corporate action and that filing 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 previously made and any certificate of correction to that filing, and (ii) a statement that a filing containing all of the information required to be included under the applicable section or sections of this chapter to ~~Page 35 SB245 INTRODUCED~~ 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 is deemed to have become effective;

or (3) if a filing was not previously made in respect of the defective corporate action and the defective corporate action ratified under Section 10A-3A-1.22 would have required a filing under any other section of this chapter, the certificate of validation must set forth (i) a statement that a filing containing all of the information required to be ~~991~~ included under the applicable section or sections of this chapter to give effect to that defective corporate action is Page 35 SB245 Engrossed attached as an exhibit to the certificate of validation, and (ii) the date and time that filing is deemed to have become effective.

(a) Upon application by the nonprofit corporation, any successor entity to the nonprofit corporation, a director of the nonprofit corporation, any member (if applicable) of the nonprofit corporation, including any member as of the date of the defective corporate action ratified under Section ~~991~~ 10A-3A-1.22, the person or group of persons (if applicable) specified in the certificate of incorporation, or any other person claiming to be substantially and adversely affected by a ratification under Section 10A-3A-1.22, the designated court, and if none, the circuit court for the county in which the nonprofit corporation's principal office is located in ~~Page 36 SB245 INTRODUCED~~ this state, and if none in this state, the circuit court for the county in which the nonprofit corporation's most recent registered office, is located, may:

Page 36 SB245 Engrossed (b) In connection with an action under this section, the court may make findings or orders, and take into account any factors or considerations, regarding any matters as it deems proper under the circumstances.

(d) Notwithstanding any other provision of this section or otherwise under applicable law, any action asserting that the ratification of any defective corporate action and any ~~Page 37 SB245 INTRODUCED~~ putative membership interest issued as a result of a defective corporate action should not be effective, or should be effective only on certain conditions, shall be brought within 120 days of the validation effective time.

(1) Section 10A-3A-2.02(b)(6), is not a director (i) to whom the limitation or elimination of the duty of an officer to offer potential business opportunities to the nonprofit corporation would apply, or (ii) who has a material Page 37 SB245 Engrossed relationship with any other person to whom the limitation or elimination would apply;

or (3) Section 10A-2A-8.60, is not a director (i) as to whom the contract or transaction is a director's conflicting interest transaction, (ii) who has a material relationship with another director as to whom the transaction is a director's conflicting interest transaction, (iii) who pursues ~~Page 38 SB245 INTRODUCED~~ or takes advantage of the business opportunity, directly, or indirectly through or on behalf of another person, or (iv) has a material relationship with a director or officer who pursues or takes advantage of the business opportunity, directly, or indirectly through or on behalf of another person.

and (2) "MATERIAL INTEREST" means an actual or potential Page 38 SB245 Engrossed benefit or detriment

(other than one which would devolve on the nonprofit corporation or the members generally) that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken.

or (2) service as a director of another nonprofit corporation of which a director who is not a qualified director with respect to the matter (or any individual who has ~~Page 39 SB245 INTRODUCED~~ a material relationship with that director), is or was also a director.

(2) the membership nonprofit corporation addresses the notice, report, or statement to those members either as a Page 39 SB245 Engrossed group or to each of those members individually or to the members in a form to which each of those members has consented;

(c) Any member who fails to object by written notice to the membership nonprofit corporation, within 60 days of ~~Page 40 SB245 INTRODUCED~~ written notice by the membership nonprofit corporation of its intention to deliver single copies of notices, reports, or statements to members who share a common address as permitted by subsection (a), shall be deemed to have consented to receiving a single copy at the common address;

(1) the incorporation and internal affairs of the Page 40 SB245 Engrossed foreign nonprofit corporation; In order to incorporate a nonprofit corporation, one or more incorporators must execute a certificate of incorporation and ~~Page 41 SB245 INTRODUCED~~ deliver it for filing to the Secretary of State.

Page 41 SB245 Engrossed (3) that the nonprofit corporation is incorporated under this chapter;

(iii) defining, limiting, and regulating the powers of ~~Page 42 SB245 INTRODUCED~~ the nonprofit corporation, its board of directors, and the members;

(viii) provisions granting inspection rights to a Page 42 SB245 Engrossed person or group of persons under Section 10A-3A-4.07;

~~Page 43 SB245 INTRODUCED~~ (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 Page 43 SB245 Engrossed more classes or categories of, corporate opportunities, before the pursuit or taking of the opportunity by the director or other person;

(d) Provisions of the certificate of incorporation may ~~Page 44 SB245 INTRODUCED~~ be made dependent upon facts objectively ascertainable outside the certificate of incorporation in accordance with Section 10A-3A-1.04.

(iv) an entity (other than the nonprofit corporation or an entity controlled by the nonprofit corporation) controlled by the individual or any person Page 44 SB245 Engrossed specified above in this definition;

(g) The certificate of incorporation is a part of a ~~Page 45 SB245 INTRODUCED~~ 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.

Page 45 SB245 Engrossed (1) if initial directors are named in the certificate of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the nonprofit corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting;

(b) Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be ~~Page 46 SB245 INTRODUCED~~ taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(c) The bylaws are a part of a binding contract between the nonprofit corporation and (i) the members in a membership Page 46 SB245 Engrossed nonprofit corporation and (ii) the directors in a nonmembership nonprofit corporation, subject to the provisions of this chapter.

(b) All provisions of the regular bylaws not ~~Page 47 SB245 INTRODUCED~~ inconsistent with the emergency bylaws remain effective during the emergency.

Page 47 SB245 Engrossed Sec.10A-3A-2.07.

If the court or courts of this state specified in a provision adopted under subsection (a) do not have the requisite personal and subject matter jurisdiction and another court of this state does have jurisdiction, then the internal ~~Page 48 SB245 INTRODUCED~~ corporate claim may be brought in the other court of this state, notwithstanding that the other court of this state is not specified in that provision, and in any other court specified in that provision that has the requisite jurisdiction.

(d) "Internal corporate claim" means, for the purposes of this section, (i) any claim that is based upon a violation of a duty under the laws of this state by a current or former Page 48 SB245 Engrossed director, officer, or member in their capacities as such, (ii) any action asserting a claim arising pursuant to any provision of this chapter or the certificate of incorporation or bylaws, or (iii) any

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

~~Page 49 SB245 INTRODUCED~~ (c) Labor unions, cooperative organizations, and organizations subject to any of the provisions of the insurance laws of Alabama may not be organized under this chapter.

(e) Whenever 10 or more wholesale merchants wish to form a nonprofit association, cooperative society, or Page 49 SB245 Engrossed corporation in the sense of paying interest or dividends on stock, but for mutual benefit through the application of cooperation or other economic principles, they may become a body corporate in the manner provided in this chapter.

~~Page 50 SB245 INTRODUCED~~ (1) modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent;

and (2) one or more officers of the nonprofit corporation present at a meeting of the board of directors may be deemed Page 50 SB245 Engrossed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

~~Page 51 SB245 INTRODUCED~~ (b) The power of a nonprofit corporation to act may be challenged:

(c) In a proceeding by a member or a director under subsection (b)(1) to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all Page 51 SB245 Engrossed affected persons are parties to the proceeding, and may award damages for loss (other than anticipated profits) suffered by the nonprofit corporation or another party because of enjoining the unauthorized corporate act.

~~Page 52 SB245 INTRODUCED~~ (3) its bylaws as currently in effect;

(b) A nonprofit corporation shall maintain all annual financial statements prepared for the nonprofit corporation for its last three fiscal years (or such shorter period of Page 52 SB245 Engrossed existence) and any audit or other reports with respect to those financial statements.

In addition if a member has provided an electronic mail address to the membership nonprofit corporation or has consented to receive notices or other communications by electronic mail or other electronic transmission, the record of members shall include the electronic mail or other electronic transmission address of the member if notices or other communications are being ~~Page 53 SB245 INTRODUCED~~ delivered by the membership nonprofit corporation to the member at that electronic mail or other electronic transmission address pursuant to Section 10A-3A-1.03(d).

Page 53 SB245 Engrossed Sec.10A-3A-4.02.

(b) A member of a membership nonprofit corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the membership nonprofit ~~Page 54 SB245 INTRODUCED~~ corporation, any of the following records of the membership nonprofit corporation if the member meets the requirements of subsection (c) and gives the membership nonprofit corporation a signed written notice of the member's demand at least five business days before the date on which the member wishes to inspect and copy:

and (3) excerpts from minutes of any meeting of, or records Page 54 SB245 Engrossed of any actions taken without a meeting by, the board of directors and board committees maintained in accordance with Section 10A-3A-4.01(a);

(d) The membership nonprofit corporation may impose reasonable restrictions and conditions on access to and use of ~~Page 55 SB245 INTRODUCED~~ the records to be inspected and copied under subsections (a) and (b), including designating information confidential and imposing nondisclosure and safeguarding, and may further keep confidential from its members and other persons, for a period of time as the membership nonprofit corporation deems reasonable any information that the membership nonprofit corporation reasonably believes to be in the nature of a trade secret or other information the disclosure of which the membership nonprofit corporation in good faith believes is not in the best interest of the membership nonprofit corporation or could damage the membership nonprofit corporation or its activities or affairs, or that the membership nonprofit Page 55 SB245 Engrossed corporation is required by law or by agreement with a third party to keep confidential.

(e) For any meeting of members for which the record date for determining members entitled to vote at the meeting is different than the record date for notice of the meeting, any person who becomes a member subsequent to the record date for notice of the meeting and is entitled to vote at the meeting is entitled to obtain from the membership nonprofit corporation upon request the notice and any other information provided by the membership nonprofit corporation to members in connection with the meeting, unless the membership nonprofit corporation has made that information generally available to members by posting it on its website or by other generally ~~Page 56 SB245 INTRODUCED~~ recognized means.

or Page 56 SB245 Engrossed (2) the power of a court, independently of this chapter, to compel the production of corporate records for examination and to impose reasonable restrictions as provided in Section 10A-3A-4.04(c), provided that, in the case of production of records described in subsection (b) of this section at the request of the member, the member has met the requirements of subsection (c) of this section.

(b) The membership nonprofit corporation may, if reasonable, satisfy the right of a member to copy

records under Section 10A-3A-4.02 by furnishing to the member copies by photocopy or other means as are chosen by the membership nonprofit corporation, including furnishing copies through ~~Page 57 SB245 INTRODUCED~~ electronic transmission.

Page 57 SB245 Engrossed (a) If a membership nonprofit corporation does not allow a member who complies with Section 10A-3A-4.02(a) to inspect and copy any records required by that section to be available for inspection, the designated court, and if none, the circuit court for the county in which the membership nonprofit corporation's principal office is located in this state, and if none in this state, the circuit court for the county in which the membership nonprofit corporation's most recent registered office is located may summarily order inspection and copying of the records demanded at the membership nonprofit corporation's expense upon application of the member.

(b) If a membership nonprofit corporation does not within a reasonable time allow a member who complies with Section 10A-3A-4.02(b) to inspect and copy the records as required by that section, the member who complies with Section ~~Page 58 SB245 INTRODUCED~~ 10A-3A-4.02(c) may apply to the designated court, and if none, the circuit court for the county in which the membership nonprofit corporation's principal office is located in this state, and if none in this state, the circuit court for the county in which the membership nonprofit corporation's most recent registered office is located for an order to permit inspection and copying of the records demanded.

