

SENATE BILL NO. 195

INTRODUCED BY P. CONNELL

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO UNINCORPORATED  
5 NONPROFIT ASSOCIATIONS; ENACTING THE UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION  
6 ACT; REVISING UNINCORPORATED NONPROFIT ASSOCIATION CREATION, LIABILITY, DEFAULT  
7 GOVERNING PRINCIPLES, MEMBER AND MANAGER DUTIES AND LIABILITY, PROCEDURAL  
8 REQUIREMENTS, INDEMNIFICATION OF MEMBERS AND MANAGERS, DISSOLUTION, MERGERS, AND  
9 TERMINATION; ALLOWING FEES FOR THE FILING OF CERTAIN DOCUMENTS RELATED TO  
10 UNINCORPORATED NONPROFIT ASSOCIATIONS; PROVIDING RULEMAKING AUTHORITY; AND  
11 AMENDING SECTION 35-2-215, MCA."

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13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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15 NEW SECTION. **Section 1. Short title.** [Sections 1 through 31] may be cited as the "Uniform  
16 Unincorporated Nonprofit Association Act".

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18 NEW SECTION. **Section 2. Definitions.** In [sections 1 through 31]:

19 (1) "Established practices" means the practices used by an unincorporated nonprofit association without  
20 material change during the most recent 5 years of its existence, or if it has existed for less than 5 years, during  
21 its entire existence.

22 (2) "Governing principles" means the agreements, whether oral, in a record, or implied from its  
23 established practices, or in any combination thereof, which govern the purpose or operation of an unincorporated  
24 nonprofit association and the rights and obligations of its members and managers. The term includes any  
25 amendment or restatement of the agreements constituting the governing principles.

26 (3) "Manager" means a person that is responsible, alone or in concert with others, for the management  
27 of an unincorporated nonprofit association.

28 (4) "Member" means a person that, under the governing principles, may participate in the selection of  
29 persons authorized to manage the affairs of the unincorporated nonprofit association or in the development of  
30 the policies and activities of the association.

1 (5) "Person" means an individual, business corporation, nonprofit corporation, partnership, limited  
2 partnership, limited liability company, limited cooperative association, unincorporated nonprofit association,  
3 statutory trust, business trust, common law business trust, estate, trust, association, joint venture, public  
4 corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial  
5 entity.

6 (6) "Property" means all property, whether real, personal, or mixed or tangible or intangible, or any right  
7 or interest therein.

8 (7) "Record", used as a noun, means information that is inscribed on a tangible medium or that is stored  
9 in an electronic or other medium and is retrievable in perceivable form.

10 (8) "Sign" means, with present intent to authenticate or adopt a record:

11 (a) to execute or adopt a tangible symbol; or

12 (b) to attach to or logically associate with the record an electronic symbol, sound, or process.

13 (9) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States  
14 Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

15 (10) "Transfer" includes:

16 (a) an assignment;

17 (b) a conveyance;

18 (c) a sale;

19 (d) a lease;

20 (e) an encumbrance, including a mortgage or security interest;

21 (f) a gift; and

22 (g) a transfer by operation of law.

23 (11) "Unincorporated nonprofit association" means an unincorporated organization consisting of two or  
24 more members joined under an agreement that is oral, in a record, or implied from conduct, for one or more  
25 common, nonprofit purposes. The term does not include:

26 (a) a trust;

27 (b) a marriage, domestic partnership, common law domestic relationship, civil union, or other domestic  
28 living arrangement;

29 (c) an organization formed under any other statute that governs the organization and operation of  
30 unincorporated associations;

1 (d) a joint tenancy, tenancy in common, or tenancy by the entireties even if the co-owners share use of  
2 the property for a nonprofit purpose; or

3 (e) a relationship under an agreement in a record that expressly provides that the relationship between  
4 the parties does not create an unincorporated nonprofit association.

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6 **NEW SECTION. Section 3. Relation to other law.** (1) A statute governing a specific type of  
7 unincorporated nonprofit association prevails over an inconsistent provision in [sections 1 through 31], to the  
8 extent of the inconsistency.

9 (2) [Sections 1 through 31] supplement the law of this state that applies to nonprofit associations  
10 operating in this state. If a conflict exists, that law applies.

11 (3) Unless displaced by particular provisions of [sections 1 through 31], the principles of law and equity  
12 supplement [sections 1 through 31].

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14 **NEW SECTION. Section 4. Governing law.** (1) Except as otherwise provided in subsection (2), the  
15 law of this state governs the operation in this state of an unincorporated nonprofit association formed or operating  
16 in this state.

17 (2) Unless the governing principles specify a different jurisdiction, the law of the jurisdiction in which an  
18 unincorporated nonprofit association has its main place of activities governs the internal affairs of the association.