(c) If the court orders inspection and copying of the records demanded under Section 10A-3A-4.02(b), it may impose reasonable restrictions on their confidentiality, use or Page 58 SB245 Engrossed distribution by the demanding member and it shall also order the membership nonprofit corporation to pay the member's expenses incurred to obtain the order unless the membership nonprofit corporation establishes that it refused inspection in good faith because the membership nonprofit corporation had:

(a) A director of a nonprofit corporation is entitled to inspect and copy the books, records, and documents of the nonprofit corporation at any reasonable time to the extent reasonably related to the performance of the director's duties ~~Page 59 SB245 INTRODUCED~~ as a director, including duties as a member of a board committee, but not for any other purpose or in any manner that would violate any duty to the nonprofit corporation.

(b) The designated court, and if none, the circuit court for the county in which the nonprofit corporation's principal office is located in this state, and if none in this state, the circuit court for the county in which the nonprofit corporation's most recent registered office is located may order inspection and copying of the books, records, and documents at the nonprofit corporation's expense, upon application of a director who has been refused inspection rights, unless the nonprofit corporation establishes that the Page 59 SB245 Engrossed director is not entitled to inspection rights.

(a) Unless otherwise permitted by the certificate of incorporation or bylaws of a membership nonprofit corporation, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a member's ~~Page 60 SB245 INTRODUCED~~ interest as a member without the consent of the board of directors, including without limitation:

Page 60 SB245 Engrossed Sec.10A-3A-4.07.

(a) Upon the written request of a member, a membership nonprofit corporation shall deliver or make available to the requesting member by posting on its website or by other generally recognized means annual financial statements for the ~~Page 61 SB245 INTRODUCED~~ most recent fiscal year of the membership nonprofit corporation for which annual financial statements have been prepared for the membership nonprofit corporation.

Page 61 SB245 Engrossed (b) A membership nonprofit corporation shall deliver, or make available and provide written notice of availability of, the financial statements required under subsection (a) to the requesting member within five business days of delivery of the written request to the membership nonprofit corporation.

~~Page 62 SB245 INTRODUCED~~ (d) If a membership nonprofit corporation does not respond to a member's request for annual financial statements pursuant to this section in accordance with subsection (b) within five business days of delivery of the request to the membership nonprofit corporation:

(1) The requesting member may apply to the designated court, and if none, the circuit court for the county in which the membership nonprofit corporation's principal office is located in this state, and if none in this state, the circuit court for the county in which the membership nonprofit corporation's most recent registered office is located for an order requiring delivery of or access to the requested Page 62 SB245 Engrossed financial statements.

(4) In the proceeding, if the membership nonprofit corporation has declined to deliver or make available the ~~Page 63 SB245 INTRODUCED~~ financial statements pursuant to Section 10A-3A-4.20(c)(2), the membership nonprofit corporation shall have the burden of demonstrating that it had reasonably determined that the member's request was not made in good faith or for a proper purpose.

(5) If the court orders delivery or access to the requested financial statements, it shall order the membership nonprofit corporation to pay the member's expenses incurred to obtain the order unless the membership nonprofit corporation establishes that it had refused delivery or access to the requested financial statements because the member had refused to agree to reasonable restrictions on the

confidentiality, [Page 63 SB245 Engrossed](#) use, or distribution of the financial statements or that the membership nonprofit corporation had reasonably determined that the member's request was not made in good faith or for a proper purpose.

If the nonprofit corporation ~~Page 64 SB245 INTRODUCED~~ will not have members, that fact shall be set forth in the certificate of incorporation.

(b) Except as otherwise provided in this chapter or in the certificate of incorporation, if the certificate of incorporation of a nonprofit corporation states that the nonprofit corporation will have members, but that nonprofit corporation has in fact no members entitled to vote on a matter, then any provision of this chapter or any other provision of law requiring notice to, the presence of, or the vote, consent, or other action by members of that nonprofit corporation in connection with the matter shall be satisfied by notice to, the presence of, or the vote, consent, or other [Page 64 SB245 Engrossed](#) action by the board of directors of the nonprofit corporation.

(b) If a membership nonprofit corporation provides certificates of membership to the members, the certificates shall not be registered or transferable except as provided in ~~Page 65 SB245 INTRODUCED~~ the certificate of incorporation or bylaws.

(d) A person is not a member of a nonmembership nonprofit corporation, regardless of whether the nonmembership [Page 65 SB245 Engrossed](#) nonprofit corporation designates or refers to the person as a member.

Except as otherwise provided in the certificate of incorporation or bylaws, each member of a membership nonprofit corporation has the same rights and obligations as every other member with respect to voting, dissolution, membership ~~Page 66 SB245 INTRODUCED~~ transfer, and other matters.

[Page 66 SB245 Engrossed](#) A member of a nonprofit corporation is not personally liable for any liabilities of the nonprofit corporation (including liabilities arising from acts of the nonprofit corporation).

Members of a class may be made exempt from dues, assessments, fees, fines, late charges, interest, penalties, and other such sums ~~Page 67 SB245 INTRODUCED~~ to the extent provided in the certificate of incorporation or bylaws.

(c) The certificate of incorporation or bylaws may provide reasonable means to enforce the collection of dues, assessments, fees, fines, late charges, interest, penalties, and other such sums, including, but not limited to, [Page 67 SB245 Engrossed](#) termination, suspension, or reinstatement of membership.

(c) The termination or suspension of a member does not ~~Page 68 SB245 INTRODUCED~~ relieve the member from any obligations incurred or commitments made prior to the termination or suspension.

[Page 68 SB245 Engrossed](#) If the board of directors does not fix a record date for determining members entitled to a distribution, the record date is the date the board of directors authorizes the distribution.

(d) The board of directors may base a determination that a distribution is not prohibited under subsection (c) either on financial statements prepared on the basis of ~~Page 69 SB245 INTRODUCED~~ accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(g) This section shall not apply to a contract or transaction with a member, director, or officer, which [Page 69 SB245 Engrossed](#) contract or transaction is authorized pursuant to Section 10A-3A-8.60.

~~Page 70 SB245 INTRODUCED~~ The requirement of a capital contribution may apply to all members, or to the members of a single class, or to members of different classes in different amounts or proportions.

[Page 70 SB245 Engrossed](#) DIVISION A.

(c) Unless the board of directors determines to hold the meeting solely by means of remote communication in accordance with Section 10A-3A-7.09(c), annual and regular meetings of the members may be held (i) in or out of this state at the place stated in or fixed in accordance with the certificate of incorporation or bylaws or (ii) if no place is ~~Page 71 SB245 INTRODUCED~~ stated in or fixed in accordance with the certificate of incorporation or bylaws, at the membership nonprofit corporation's principal office.

(a) Special meetings of the members in a membership nonprofit corporation may be called by the board of directors or by the person or persons as may be authorized by the [Page 71 SB245 Engrossed](#) certificate of incorporation or by the bylaws.

~~Page 72 SB245 INTRODUCED~~ (c) Unless the board of directors determines to hold the meeting solely by means of remote participation in accordance with Section 10A-3A-7.09(c), special meetings of members may be held (i) in or out of this state at the place stated in or fixed in accordance with the certificate of incorporation or bylaws or (ii) if no place is stated in or fixed in accordance with the certificate of incorporation or bylaws, at the membership nonprofit corporation's principal office.

(d) Only business within the purpose or purposes described in the meeting notice required by Section 10A-3A-7.05(c) may be conducted at a special meeting of [Page 72 SB245 Engrossed](#) members.

or ~~Page 73 SB245 INTRODUCED~~ (2) on application of one or more members who signed a demand for a special meeting valid under Section 10A-3A-7.02, if:

(b) The court may fix the time and place of the meeting, determine the members entitled to participate in the meeting, specify a record date or dates for determining [Page 73 SB245 Engrossed](#) members entitled

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

(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 ~~Page 74 SB245 INTRODUCED~~ the action were present and voted.

(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 is delivered to the membership Page 74 SB245 Engrossed nonprofit corporation.

Any person executing 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 ~~Page 75 SB245 INTRODUCED~~ is made, if evidence of the instruction or provision is provided to the membership nonprofit corporation.

Unless the certificate of incorporation, bylaws, or a resolution of the board of directors provides for a reasonable delay to permit tabulation Page 75 SB245 Engrossed 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.

(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 ~~Page 76 SB245 INTRODUCED~~ 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.

If the board of directors has authorized participation by means of remote communication pursuant to Section 10A-3A-7.09 for any class of Page 76 SB245 Engrossed members or voting group, the notice to that class of members or voting group must describe the means of remote communication to be used.

~~Page 77 SB245 INTRODUCED~~ (c) Notice of a special meeting of members must include a description of the purpose or purposes for which the meeting is called.

(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, notice need not be given of the new place, if Page 77 SB245 Engrossed any, date, or time if the new place, if any, date, or time is announced at the meeting before adjournment.

~~Page 78 SB245 INTRODUCED~~ (1) waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting;

(a) The certificate of incorporation or bylaws may fix or provide the manner of fixing the record date or dates for one or more voting groups of members to determine the members Page 78 SB245 Engrossed entitled to notice of a members' meeting, to demand a special meeting, to vote, or to take any other action.

(d) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original ~~Page 79 SB245 INTRODUCED~~ meeting, it may provide that the original record date or dates continues in effect or it may fix a new record date or dates.

Page 79 SB245 Engrossed (b) At each meeting of members, the order of business and the rules for the conduct of the meeting must be:

If no announcement is made, the polls close upon the final adjournment of the ~~Page 80 SB245 INTRODUCED~~ meeting.

Page 80 SB245 Engrossed (b) Members participating in a members' meeting by means of remote communication shall be deemed present and may vote at that meeting if the membership nonprofit corporation has implemented reasonable measures:

(c) Unless the certificate of incorporation or bylaws require the meeting of members to be held at a place, the board of directors may determine that any meeting of members shall not be held at any place and shall instead be held ~~Page 81 SB245 INTRODUCED~~ solely by means of remote communication, but only if the membership nonprofit corporation implements the measures specified in subsection (b).

Page 81 SB245 Engrossed (3) provide an opportunity to vote for, or withhold a vote for, each candidate for election as a director, if any;

~~Page 82 SB245 INTRODUCED~~ (2) state the percentage of approvals necessary to approve each matter other than election of directors;

(a) After fixing a record date for a meeting, a membership nonprofit corporation shall prepare an alphabetical list of the names of all its members who are entitled to Page 82 SB245 Engrossed notice of and to vote at the members' meeting.

The list shall be available (i) at ~~Page 83 SB245 INTRODUCED~~ the membership nonprofit corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held or (ii) on a reasonably accessible electronic network, provided that the information required to gain access to the list is provided with the notice of the meeting.

A member, or the member's agent or attorney, is entitled on written demand to inspect and, subject to the Page 83 SB245 Engrossed requirements of Section 10A-3A-4.02(c), to copy a list of members, during regular business hours and at the member's expense, during the period it is available for inspection.

(c) If the membership nonprofit corporation refuses to allow a member, or the member's agent or attorney, to inspect a list of members before the meeting or any adjournment (or copy a list as permitted by subsection (b)), the designated ~~Page 84 SB245 INTRODUCED~~ court, and if none, the circuit court for the county in which the membership nonprofit corporation's principal office is located in this state, and if none in this state, the circuit court for the county in which the membership nonprofit corporation's most recent registered office is located, on application of the member, may summarily order the inspection or copying at the membership nonprofit corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

Page 84 SB245 Engrossed (e) Instead of making the list of members available as provided in subsection (b), a membership nonprofit corporation may state in a notice of meeting that the membership nonprofit corporation has elected to proceed under this subsection (e).

An alternative method that reasonably and in a timely manner accomplishes the proper purpose set forth in the demand relieves the membership nonprofit ~~Page 85 SB245 INTRODUCED~~ corporation from making the list of members available under subsection (b), unless within a reasonable time after acceptance of the offer the membership nonprofit corporation fails to do the things it offered to do.

Page 85 SB245 Engrossed Sec.10A-3A-7.21.

An electronic transmission must contain or be accompanied by information from which the recipient can determine the date of ~~Page 86 SB245 INTRODUCED~~ the transmission and that the transmission was authorized by the sender or the sender's agent or attorney-in-fact.

(d) An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is Page 86 SB245 Engrossed irrevocable and the appointment is coupled with an interest.

(h) Nothing in this section shall be construed as ~~Page 87 SB245 INTRODUCED~~ limiting, or extending, authority granted under a durable power of attorney under Section 26-1-2 or Chapter 1A of Title 26, and any successor statute or statutes thereto.

(b) If the name signed on a vote, ballot, consent, Page 87 SB245 Engrossed waiver, member demand, or proxy appointment does not correspond to the name of its member, the membership nonprofit corporation, if acting in good faith, is nevertheless entitled to accept the vote, ballot, consent, waiver, member demand, or proxy appointment and give it effect as the act of the member if:

(3) the name signed purports to be that of a receiver ~~Page 88 SB245 INTRODUCED~~ or trustee in bankruptcy of the member and, if the membership nonprofit corporation requests, evidence of this status acceptable to the membership nonprofit corporation has been presented with respect to the vote, ballot, consent, waiver, member demand, or proxy appointment;

or Page 88 SB245 Engrossed (5) two or more persons are the members as co-tenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all the co-owners.

(d) Neither the membership nonprofit corporation or any person authorized by it, nor an inspector of election appointed under Section 10A-3A-7.28, that accepts or rejects a vote, ballot, consent, waiver, member demand, or proxy appointment in good faith and in accordance with the standards of this Section 10A-3A-7.23 or Section 10A-3A-7.22(b) is ~~Page 89 SB245 INTRODUCED~~ liable in damages to the member for the consequences of the acceptance or rejection.

(f) If an inspector of election has been appointed Page 89 SB245 Engrossed under Section 10A-2A-7.28, the inspector of election also has the authority to request information and make determinations under subsections (a), (b), and (c).

(b) Except as otherwise provided in the certificate of ~~Page 90 SB245 INTRODUCED~~ incorporation or bylaws, once a member is present or represented for any purpose at a meeting, the member is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be fixed for that adjourned meeting.

(d) An amendment of the certificate of incorporation or Page 90 SB245 Engrossed bylaws adding, changing, or deleting a quorum or voting requirement for a voting group greater than specified in subsection (a) or subsection (c) is governed by Section 10A-3A-7.26.

~~Page 91 SB245 INTRODUCED~~ Sec.10A-3A-7.25.

Page 91 SB245 Engrossed Sec.10A-3A-7.26.

(a) Except as otherwise provided in the certificate of incorporation or bylaws, directors of a membership nonprofit corporation are elected by a plurality of the votes cast by ~~Page 92 SB245 INTRODUCED~~ the members entitled to vote in the election at a meeting at which a quorum is present.

If no inspector or alternate is able to act at a meeting of members, the person presiding at the meeting may appoint one or more inspectors to Page 92 SB245 Engrossed act at the meeting.

~~Page 93 SB245 INTRODUCED~~ (4) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors;

(c) No ballot, proxies, or votes, nor any revocations thereof or changes thereto, shall be accepted by the inspectors after the closing of the polls unless the designated court, and if none, the circuit court for the county in which the membership nonprofits 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 Page 93 SB245 Engrossed membership nonprofit corporation's most recent registered office is located, upon application by a member, shall determine otherwise.

(e) The inspectors also may consider other information ~~Page 94 SB245 INTRODUCED~~ that they believe is relevant and reliable for the purpose of performing any of the duties assigned to them pursuant to subsection (b).

(a) Except as provided in the certificate of Page 94 SB245 Engrossed incorporation or bylaws, two or more members may provide for the manner in which they will vote by signing a written agreement for that purpose.

All corporate powers shall be exercised by or under authority of, and the activities and affairs of a nonprofit corporation shall be managed by or under the direction and ~~Page 95 SB245 INTRODUCED~~ subject to the oversight of, the board of directors except as may be otherwise provided in this chapter or the certificate of incorporation.

Page 95 SB245 Engrossed Sec.10A-3A-8.02.

(c) A qualification for nomination, election, or appointment for director prescribed before the earlier of a person's nomination, election, or appointment shall apply to that person at the time of the earlier of that person's ~~Page 96 SB245 INTRODUCED~~ nomination, election, or appointment and shall apply to that director during that director's term.

Page 96 SB245 Engrossed (a) A board of directors shall consist of one or more individuals, with the number specified in or fixed in accordance with the certificate of incorporation or bylaws.

~~Page 97 SB245 INTRODUCED~~ (b) Except as set forth in Section 10A-3A-2.04, the directors of a nonmembership nonprofit corporation are elected, appointed, or designated as provided in the certificate of incorporation or bylaws.

A class or multiple Page 97 SB245 Engrossed classes of members entitled to elect one or more directors is a separate voting group for purposes of the election of directors.

(d) Despite the expiration of a director's term, the director continues to serve until the director's successor is ~~Page 98 SB245 INTRODUCED~~ elected, appointed, or designated and until the director's successor takes office unless otherwise provided in the certificate of incorporation or bylaws or there is a decrease in the number of directors.

(a) A director may resign at any time by delivering a Page 98 SB245 Engrossed written notice of resignation to the board of directors or its chair, to the secretary, or to the nonprofit corporation.

(b) The notice of a meeting of members of a membership nonprofit corporation at which removal of a director is to be considered must state that the purpose, or one of the ~~Page 99 SB245 INTRODUCED~~ purposes, of the meeting is removal of the director.

Page 99 SB245 Engrossed (1) did not satisfy the qualifications for directors as set forth in the certificate of incorporation or bylaws at the time that director was nominated, elected, appointed, or designated to that director's current term, if the decision that the director failed to satisfy a qualification is made by the vote of a majority of the directors who meet all of the required qualifications;

~~Page 100 SB245 INTRODUCED~~ The designated court, and if none, the circuit court for the county in which the nonprofit corporation's principal office is located in this state, and if none in this state, the circuit court for the county in which the nonprofit corporation's most recent registered office is located may remove a director from office or may order other relief, including barring the director from reelection, redesignation, or reappointment for a period prescribed by the court, in a proceeding commenced by or in the right of the nonprofit corporation if the court finds that:

(i) the director engaged in fraudulent conduct with respect to the nonprofit corporation or its members, grossly abused the position of Page 100 SB245 Engrossed director, or intentionally inflicted harm on the nonprofit corporation;

(b) Unless the certificate of incorporation or bylaws ~~Page 101 SB245 INTRODUCED~~ provides otherwise, if the vacant office was held by a director who is:

or (3) designated in the certificate of incorporation or Page 101 SB245 Engrossed bylaws, may only be filled as specified in the certificate of incorporation or bylaws.

(b) Unless restricted by the certificate of ~~Page 102 SB245 INTRODUCED~~ incorporation or bylaws, any or all directors may participate in a meeting of the board through the use of any means of communication by which all directors participating may simultaneously hear each other during the meeting.

(a) Except to the extent that the certificate of incorporation or bylaws require that action by the board of directors be taken at a meeting, action required or permitted by this chapter to be taken by the board of directors may be taken without a meeting if each director signs a consent in a Page 102 SB245 Engrossed record describing the action to be taken and delivers it to the nonprofit corporation.

(c) A consent signed under this section has the effect ~~Page 103 SB245 INTRODUCED~~ of action taken at a meeting of the board of directors and may be described as such in any document.

The notice need not describe the purpose of the special meeting Page 103 SB245 Engrossed unless required by the certificate of incorporation or bylaws.

~~Page 104 SB245 INTRODUCED~~ (a) Unless the certificate of incorporation or bylaws provide for a greater or lesser number or unless otherwise expressly provided in this chapter, a quorum of a board of directors consists of a majority of the number of directors specified in or fixed in accordance with the certificate of incorporation or bylaws.

(c) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act Page 104 SB245 Engrossed of the board of directors unless the certificate of incorporation or bylaws require the vote of a greater number of directors or unless otherwise expressly provided in this chapter.

The right of dissent or abstention is not available to a director who votes in favor of the ~~Page 105 SB245 INTRODUCED~~ action taken.

~~(e) A director, in that person's capacity as a director, may not appoint an agent or proxy to vote, consent, approve, attend, act, or otherwise carry out the duties of that director for any purpose.~~

Page 105 SB245 Engrossed (1) a majority of all the directors in office when the action is taken;

~~Page 106 SB245 INTRODUCED~~ (1) in the case of a membership nonprofit corporation, approve or propose to members action that this chapter requires be approved by members;

If the certificate of incorporation, bylaws, or the action creating a board committee so provides, the member or members present at any board committee meeting and not disqualified from voting may, by unanimous action, appoint another director to act in place Page 106 SB245 Engrossed of an absent or disqualified member during that member's absence or disqualification.

~~Page 107 SB245 INTRODUCED~~ (a) Each member of the board of directors, when discharging the duties of a director, shall act:

(c) In discharging board of directors or board committee duties, a director shall disclose, or cause to be disclosed, to the other board of directors or board committee members information not already known by them but known by the director to be material to the discharge of their decision-making or oversight functions, except that disclosure Page 107 SB245 Engrossed is not required to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule.

~~Page 108 SB245 INTRODUCED~~ (e) In discharging board of directors or board committee duties, a director who does not have knowledge that makes reliance unwarranted is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by any of the persons specified in subsection (f).

(2) legal counsel, public accountants, or other persons retained by the nonprofit corporation as to matters involving Page 108 SB245 Engrossed skills or expertise the director reasonably believes are matters (i) within the particular person's professional or expert competence, or (ii) as to which the particular person merits confidence;

Division C of Article 3 of Chapter 1 shall not apply to ~~Page 109 SB245 INTRODUCED~~ this chapter.

(A) which the director did not reasonably believe to be Page 109 SB245 Engrossed in the best interests of the nonprofit corporation, or (B) as to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances;

(A) which relationship or which domination or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse ~~Page 110 SB245 INTRODUCED~~ to the nonprofit corporation, and (B) after a reasonable expectation to that effect has been established, the director shall not have established that the challenged conduct was reasonably believed by the director to be in the best interests of the nonprofit corporation;

or (v) receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the nonprofit corporation and its members that is actionable under Page 110 SB245 Engrossed applicable law.

or (2) for other money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, shall also have whatever persuasion burden may be called for to establish that the payment sought is appropriate in the ~~Page 111 SB245 INTRODUCED~~ circumstances;

(3) affect any rights to which a director may be Page 111 SB245 Engrossed entitled under another statute

of this state or the United States;

(a) A director who votes for or assents to a distribution in excess of what may be authorized and made pursuant to Section 10A-3A-6.40 or Section 10A-3A-11.07 is personally liable to the nonprofit corporation for the amount of the distribution that exceeds what could have been ~~Page 112 SB245 INTRODUCED~~ distributed without violating Section 10A-3A-6.40 or Section 10A-3A-11.07 if the party asserting liability establishes that when taking the action the director did not comply with Section 10A-3A-8.30.

(1) the liability of a director under subsection (a) is Page 112 SB245 Engrossed barred unless it is commenced within two years after the date on which the distribution was made;

(b) The fact that a loan or guarantee is made in ~~Page 113 SB245 INTRODUCED~~ violation of this section does not affect the borrower's liability on the loan.

(d) Unless the certificate of incorporation or bylaws Page 113 SB245 Engrossed provide otherwise, the same individual may simultaneously hold more than one office in a nonprofit corporation.

Division C of Article 3 of Chapter 1 shall not apply to ~~Page 114 SB245 INTRODUCED~~ this chapter.

and Page 114 SB245 Engrossed (2) to inform the officer's superior officer, or another appropriate person within the nonprofit corporation, or the board of directors, or a board committee, of any actual or probable material violation of law involving the nonprofit corporation or material breach of duty to the nonprofit corporation by an officer, employee, or agent of the nonprofit corporation, that the officer believes has occurred or is likely to occur.

(1) the performance of properly delegated ~~Page 115 SB245 INTRODUCED~~ responsibilities by one or more employees, one or more volunteers of the nonprofit corporation, or one or more other persons associated with the nonprofit corporation, to whom that officer has delegated responsibilities and whom the officer reasonably believes to be reliable and competent in performing the responsibilities delegated;

(i) within the Page 115 SB245 Engrossed particular person's professional or expert competence, or (ii) as to which the particular person merits confidence;

~~Page 116 SB245 INTRODUCED~~ Sec.10A-3A-8.43.

(b) An officer may be removed at any time with or Page 116 SB245 Engrossed without cause by (i) the board of directors;

(b) An officer's removal does not affect the officer's ~~Page 117 SB245 INTRODUCED~~ contract rights, if any, with the nonprofit corporation.

A director or officer is considered to be serving an employee benefit plan at the nonprofit corporation's request if the individual's duties to the Page 117 SB245 Engrossed nonprofit corporation also impose duties on, or otherwise involve services by, the individual to the plan or to participants in or beneficiaries of the plan.

(3) "NONPROFIT CORPORATION" includes any domestic or ~~Page 118 SB245 INTRODUCED~~ foreign predecessor entity of a nonprofit corporation.

Page 118 SB245 Engrossed Sec.10A-3A-8.51.

and (B) in all other cases, that the director's conduct was ~~Page 119 SB245 INTRODUCED~~ at least not opposed to the best interests of the nonprofit corporation;

(c) The termination of a proceeding by judgment, order, settlement, or conviction, or upon a plea of nolo contendere Page 119 SB245 Engrossed or its equivalent, is not, of itself, determinative that the director did not meet the relevant standard of conduct described in this section.

or (2) in connection with any proceeding with respect to conduct for which the director was adjudged liable on the ~~Page 120 SB245 INTRODUCED~~ basis of receiving a financial benefit to which the director was not entitled, regardless of whether it involved action in the director's official capacity.

(a) A nonprofit corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse expenses incurred in connection with the proceeding by an individual who is a party to the proceeding because that Page 120 SB245 Engrossed individual is a director if the director delivers to the nonprofit corporation a signed written undertaking of the director to repay any funds advanced if (i) the director is not entitled to mandatory indemnification under Section 10A-3A-8.52 and (ii) it is ultimately determined under Section 10A-3A-8.54 or Section 10A-3A-8.55 that the director is not entitled to indemnification.

~~Page 121 SB245 INTRODUCED~~ (1) by the board of directors:

Court-ordered indemnification and advance Page 121 SB245 Engrossed for expenses.

(2) order indemnification or advance for expenses if the court determines that the director is entitled to ~~Page 122 SB245 INTRODUCED~~ indemnification or advance for expenses pursuant to a provision authorized by Section 10A-3A-8.58(a);

(b) If the court determines that the director is entitled to indemnification under subsection (a)(1) or to Page 122 SB245 Engrossed indemnification or advance for expenses under subsection (a)(2), it shall also order the nonprofit corporation to pay the director's expenses incurred in connection with obtaining court-ordered indemnification or advance for expenses.

(a) A nonprofit corporation may not indemnify a ~~Page 123 SB245 INTRODUCED~~ director under Section 10A-3A-8.51 unless authorized for a specific proceeding after a determination has been made that indemnification is permissible because the director has met the relevant standard of conduct set forth in Section 10A-3A-8.51.

or (ii) if there are fewer than two qualified directors, Page 123 SB245 Engrossed selected by the board of directors (in which selection directors who are not qualified directors may participate);

(c) Authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible except that if there are fewer than two qualified directors, or if the determination is made by special legal counsel, authorization of indemnification shall be made by those entitled to select special legal counsel under ~~Page 124 SB245 INTRODUCED~~ subsection (b)(2)(ii).

and (2) if he or she is an officer but not a director, to such further extent as may be provided by the certificate of incorporation or the bylaws, or by a resolution adopted or a contract approved by the board of directors or members except for (i) liability in connection with a proceeding by the nonprofit corporation other than for expenses incurred in connection with the proceeding, or (ii) liability arising out of conduct that constitutes Page 124 SB245 Engrossed (A) receipt by the officer of a financial benefit to which the officer is not entitled, (B) an intentional infliction of harm on the nonprofit corporation or the members, or (C) an intentional violation of criminal law.

(c) An officer who is not a director is entitled to indemnification under Section 10A-3A-8.52 if the certificate of incorporation or bylaws of the nonprofit corporation allows for such indemnification, and may apply to a court under ~~Page 125 SB245 INTRODUCED~~ Section 10A-3A-8.54 for indemnification or an advance for expenses, in each case to the same extent to which a director may be entitled to indemnification or advance for expenses under those sections, unless otherwise provided in the certificate of incorporation or bylaws.

A nonprofit corporation may purchase and maintain insurance on behalf of an individual who is a director or officer of the nonprofit corporation, or who, while a director or officer of the nonprofit corporation, serves at the nonprofit corporation's request as a director, officer, partner, trustee, employee, or agent of another corporation or foreign corporation or a joint venture, trust, employee benefit plan, or other entity, against liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a director or officer, Page 125 SB245 Engrossed regardless of whether the nonprofit corporation would have power to indemnify or advance expenses to the individual against the same liability under this Division E of this Article 8.

(a) A nonprofit corporation may, by a provision in its certificate of incorporation, bylaws, or in a resolution adopted or a contract approved by the board of directors or members, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with Section 10A-3A-8.51 or advance funds to pay ~~Page 126 SB245 INTRODUCED~~ for or reimburse expenses in accordance with Section 10A-3A-8.53.

(b) A right of indemnification or to advances for expenses created by this Division E of this Article 8 or under subsection (a) and in effect at the time of an act or omission shall not be eliminated or impaired with respect to the act or omission by an amendment of the certificate of incorporation, bylaws, or a resolution of the board of directors or members, Page 126 SB245 Engrossed adopted after the occurrence of the act or omission, unless, in the case of a right created under subsection (a), the provision creating the right and in effect at the time of the act or omission explicitly authorizes elimination or impairment after the act or omission has occurred.

Any provision for indemnification or advance for expenses in the certificate of incorporation, bylaws, or a resolution of the ~~Page 127 SB245 INTRODUCED~~ board of directors or other similar governing authority of a predecessor of the nonprofit corporation in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, shall be governed by Section 10A-3A-12.06(a)(4).

(f) This Division E of this Article 8 does not limit a nonprofit corporation's power to indemnify, advance expenses Page 127 SB245 Engrossed to or provide or maintain insurance on behalf of an employee, agent, or volunteer.

(a) No contract or transaction between a nonprofit corporation and one or more of its directors or officers, or between a nonprofit corporation and any other corporation, partnership, association, or other entity in which one or more ~~Page 128 SB245 INTRODUCED~~ of its directors or officers, are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the board of directors or committee which authorizes the contract or transaction, or solely because the director's or officer's votes are counted for that purpose, if:

or (2) The material facts as to the director's or Page 128 SB245 Engrossed officer's relationship or interest and as to the contract or transaction are disclosed or are known to (i) the members in a membership nonprofit corporation entitled to vote thereon or (ii) the qualified directors of the board of directors in a membership nonprofit corporation, and the contract or transaction is specifically approved in good faith by vote of the members in a membership nonprofit corporation or the qualified directors of the board of directors in a membership nonprofit corporation;

or (3) The contract or transaction is fair as to the nonprofit corporation as of the time it is authorized, approved or ratified, by the board of directors, a committee, ~~Page 129 SB245 INTRODUCED~~ or the members.

(a) A nonprofit corporation may amend its certificate of incorporation at any time to add or change a provision that is required or permitted in the certificate of incorporation Page 129 SB245 Engrossed as of the effective date of the amendment or to delete a provision that is not required to be contained in the certificate of incorporation.

Amendment of certificate of incorporation ~~Page 130 SB245 INTRODUCED~~ of membership nonprofit corporation before admission of members.

(b) Except as provided in subsection (g) and Sections Page 130 SB245 Engrossed 10A-3A-9.07 and 10A-3A-9.08, the amendment shall then be approved by the members entitled to vote on the amendment.

~~Page 131 SB245 INTRODUCED~~ (d) If the amendment is required to be approved by the members, and the approval is to be given at a meeting, the membership nonprofit corporation shall notify each member entitled to vote on the amendment of the meeting of members at which the amendment is to be submitted for approval.

(e) Unless the certificate of incorporation, or the board of directors acting pursuant to subsection (c), requires a greater vote or a greater quorum, approval of the amendment requires the approval of the members at a meeting at which a quorum consisting of a majority of the votes entitled to be cast on the amendment exists, and, if any class of members is entitled to vote as a separate group on the amendment, except as provided in Section 10A-3A-9.04(d), the approval of each Page 131 SB245 Engrossed separate voting group at a meeting at which a quorum of the voting group exists consisting of a majority of the votes entitled to be cast on the amendment by that voting group.

(g) Unless the certificate of incorporation provides otherwise, the board of directors of a membership nonprofit corporation may adopt amendments to the membership nonprofit ~~Page 132 SB245 INTRODUCED~~ corporation's certificate of incorporation without approval of the members to:

Except as provided in the certificate of incorporation Page 132 SB245 Engrossed or bylaws:

~~Page 133 SB245 INTRODUCED~~ (3) change the rights, preferences, or limitations of all or part of the memberships of the class;

(b) If a class of members will be divided into two or more classes by an amendment to the certificate of incorporation, the amendment must be approved by a majority of Page 133 SB245 Engrossed the members of each class that will be created.

(d) If a proposed amendment that entitles the holders of two or more classes of memberships to vote as separate voting groups under this section would affect those two or more classes in the same or a substantially similar way, the holders of the memberships of all the classes so affected shall vote together as a single voting group on the proposed amendment, unless added as a condition by the board of ~~Page 134 SB245 INTRODUCED~~ directors pursuant to Section 10A-3A-9.03(c).

(a) After an amendment to the certificate of incorporation has been adopted and approved in the manner Page 134 SB245 Engrossed required by this chapter, the certificate of incorporation, and bylaws, the nonprofit corporation must deliver to the Secretary of State, for filing, a certificate of amendment, which must set forth:

(3) if an amendment provides for an exchange, reclassification, or cancellation of memberships, provisions for implementing the amendment if not contained in the amendment itself (which may be made dependent upon facts objectively ascertainable outside the articles of amendment in ~~Page 135 SB245 INTRODUCED~~ accordance with Section 10A-3A-1.04(c)(5));

and (7) the unique identifying number or other designation Page 135 SB245 Engrossed as assigned by the Secretary of State.

~~Page 136 SB245 INTRODUCED~~ (b) If the restated certificate of incorporation includes one or more new amendments, the amendments must be adopted and approved as provided in (i) Sections 10A-3A-9.03 and 10A-3A-9.04 or (ii) Section 10A-3A-9.05.

and Page 136 SB245 Engrossed (5) the unique identifying number or other designation as assigned by the Secretary of State.

(a) A nonprofit corporation's certificate of incorporation may be amended without action by the board of directors, the members, if any, or a person or group of persons, if any, whose approval is required by the certificate of incorporation in accordance with Section 10A-3A-9.30, to ~~Page 137 SB245 INTRODUCED~~ 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-3A-2.02.

and Page 137 SB245 Engrossed (6) the unique identifying number or other designation as assigned by the Secretary of State.

~~Page 138 SB245 INTRODUCED~~ (2) a proceeding to which the nonprofit corporation is a party;

Page 138 SB245 Engrossed (b) On the date and time the restated certificate of incorporation takes effect, the original certificate of incorporation and each prior amendment or restatement of the

certificate of incorporation is superseded and the restated certificate of incorporation is the effective certificate of incorporation.

(a) The members of a membership nonprofit corporation may amend or repeal the membership nonprofit corporation's ~~Page 139 SB245 INTRODUCED~~ bylaws except as provided in the certificate of incorporation or bylaws.

Page 139 SB245 Engrossed In a membership nonprofit corporation:

(b) A bylaw adopted or amended by the members that increases a quorum or voting requirement for the board of directors may provide that it can be amended or repealed only ~~Page 140 SB245 INTRODUCED~~ by a specified vote of either the members or the board of directors.

(1) Section 10A-3A-6.10 providing that some of the members shall have different rights or obligations than other Page 140 SB245 Engrossed members with respect to voting, dissolution, transfer of memberships, or other matters;

or (5) Section 10A-3A-8.08(e) relating to the removal of a director who is designated in a manner other than election or ~~Page 141 SB245 INTRODUCED~~ appointment.

(d) If a class of members will be divided into two or more classes by an amendment to the bylaws, the amendment must Page 141 SB245 Engrossed be approved by a majority of the members of each class that will be created.

The certificate of incorporation of a nonmembership nonprofit corporation may require that an ~~Page 142 SB245 INTRODUCED~~ amendment to the certificate of incorporation be approved in writing by a specified person or group of persons in addition to the board of directors.

Page 142 SB245 Engrossed ARTICLE 10.

(b) to mortgage, pledge, dedicate to the repayment of indebtedness (whether with or without recourse), or otherwise ~~Page 143 SB245 INTRODUCED~~ encumber any or all of the membership nonprofit corporation's assets, regardless of whether in the usual and regular course of its activities;

A membership nonprofit corporation will conclusively be deemed to have retained a significant Page 143 SB245 Engrossed continuing activity if it retains an activity that represented, for the membership nonprofit corporation and its subsidiaries on a consolidated basis, at least (i) 25 percent of total assets at the end of the most recently completed fiscal year, and (ii) either 25 percent of either income from continuing operations before taxes or 25 percent of revenues from continuing operations, in each case for the most recently completed fiscal year.

In submitting the disposition ~~Page 144 SB245 INTRODUCED~~ to the members for approval, the board of directors shall recommend that the members approve the disposition, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make a recommendation, in which case the board of directors must inform the members of the basis for that determination.

The notice must state that the purpose, or one Page 144 SB245 Engrossed of the purposes, of the meeting is to consider the disposition and must contain a description of the disposition, including the terms and conditions of the disposition and the consideration to be received by the membership nonprofit corporation.

(f) After a disposition has been approved by the ~~Page 145 SB245 INTRODUCED~~ members under this Article 10, and at any time before the disposition has been consummated, it may be abandoned by the membership nonprofit corporation without action by the members, subject to any contractual rights of other parties to the disposition.

As used in this subsection, "subsidiary" means any entity wholly owned and controlled, directly or indirectly, by the membership nonprofit corporation and includes, without limitation, nonprofit corporations, business corporations, partnerships (including limited liability partnerships), limited partnerships Page 145 SB245 Engrossed (including limited liability limited partnerships), limited liability companies, and/or statutory trusts, whether domestic or foreign.

Except as otherwise provided in the certificate of ~~Page 146 SB245 INTRODUCED~~ incorporation:

(a) The certificate of incorporation of a membership nonprofit corporation may require that a disposition of assets Page 146 SB245 Engrossed under 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.

~~Page 147 SB245 INTRODUCED~~ ARTICLE 11.

(5) that the net assets of the nonprofit corporation Page 147 SB245 Engrossed remaining after winding up have been distributed;

(b) For a proposal to dissolve to be adopted, it shall ~~Page 148 SB245 INTRODUCED~~ then be approved by the members entitled to vote thereon.

The notice must state that the purpose, or one Page 148 SB245 Engrossed of the purposes, of the meeting is to consider dissolving the membership nonprofit corporation and how the assets of the membership nonprofit corporation will be distributed after all creditors have been paid, or how the distribution of assets will be determined.

~~Page 149 SB245 INTRODUCED~~ (f) Dissolution of a membership nonprofit corporation may also be authorized without action of the directors if all the members entitled to vote thereon shall consent in writing and a certificate of dissolution shall be delivered to the Secretary of State for filing pursuant to Section 10A-3A-11.05.

Page 149 SB245 Engrossed (1) the dissolution of a nonmembership nonprofit corporation may be approved by the board of directors;

(a) The certificate of incorporation of a membership nonprofit corporation may require that a dissolution of a membership nonprofit corporation under Section 10A-3A-11.02 be ~~Page 150 SB245 INTRODUCED~~ approved in writing by a specified person or group of persons in addition to the board of directors and members.

Page 150 SB245 Engrossed (1) the name of the nonprofit corporation;

~~Page 151 SB245 INTRODUCED~~ (5) if dissolution of a nonprofit corporation was approved in accordance with Section 10A-3A-11.02 or Section 10A-3A-11.03, and the certificate of incorporation required the dissolution to also be approved by a specified person or group of persons in accordance with Section 10A-3A-11.04, a statement that the proposal to dissolve was duly approved by the manner required by this chapter and by the certificate of incorporation;

(c) For purposes of this Division A of this Article 11, "dissolved nonprofit corporation" means a nonprofit Page 151 SB245 Engrossed corporation whose certificate of dissolution has become effective and includes a successor entity to which the remaining assets of the nonprofit corporation are transferred subject to its liabilities for purposes of liquidation.

(b) Revocation of dissolution and reinstatement shall be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation and reinstatement by action of the board of directors alone, in which event the board of directors may revoke the dissolution ~~Page 152 SB245 INTRODUCED~~ and effect the reinstatement without member action and without the action of the specified person or group of persons set forth in the certificate of incorporation in accordance with Section 10A-3A-11.04.

(4) if the nonprofit corporation's board of directors Page 152 SB245 Engrossed (or incorporators) revoked the dissolution and effected the reinstatement, a statement to that effect;

(6) if member action was required to revoke the dissolution and effect the reinstatement, a statement that the revocation and reinstatement was duly approved by the members ~~Page 153 SB245 INTRODUCED~~ in the manner required by this chapter and by the certificate of incorporation;

Revocation of dissolution and reinstatement is effective upon the effective date of the certificate of revocation of Page 153 SB245 Engrossed dissolution and reinstatement.

~~Page 154 SB245 INTRODUCED~~ (f) If the nonprofit corporation is listed in the Secretary of State's records as a nonprofit corporation that has been dissolved, then the name of the nonprofit corporation following revocation and reinstatement shall be that nonprofit corporation name at the time of revocation and reinstatement if that nonprofit corporation name complies with Article 5 of Chapter 1 at the time of revocation and reinstatement.

Page 154 SB245 Engrossed (1) collecting its assets;

~~Page 155 SB245 INTRODUCED~~ (1) preserve the nonprofit corporation's activities and affairs and property as a going concern for a reasonable time;

Page 155 SB245 Engrossed (ii) provisions for selection, resignation, or removal of its directors or officers or both;

~~Page 156 SB245 INTRODUCED~~ Sec.10A-3A-11.08.

(4) state the deadline, which may not be fewer than 120 days from the effective date of the notice, by which the Page 156 SB245 Engrossed dissolved nonprofit corporation must receive the claim;

or (2) if a claimant whose claim was rejected by the dissolved nonprofit corporation does not commence a proceeding to enforce the claim within 90 days from the effective date of ~~Page 157 SB245 INTRODUCED~~ the rejection notice.

(1) be published at least one time in a newspaper of Page 157 SB245 Engrossed general circulation in the county in which the dissolved nonprofit corporation's principal office is located or, if it has none in this state, in the county in which the nonprofit corporation's most recent registered office is located;

(c) If a dissolved nonprofit corporation publishes a ~~Page 158 SB245 INTRODUCED~~ newspaper notice in accordance with subsection (b), unless sooner barred by any other statute limiting actions, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved nonprofit corporation within two years after the publication date of the newspaper notice:

Page 158 SB245 Engrossed (d) A claim that is not barred under this section, any other statute limiting actions, or Section 10A-3A-11.08 may be enforced:

and (2) except as provided in subsection (h), if the assets of a dissolved nonprofit corporation have been distributed after dissolution, against any person, other than a creditor of the dissolved nonprofit corporation, to whom the nonprofit corporation distributed its property to the extent of the

distributee's pro rata share of the claim or the corporate assets distributed to the distributee in liquidation, ~~Page 159 SB245 INTRODUCED~~ whichever is less, but a distributee's total liability for all claims under this section may not exceed the total amount of assets distributed to the distributee.

(e) A dissolved nonprofit corporation that published a notice under this section may file an application with the circuit court for the county in which the dissolved nonprofit corporation's principal office is located in this state and if the dissolved nonprofit corporation does not have a principal office within this state, with the circuit court for the county in which the dissolved nonprofit corporation's most recent registered office is located, for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved nonprofit corporation or that are based on an event occurring after the effective date of the dissolution of the nonprofit corporation but that, based on the facts known to Page 159 SB245 Engrossed the dissolved nonprofit corporation, are reasonably estimated to arise after the effective date of the dissolution of the nonprofit corporation.

(g) The circuit court under subsection (e) may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this ~~Page 160 SB245 INTRODUCED~~ section.

Page 160 SB245 Engrossed (j) If a claim has been satisfied, disposed of, or barred under Section 10A-3A-11.08, this section, or other law, the person or persons designated to wind up the affairs of a dissolved nonprofit corporation, and the distributees receiving assets from the dissolved nonprofit corporation, shall not be liable for that claim.

(a) Directors shall cause the dissolved nonprofit corporation to discharge or make reasonable provision for the payment of claims and make distributions in liquidation of assets to the persons designated to receive the assets of the dissolved nonprofit corporation after payment or provision for ~~Page 161 SB245 INTRODUCED~~ claims.

Page 161 SB245 Engrossed (i) the nonprofit corporation obtained its certificate of incorporation through fraud;

(i) the directors are deadlocked in the management of the corporate affairs, the members, if any, are unable to break the deadlock, and irreparable injury to the nonprofit ~~Page 162 SB245 INTRODUCED~~ corporation or its mission is threatened or being suffered, because of the deadlock;

or (vii) the nonprofit corporation has abandoned its Page 162 SB245 Engrossed activities and affairs and has failed within a reasonable time to liquidate and distribute its assets and dissolve;

(4) in a proceeding by the nonprofit corporation to have its voluntary dissolution continued under court ~~Page 163 SB245 INTRODUCED~~ supervision;

Venue for a proceeding brought by any other party named in Section Page 163 SB245 Engrossed 10A-3A-11.20 lies in circuit court for the county in which the nonprofit 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 nonprofit corporation's most recent registered office is located.

(c) A court in a proceeding brought to dissolve a nonprofit corporation may issue injunctions, appoint a receiver or custodian during the proceeding with all powers and duties the court directs, take other action required to ~~Page 164 SB245 INTRODUCED~~ preserve the corporate assets wherever located, and carry on the activities and affairs of the nonprofit corporation until a full hearing can be held.

The court appointing a receiver or custodian has jurisdiction over the nonprofit corporation and all of its Page 164 SB245 Engrossed property wherever located.

(i) may dispose of all or any part of the assets of the nonprofit corporation wherever located, at a ~~Page 165 SB245 INTRODUCED~~ public or private sale;

Page 165 SB245 Engrossed (i) the reasons that it is in the best interest of the nonprofit corporation to continue its activities and affairs and not be dissolved;

(iv) for a membership nonprofit corporation that does ~~Page 166 SB245 INTRODUCED~~ not have any members, the name of at least one person proposed to be a member;

Page 166 SB245 Engrossed Sec.10A-3A-11.23.

(b) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the nonprofit corporation's activities and affairs in accordance with ~~Page 167 SB245 INTRODUCED~~ Section 10A-3A-11.07 and the notification of claimants in accordance with Sections 10A-3A-11.08 and 10A-3A-11.09.

If the court approves an amendment to the certificate of incorporation in accordance with Section 10A-3A-11.22(c)(3), then the court's decree shall also set forth that amendment, specifying the effective date of that amendment, and the clerk of the court shall deliver a certified copy of the decree to the Secretary of State for Page 167 SB245 Engrossed filing.

When the creditor, claimant, or person designated to receive the assets of the nonprofit corporation furnishes satisfactory proof of entitlement to the amount deposited, the State Treasurer or other appropriate state official shall pay that person or that ~~Page 168 SB245 INTRODUCED~~ person's representative that amount.

or any other Page 168 SB245 Engrossed person having a governing statute.

(C) for a limited liability company or foreign limited ~~Page 169 SB245 INTRODUCED~~ liability company, its

certificate of formation and limited liability company agreement, or comparable writings as provided in its governing statute;

Page 169 SB245 Engrossed (G) for a professional corporation or foreign professional corporation, its certificate of incorporation, bylaws, and other agreements among its stockholders that are authorized by its governing statute, or comparable writings as provided in its governing statute;

(6) SURVIVING ORGANIZATION means an organization into which one or more other organizations are merged under this article, whether the organization pre-existed the merger or ~~Page 170 SB245 INTRODUCED~~ was created pursuant to the merger.

(1) the name, type of organization, and mailing address of the principal office of each constituent organization, the jurisdiction of the governing statute of each constituent Page 170 SB245 Engrossed organization, and the respective unique identifying number or other designation as assigned by the Secretary of State, if any, of each constituent organization;

(3) the terms and conditions of the merger, including the manner and basis for converting the interests in each ~~Page 171 SB245 INTRODUCED~~ constituent organization into any combination of money, securities, interests in the surviving organization, and other consideration as allowed by subsection (c);

(c) In connection with a merger, rights, securities, or interests, if any, in a constituent organization may be exchanged for or converted into cash, property, rights, securities, or interests, if any, in the surviving organization, or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights, Page 171 SB245 Engrossed securities, or interests, if any, in another organization, or may be cancelled.

~~Page 172 SB245 INTRODUCED~~ (1) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended;

(ii) the certificate of incorporation of any nonprofit corporation, foreign nonprofit corporation, business corporation, foreign business corporation or the organizational documents of any other organization, that will Page 172 SB245 Engrossed be the surviving organization, except for changes permitted by Section 10A-3A-9.03(g) or by comparable provisions of the governing statute of the foreign nonprofit corporation, business corporation, foreign business corporation, or other organization;

In the case of a membership nonprofit corporation that is a constituent organization, the plan of merger shall be ~~Page 173 SB245 INTRODUCED~~ adopted in the following manner:

(d) If the plan of merger is required to be approved by Page 173 SB245 Engrossed the members, and if the approval is to be given at a meeting, the membership nonprofit corporation shall notify each member who is entitled to vote, of the meeting of the members at which the plan of merger is to be submitted for approval.

If the membership nonprofit corporation is to be merged into an existing nonprofit corporation, foreign nonprofit corporation, or other organization, the notice must also include or be accompanied by a copy or summary of the certificate of incorporation and bylaws or the organizational ~~Page 174 SB245 INTRODUCED~~ documents of that nonprofit corporation, foreign nonprofit corporation, or other organization.

(e) Unless the certificate of incorporation, or the board of directors acting pursuant to subsection (c), requires a greater vote or a greater quorum, approval of the plan of merger requires the approval of the members entitled to vote at a meeting at which a quorum exists consisting of a majority Page 174 SB245 Engrossed of the votes entitled to be cast on the plan of merger, and, if any class of membership interests entitled to vote as a separate group on the plan of merger, the approval of each separate voting group at a meeting at which a quorum of the voting group is present consisting of a majority of the votes entitled to be cast on the merger by that voting group.

(i) are to be converted under the plan of merger into securities, interests, obligations, rights to acquire other ~~Page 175 SB245 INTRODUCED~~ securities or interests, cash, other property, or any combination of the foregoing;

(g) The certificate of incorporation may expressly limit or eliminate the separate voting rights provided in subsection (f)(1)(i) and subsection (f)(2) as to any class of membership, except when the plan of merger includes what is or would be in effect an amendment subject to subsection Page 175 SB245 Engrossed (f)(1)(ii).

(3) except for amendments that do not require member approval under Section 10A-3A-9.22 or the approval of a person ~~Page 176 SB245 INTRODUCED~~ or group of persons under Section 10A-3A-9.30, its bylaws will not be changed;

In the case of a merger of a nonmembership nonprofit corporation the plan of merger shall be adopted in the Page 176 SB245 Engrossed following manner:

~~Page 177 SB245 INTRODUCED~~ (1) the name, type of organization, and mailing address of the principal office of each constituent organization, the jurisdiction of the governing statute of each constituent organization, and the respective unique identifying number or other designation as assigned by the Secretary of State, if any, of each constituent organization;

(4) if the surviving organization is to be created Page 177 SB245 Engrossed pursuant to the merger:

~~Page 178 SB245 INTRODUCED~~ (6) a statement as to each constituent organization that the merger was approved as required by the organization's governing statute;

Page 178 SB245 Engrossed (10) if the plan of merger required approval by a person or group of persons as specified in the certificate of incorporation pursuant to Section 10A-3A-12.08, a statement that the plan was duly approved by that person or group of persons;

~~Page 179 SB245 INTRODUCED~~ (b) In addition to the requirements of subsection (a), a statement of merger may contain any other provision not prohibited by law.

(e) A statement of merger filed under this section may Page 179 SB245 Engrossed be combined with any filing required under the governing statute governing any domestic organization involved in the transaction if the combined filing satisfies the requirements of this section, the other governing statute, and Article 4 of Chapter 1.

The judge of probate, however, shall be entitled to collect the filing ~~Page 180 SB245 INTRODUCED~~ fee of five dollars (\$5).

(3) except as provided in the plan of merger, all property owned by, and every contract right possessed by, each Page 180 SB245 Engrossed constituent organization that ceases to exist vests in the surviving organization without transfer, reversion, or impairment and the title to any property and contract rights vested by deed or otherwise in the surviving organization shall not revert, be in any way impaired, or be deemed to be a transfer by reason of the merger;

~~Page 181 SB245 INTRODUCED~~ (5) an action or proceeding pending by or against any constituent organization continues as if the merger had not occurred and the name of the surviving organization may, but need not be, substituted in any pending proceeding for the name of any constituent organization whose separate existence ceased in the merger;

Page 181 SB245 Engrossed (9) if the surviving organization is created pursuant to the merger:

(11) the membership interests, if any, of each ~~Page 182 SB245 INTRODUCED~~ nonprofit corporation or foreign nonprofit corporation that is a constituent organization to the merger, and the interests in an organization that is a constituent organization, that are to be converted in accordance with the terms of the merger into securities, interests, obligations, rights to acquire other securities or interests, cash, other property, or any combination of the foregoing, are converted, and the former holders of membership interests, if any, or interests are entitled only to the rights provided to them by those terms or to any rights they may have under the governing statute governing that constituent organization;

(A) except as provided in the plan of merger, all property and contract rights of the surviving organization remain its property and contract rights without transfer, Page 182 SB245 Engrossed reversion, or impairment;

(1) consents to the jurisdiction of this state to enforce any debt, obligation, or other liability owed by a constituent organization, if before the merger the constituent ~~Page 183 SB245 INTRODUCED~~ organization was subject to suit in this state on the debt, obligation, or other liability;

(a) After a plan of merger has been adopted and approved as required by this Article 12, and before the statement of merger has become effective, the plan may be abandoned by a nonprofit corporation that is a party to the Page 183 SB245 Engrossed plan without action by its members, if any, or a person or group of persons under Section 10A-3A-12.08, if any, in accordance with any procedures set forth in the plan of merger or, if no procedures are set forth in the plan, in the manner determined by the board of directors.

The statement shall take effect on filing and the ~~Page 184 SB245 INTRODUCED~~ merger shall be deemed abandoned and shall not become effective.

(b) The certificate of incorporation of a nonmembership nonprofit corporation may require that a merger under this Page 184 SB245 Engrossed article or under Article 8 of Chapter 1 be approved in writing by a specified person or group of persons in addition to the board of directors.

~~Page 185 SB245 INTRODUCED~~ Sec.10A-3A-13.01.

Page 185 SB245 Engrossed nonprofit corporation;

~~Page 186 SB245 INTRODUCED~~ (C) for a limited liability company or foreign limited liability company, its certificate of formation and limited liability company agreement, or comparable writings as provided in its governing statute;

(F) for a nonprofit corporation or foreign nonprofit corporation, its certificate of incorporation, bylaws, and other agreements that are authorized by its governing statute, Page 186 SB245 Engrossed or comparable writings as provided in its governing statute;

(a) An organization other than a nonprofit corporation ~~Page 187 SB245 INTRODUCED~~ may convert to a nonprofit corporation, and a nonprofit corporation may convert to an organization other than a nonprofit corporation pursuant to this article, and a plan of conversion, if:

(1) the name, type of organization, and mailing address Page 187 SB245 Engrossed of the principal office of the converting organization and its unique identifying number or other designation as assigned by the Secretary of State, if any, before conversion;

and (4) the organizational documents of the converted ~~Page 188 SB245 INTRODUCED~~ organization.

Action on a plan of conversion in a Page 188 SB245 Engrossed membership nonprofit corporation.

In submitting the plan of conversion to the members for their approval, the board of directors must recommend that the members approve the plan of conversion, unless the board of directors makes a determination that because of conflicts of interest or other ~~Page 189 SB245 INTRODUCED~~ special circumstances it should not make a recommendation, in which case the board of directors shall inform the members of the basis for its so proceeding.

The notice must include or be accompanied by a copy of the organizational documents of the converted organization which are to be in writing as they will be in effect immediately Page 189 SB245 Engrossed after the conversion.

~~Page 190 SB245 INTRODUCED~~ (f) In addition to the adoption and approval of the plan of conversion as required by this section, the plan of conversion must also be approved in writing by a person or group of persons, if any, whose approval is required under Section 10A-3A-13.08.

Page 190 SB245 Engrossed Sec.10A-3A-13.05.

~~Page 191 SB245 INTRODUCED~~ (B) a statement that the converting organization has been converted into the converted organization;

Page 191 SB245 Engrossed and (I) if the converted organization is a foreign organization not authorized to conduct activities and affairs in this state, the street and mailing address of an office for the purposes of Section 10A-3A-13.07(b);

(A) a statement that the nonprofit corporation was ~~Page 192 SB245 INTRODUCED~~ converted from the converting organization;

Page 192 SB245 Engrossed (c) If the converting organization is an organization formed under, or its internal affairs are governed by, the laws of this state, then the converting organization shall deliver for filing the statement of conversion required under subsection (a)(1) to the Secretary of State.

(e) If the converting organization is required to deliver for filing a statement of conversion and a certificate of formation or a certificate of incorporation to the ~~Page 193 SB245 INTRODUCED~~ Secretary of State, then the converting organization shall deliver for filing the statement of conversion and the certificate of formation or certificate of incorporation to the Secretary of State simultaneously.

and (4) the name of the converted organization complies with Division A of Article 5 of Chapter 1 or Section Page 193 SB245 Engrossed 10A-1-7.07, as the case may be;

The judge of probate shall, ~~Page 194 SB245 INTRODUCED~~ however, be entitled to collect a filing fee of five dollars (\$5).

or (2) in the manner provided in the plan, except that if Page 194 SB245 Engrossed the plan has been approved by the members that were entitled to vote on, consent to, or approve of the plan, then those members are entitled to vote on, consent to, or approve of any amendment of the plan that will change:

(ii) the organizational documents of the converted organization that will be in effect immediately after the conversion becomes effective, except for changes that do not ~~Page 195 SB245 INTRODUCED~~ require approval of the interest holders of the converted organization under its governing statute or organizational documents;

(c) If a conversion is abandoned after the statement of Page 195 SB245 Engrossed conversion has been delivered to the Secretary of State for filing and before the statement of conversion becomes effective, a statement of abandonment, signed by the converting organization, must be delivered to the Secretary of State for filing before the statement of conversion becomes effective.

and (3) a statement that the conversion has been abandoned ~~Page 196 SB245 INTRODUCED~~ in accordance with this section.

(3) an action or proceeding pending by or against the Page 196 SB245 Engrossed converting organization continues as if the conversion had not occurred and the name of the converted organization may, but need not, be substituted for the name of the converting organization in any pending action or proceeding;

(6) except as otherwise agreed, for all purposes of the ~~Page 197 SB245 INTRODUCED~~ laws of this state, the converting organization shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of the converting organization;

(8) if the converted organization is a nonprofit corporation, for all purposes of the laws of this state, the nonprofit corporation shall be deemed to be the same organization as the converting organization, and the conversion shall constitute a continuation of the existence of Page 197 SB245 Engrossed the converting organization in the form of a nonprofit corporation;

(11) if the Secretary of State has assigned a unique identifying number or other designation to the converting ~~Page 198 SB245 INTRODUCED~~ organization and (i) the converted organization is formed pursuant to, or its internal affairs are governed by, the laws of this state, or (ii) the converted organization is, within 30 days after the effective date of the conversion, registered to transact business in this state, then that unique identifying number or other designation shall continue to be assigned to the converted organization;

Page 198 SB245 Engrossed (b) A converted organization that is a foreign entity consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability for which the converting nonprofit corporation, is liable if, before the conversion, the converting nonprofit corporation was subject to suit in this state on the debt, obligation, or other liability.

If a converted organization is a foreign entity and fails to designate or maintain a registered agent, or the designated registered agent cannot with reasonable diligence be served, then service of process on that converted organization for the purposes of enforcing a debt, obligation, or other liability under this subsection may be made in the ~~Page 100 SB245 INTRODUCED~~ same manner and has the same consequences as provided in Section 10A-1-5.35.

(c) A requirement in the certificate of incorporation described in subsections (a) or (b) of this section may only Page 199 SB245 Engrossed be approved by the written approval of the specified person or group of persons.

and ~~Page 200 SB245 INTRODUCED~~ (2) a nonprofit corporation incorporated before January 1, 2024, which elects, by amending or restating that nonprofit corporation's certificate of incorporation, to be governed by this chapter.

(1) the nonprofit corporation is not required to amend Page 200 SB245 Engrossed its certificate of incorporation to comply with Section 10A-3A-2.02(a)(5);

Notwithstanding the foregoing, no such members may cumulate their votes for the election of ~~Page 201 SB245 INTRODUCED~~ directors by utilizing an action by written consent.

A foreign nonprofit corporation registered or Page 201 SB245 Engrossed authorized to transact business in this state on January 1, 2024, is subject to this chapter and is deemed to be registered to transact business in this state, and is not required to renew its registration to transact business under Article 7 of Chapter 1, except as required by Article 7 of Chapter 1.

(2) any ratification, right, remedy, privilege, ~~Page 202 SB245 INTRODUCED~~ obligation, or liability acquired, accrued, or incurred under the statute before its repeal;

(5) the application of Article 16 of Chapter 20 of this Title to any "officer" and "qualified entity" as such terms are defined in Article 16 of Chapter 20 of this Title.

Page 202 SB245 Engrossed If any provision of this chapter or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

~~Page 203 SB245 INTRODUCED~~ A nonprofit corporation formed and existing under this chapter may conduct its activities and affairs, carry on its operations, and have and exercise the powers granted by this chapter in any state, foreign country, or other jurisdiction.

(b) As used in this title, except as provided in Page 203 SB245 Engrossed subsection (a) of this section or where the context otherwise requires, the following terms mean:

When used to indicate a relationship ~~Page 204 SB245 INTRODUCED~~ with:

or Page 204 SB245 Engrossed (D) a governing person or an affiliate or officer of the person.

Any document such as a certificate of dissolution, statement of dissolution, or ~~Page 205 SB245 INTRODUCED~~ 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.

Page 205 SB245 Engrossed (9) CERTIFICATE OF OWNERSHIP.

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 ~~Page 206 SB245 INTRODUCED~~ 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.

Page 206 SB245 Engrossed (B) the continuance of a foreign entity as a domestic entity of any type;

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, ~~Page 207 SB245 INTRODUCED~~ and those entities specified in Chapter 20 as corporate.

A person who is the subject Page 207 SB245 Engrossed of:

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, (iii)(iv) partnership agreement of a partnership formed pursuant to or governed by Chapter 8A, or (iv)(v) limited partnership agreement of a limited partnership ~~Page 208 SB245 INTRODUCED~~ formed pursuant to or governed by Chapter 9A.

Page 208 SB245 Engrossed (26) EFFECTIVE DATE OF THIS TITLE.

Information that is stored in ~~Page 209 SB245 INTRODUCED~~ an electronic or other nontangible medium and is retrievable in paper form through an automated process used in conventional commercial practice.

An officer of this state with whom Page 209 SB245 Engrossed a filing instrument is required or permitted to be delivered for filing pursuant to this title.

A foreign entity that is ~~Page 210 SB245 INTRODUCED~~ not a foreign filing entity.

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 Page 210 SB245 Engrossed 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.

~~Page 211 SB245 INTRODUCED~~ (A) In the case of a domestic 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 Page 211 SB245 Engrossed internal affairs of the entity.

~~Page 212 SB245 INTRODUCED~~ (A) In the case of a filing entity, this state;

(D) in the case of a foreign limited liability partnership, the laws of the jurisdiction which govern the Page 212 SB245 Engrossed filing of the foreign limited liability partnership's statement of limited liability partnership or such filing in that jurisdiction;

~~Page 213 SB245 INTRODUCED~~ (50) LAW.

A limited liability Page 213 SB245 Engrossed partnership as defined in Chapter 8A.

(B) in the case of a nonprofit corporation formed ~~Page 214 SB245 INTRODUCED~~ 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;

(D) in the case of a nonprofit association, a person who, as provided in Chapter 17, may participate in the Page 214 SB245 Engrossed selection of persons authorized to manage the affairs of the nonprofit association or in the development of its policy.

The term includes a domestic general ~~Page 215 SB245 INTRODUCED~~ partnership, a limited liability partnership, and a nonprofit association.

An entity that is a nonprofit corporation, nonprofit association, or other entity that is Page 215 SB245 Engrossed organized solely for one or more nonprofit purposes.

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 ~~Page 216 SB245 INTRODUCED~~ formation of the entity.

The term includes the owner's share of profits and Page 216 SB245 Engrossed losses or similar items and the right to receive distributions.

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 ~~Page 217 SB245 INTRODUCED~~ foreign limited liability limited partnership.

The term does not include a domestic entity or foreign entity that is not to be combined into or with one or more domestic Page 217 SB245 Engrossed entities or foreign entities, regardless of whether ownership interests of the entity are to be issued under the plan of merger.

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 ~~Page 218 SB245 INTRODUCED~~ commercial entity.

A professional Page 218 SB245 Engrossed association as defined in Chapter 30.

~~Page 219 SB245 INTRODUCED~~ (A) The individual designated as secretary of an entity under the entity's governing documents;

or (B) to attach to or logically associate with an electronic transmission an electronic sound, symbol, or Page 219 SB245 Engrossed process, and includes an electronic signature in an electronic transmission.

~~Page 220 SB245 INTRODUCED~~ (90) SUBSIDIARY.

Page 220 SB245 Engrossed (93) UNCERTIFICATED OWNERSHIP INTEREST.

Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form." ~~Page 221 SB245 INTRODUCED~~ "Sec.10A-1-1.08 (a) The provisions of this title as described by this section may be cited as provided by this section.

(e) Chapter 5A and the provisions of Chapter 1 to the Page 221 SB245 Engrossed extent applicable to limited liability companies may be cited as the Alabama Limited Liability Company Law.

~~Page 222 SB245 INTRODUCED~~ (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." "Sec.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 Page 222 SB245 Engrossed 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.

The ~~Page 223 SB245 INTRODUCED~~ 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.

(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 Page 223 SB245 Engrossed any other damages or remedy." "Sec.10A-1-8.01 (a) A conversion of an entity may be accomplished as provided in this section:

(C) the terms and conditions of the conversion, including the manner and basis for converting interests in the converting entity into any combination of money, interests in ~~Page 224 SB245 INTRODUCED~~ the converted entity, and other consideration allowed in subsection (b);

Page 224 SB245 Engrossed (c) The plan of conversion of an entity must be approved as follows:

No conversion of a corporation to a general or limited partnership may be effected without the consent in writing of ~~Page 225 SB245 INTRODUCED~~ each stockholder who will have personal liability with respect to the converted entity, notwithstanding any provision in the governing documents of the converting corporation providing for less than unanimous stockholder approval for the conversion.

The terms and conditions of a plan of conversion of a nonprofit corporation must be approved by all the nonprofit corporation's members entitled to vote thereon, if it is a nonprofit corporation with members with voting rights, or as otherwise provided in the nonprofit corporation's Page 225 SB245 Engrossed governing documents;

(C) If a corporation is not governed by Chapter 2A or Chapter 3A and that corporation is a converting entity, the ~~Page 226 SB245 INTRODUCED~~ plan of conversion under subsection (a) must be approved in accordance with the law of the jurisdiction of formation of that corporation.

No conversion of a limited partnership to a general partnership may be effected without the consent in writing of each limited partner who will have personal liability with respect to the converted entity, notwithstanding any provision in the limited partnership agreement of the converting limited partnership providing for approval of the conversion by less Page 226 SB245 Engrossed than all partners.

If a limited liability company is a converting ~~Page 227 SB245 INTRODUCED~~ entity, the plan of conversion under subsection (a) must be approved in accordance with Article 10 of Chapter 5A.

If a Page 227 SB245 Engrossed general partnership is a converting entity, the plan of conversion under subsection (a) must be approved in accordance with Article 9 of Chapter 8A.

The terms and conditions of a the plan of conversion under subsection (a) of ~~Page 228 SB245 INTRODUCED~~ a real estate investment trust must be approved by all of the trust's shareholders or as otherwise provided in the trust's declaration of trust;

The terms and conditions of a plan of Page 228 SB245 Engrossed conversion of any entity not specified above must be approved by all owners of the converting entity.

~~Page 229 SB245 INTRODUCED~~ (1) must include the following:

the organizational documents of the converted Page 229 SB245 Engrossed entity;

(d) After a plan of conversion is approved and before the conversion takes effect, the plan may be amended or abandoned as provided in the plan, or if the plan does not provide for amendment or abandonment, in the same manner as required for the approval of the plan of conversion ~~Page 230 SB245 INTRODUCED~~ originally.

the date of the filing of the certificate of formation of the converting entity, if any, and all prior Page 230 SB245 Engrossed amendments and the filing office or offices, if any, where such is filed;

i.(H) a statement that a copy of the plan of conversion ~~Page 231 SB245 INTRODUCED~~ will be furnished by the converted entity, on request and without cost, to any owner of the converted or converting entity;

and (2) if the converted entity is (I) a filing entity, the converting entity shall deliver to the Secretary of State for filing a certificate of formation or (II) a general partnership, the converting entity shall deliver to the Secretary of State for filing a statement of partnership, a statement of not

for profit partnership, or a statement of [Page 231 SB245 Engrossed](#) limited liability partnership, as applicable, which certificate of formation or statement of partnership, statement of not for profit partnership, or statement of limited liability partnership, as applicable, must include, in addition to the information required in the chapter governing the certificate of formation of the converted entity, the following:

c.(C) The filing office where the certificate of ~~Page 232 SB245 INTRODUCED~~ formation, if any, of the converting entity is filed and the date of the filing thereof;

(3) if the converting entity is required pursuant to [Page 232 SB245 Engrossed](#) subsections (e)(2) and (3) to deliver to the Secretary of State for filing both (I) a statement of conversion and (II)(A) a certificate of formation, or (B) a statement of partnership, statement of not for profit partnership, or statement of limited liability partnership, as applicable, then the converting entity shall deliver the statement of conversion and the certificate of formation or the statement of partnership, statement of not for profit partnership, or statement of limited liability partnership, as applicable, to the Secretary of State simultaneously;

and (4) if the converting entity is a general partnership and that partnership does not have an effective statement of partnership, statement of not for profit partnership, or statement of limited liability partnership on file with the Secretary of State, then the converting entity must deliver to ~~Page 233 SB245 INTRODUCED~~ the Secretary of State for filing, a statement of partnership, statement of not for profit partnership, or statement of limited liability partnership simultaneously with the delivery to the Secretary of State for filing, of a statement of conversion.

(1) if the converted entity is a domestic filing [Page 233 SB245 Engrossed](#) entity, the effective date determined in accordance with Article 4 of this chapter;

(2) all debts, obligations, or other liabilities of the converting entity continue as debts, obligations, or other liabilities of the converted entity and neither the rights of ~~Page 234 SB245 INTRODUCED~~ creditors nor the liens upon the property of the converting entity shall be impaired by the conversion;

(5) except as otherwise provided in the statement of conversion, the terms and conditions of the statement of [Page 234 SB245 Engrossed](#) conversion take effect;

(8) if the converted entity is a domestic entity, for all purposes of the laws of this state, the converted entity ~~Page 235 SB245 INTRODUCED~~ shall be deemed to be the same entity as the converting entity, and the conversion shall constitute a continuation of the existence of the converting entity in the form of the converted entity;

(11) if the Secretary of State has assigned a unique [Page 235 SB245 Engrossed](#) identifying number or other designation to the converting entity and (i) the converted entity is formed pursuant to the laws of this state, or (ii) the converted entity is, within 30 days after the effective date of the conversion, registered to transact business in this state, then that unique identifying number or other designation shall continue to be assigned to the converted entity;

b.(B) An owner with limited liability protection who becomes an owner without limited liability protection is liable for an obligation of the converted entity incurred ~~Page 236 SB245 INTRODUCED~~ after conversion to the extent provided for by the laws applicable to the converted entity.

(1) the converting entity is a filing entity, a general partnership with an effective statement of partnership, statement of not for profit partnership, or statement of limited liability partnership on file with the Secretary of [Page 236 SB245 Engrossed](#) State, a foreign filing entity registered to transact business or not for profit activity in this state, or a qualified foreign limited liability partnership;

and (4) the name of the converted entity complies with Division A of Article 5 or Section 10A-1-7.07, as the case may ~~Page 237 SB245 INTRODUCED~~ be;

Any filing shall evidence [Page 237 SB245 Engrossed](#) chain of title, but lack of filing shall not affect the converted entity's title to the real property." "Sec.10A-1-8.02 (a) A merger of two or more entities, whether the other entity or entities are the same or another form of entity, may be accomplished as provided in this section.

~~Page 238 SB245 INTRODUCED~~ (B) the name, type of entity, and mailing address of the principal office of the surviving entity and, if the surviving entity is to be created pursuant to the merger, the surviving entity's organizational documents;

and (2) may include other provisions relating to the merger [Page 238 SB245 Engrossed](#) not prohibited by law.

In the case of a corporation, other than a nonprofit corporation, that If a corporation is governed by Chapter 2A and that corporation is a party to a merger, a plan of merger under subsection (a) must be approved in accordance ~~Page 239 SB245 INTRODUCED~~ with the procedures and by the stockholder vote required by Article 11 of Chapter 2A.

If the merger is a corporate action as described [Page 239 SB245 Engrossed](#) in Section 10A-2A-13.02, then the rights, obligations, and procedures under Article 13 of Chapter 2A shall be applicable to that

merger.

If the nonprofit corporation has no members, or no members entitled to vote thereon, the plan of merger must be approved by a unanimous vote of the board of directors of the nonprofit corporation, except as otherwise provided in the governing ~~Page 240 SB245 INTRODUCED~~ documents;

In the case of a limited partnership that is a party to the merger, a plan of merger Page 240 SB245 Engrossed under subsection (a) must be approved in writing by all of the partners or as otherwise provided in the partnership agreement.

In the case of a limited liability company that is a party to the merger, a plan of merger under subsection (a) must be approved in writing by all of the limited liability company's members or as otherwise provided in the limited liability company's ~~Page 241 SB245 INTRODUCED~~ governing documents.

No merger of Page 241 SB245 Engrossed a limited liability partnership into a general or limited partnership may be effected without the consent in writing of each partner who will have personal liability with respect to the surviving entity, notwithstanding any provision in the partnership agreement of the limited liability partnership providing for less than unanimous partner approval for a merger accordance with Article 9 of Chapter 8A.

In the case of a real estate investment trust that is a party to the merger, a plan ~~Page 242 SB245 INTRODUCED~~ of merger under subsection (a) must be approved in writing by all of the trust's shareholders or as otherwise provided in the trust's declaration of trust, but in no case may the vote required for shareholder approval be set at less than a majority of all the votes entitled to be cast.

In the case of an entity other than a Page 242 SB245 Engrossed corporation, limited partnership, limited liability company, general partnership, or real estate investment trust that is a party to the merger, a plan of merger must be approved in writing by all owners of the entity.

the name, type of entity, and mailing address of the ~~Page 243 SB245 INTRODUCED~~ principal office of each entity that is a party to the merger, the jurisdiction of the governing statute of each entity that is a party to the merger, and the respective unique identifying number or other designation as assigned by the Secretary of State, if any, of each entity that is a party to the merger;

the terms and conditions of the merger, including the manner and basis for converting the interests in each entity that is a party to the merger into any combination of Page 243 SB245 Engrossed money, interests in the surviving entity, and other consideration as allowed by subsection (c);

(d) After a plan of merger is approved and before the ~~Page 244 SB245 INTRODUCED~~ merger takes effect, the plan may be amended or abandoned as provided in the plan, or if the plan does not provide for amendment or abandonment, in the same manner as required for the approval of the plan of merger originally.

(1) the name, type of entity, and mailing address of the principal office of each entity that is a party to the merger, the jurisdiction of the governing statute of each entity that is a party to the merger, and the respective Page 244 SB245 Engrossed unique identifying number or other designation as assigned by the Secretary of State, if any, of each entity that is a party to the merger;

(4)(3) for each general partnership, the date of the ~~Page 245 SB245 INTRODUCED~~ filing of the statement of partnership, statement of not for profit partnership, or statement of limited liability partnership, if any, and all prior amendments and the filing office or offices, if any, where such is filed;

or (ii) if it will be a non-filing entity, any document that creates the entity that is required to be in a public writing or in the case of a general partnership, its statement of partnership, statement of not for profit partnership, or statement of limited liability Page 245 SB245 Engrossed partnership, as applicable;

~~Page 246 SB245 INTRODUCED~~ (10)(9) if the surviving entity is a foreign entity not authorized to conduct activities and affairs in this state, the street and mailing address of an office for the purposes of Section 10A-1-8.04;

(f)(e) Prior to the statement of merger being delivered for filing to the Secretary of State in accordance with subsection (e)(d), all parties to the merger that are general partnerships, other than a general partnership that is created pursuant to the merger, must have on file with the Secretary of State a statement of partnership, statement of not for profit partnership, or statement of limited liability Page 246 SB245 Engrossed partnership.

(1) when all documents required to be filed in foreign jurisdictions to effect the merger have become effective, or (2) the effective date determined in accordance with ~~Page 247 SB245 INTRODUCED~~ Article 4.

(3) except as provided in the plan of merger, all property owned by, and every contract right possessed by, each merging entity that ceases to exist vests in the surviving entity without transfer, reversion, or impairment and the title to any property and contract rights vested by deed or otherwise in the surviving entity shall not revert, be in any Page 247 SB245 Engrossed way impaired, or be deemed to be a transfer by reason of the merger;

(6) except as prohibited by law other than this chapter ~~Page 248 SB245 INTRODUCED~~ or as provided in the plan of merger, all the rights, privileges, franchises, immunities, powers, and purposes of each merging entity, other than the surviving entity, vest in the surviving entity;