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20 **NEW SECTION. Section 5. Entity -- perpetual existence -- powers.** (1) An unincorporated nonprofit  
21 association is an entity distinct from its members and managers.

22 (2) An unincorporated nonprofit association has perpetual duration unless the governing principles  
23 specify otherwise.

24 (3) An unincorporated nonprofit association has the same powers as an individual to do all things  
25 necessary or convenient to carry on its purposes.

26 (4) An unincorporated nonprofit association may engage in profit-making activities but profits from any  
27 activities must be used or set aside for the association's nonprofit purposes.

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29 **NEW SECTION. Section 6. Ownership and transfer of property.** (1) An unincorporated nonprofit  
30 association may acquire, hold, or transfer in its name an interest in property.

1 (2) An unincorporated nonprofit association may be a beneficiary of a trust or contract, a legatee, or a  
2 devisee.

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4 **NEW SECTION. Section 7. Statement of authority as to real property.** (1) In this section, "statement  
5 of authority" means a statement authorizing a person to transfer an interest in real property held in the name of  
6 an unincorporated nonprofit association.

7 (2) An interest in real property held in the name of an unincorporated nonprofit association may be  
8 transferred by a person authorized to do so in a statement of authority recorded by the association in the office  
9 in the county in which a transfer of the property would be recorded.

10 (3) A statement of authority must state:  
11 (a) the name of the unincorporated nonprofit association;  
12 (b) the address in this state, including the street address, if any, of the association or, if the association  
13 does not have an address in this state, its out-of-state address;  
14 (c) that the association is an unincorporated nonprofit association; and  
15 (d) the name, title, or position of a person authorized to transfer an interest in real property held in the  
16 name of the association.

17 (4) A statement of authority must be executed in the same manner as an affidavit by a person other than  
18 the person authorized in the statement to transfer the interest.

19 (5) A filing officer may collect a fee for recording a statement of authority in the amount authorized for  
20 recording a transfer of real property.

21 (6) A record amending, revoking, or canceling a statement of authority or stating that the statement is  
22 unauthorized or erroneous must meet the requirements for executing and recording an original statement.

23 (7) Unless canceled earlier, a recorded statement of authority and its most recent amendment expire  
24 5 years after the date of the most recent recording.

25 (8) If the record title to real property is in the name of an unincorporated nonprofit association and the  
26 statement of authority is recorded in the office of the county in which a transfer of the property would be recorded,  
27 the authority of the person named under subsection (3)(d) is conclusive in favor of a person that gives value  
28 without notice that the person lacks authority.

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30 **NEW SECTION. Section 8. Liability.** (1) A debt, obligation, or other liability of an unincorporated

1 nonprofit association is solely the debt, obligation, or other liability of the association. A member or manager is  
2 not personally liable, directly or indirectly, by way of contribution or otherwise for a debt, obligation, or other  
3 liability of the association solely by reason of being or acting as a member or manager. This subsection applies  
4 regardless of the dissolution of the association.

5 (2) A person's status as a member or manager does not prevent or restrict law other than [sections 1  
6 through 31] from imposing liability on the person or the association because of the person's conduct.

7 (3) The failure of an unincorporated nonprofit association to observe formalities relating to the exercise  
8 of its powers or management of its activities and affairs is not a ground for imposing liability on a member or  
9 manager of the association for a debt, obligation, or other liability of the association.

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11 **NEW SECTION. Section 9. Assertion and defenses of claims.** (1) An unincorporated nonprofit  
12 association may sue or be sued in its own name.

13 (2) A member or manager may assert a claim the member or manager has against the unincorporated  
14 nonprofit association. An association may assert a claim it has against a member or manager.

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16 **NEW SECTION. Section 10. Effect of judgment or order.** A judgment or order against an  
17 unincorporated nonprofit association is not by itself a judgment or order against a member or manager.

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19 **NEW SECTION. Section 11. Action or proceeding not abated by change.** An action or proceeding  
20 against an unincorporated nonprofit association does not abate merely because of a change in its members or  
21 managers.

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23 **NEW SECTION. Section 12. Venue.** Unless otherwise provided by law other than [sections 1 through  
24 31], venue of an action against an unincorporated nonprofit association brought in this state is determined under  
25 the statutes or court rules applicable to an action brought in this state against a corporation.

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27 **NEW SECTION. Section 13. Member not agent.** A member is not an agent of the association solely  
28 by reason of being a member.

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30 **NEW SECTION. Section 14. Approval by members.** (1) Except as otherwise provided in the governing

- 1 principles, an unincorporated nonprofit association must have the approval of its members to:
- 2 (a) admit, suspend, dismiss, or expel a member;
- 3 (b) select or dismiss a manager;
- 4 (c) adopt, amend, or repeal the governing principles;
- 5 (d) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the association's property,
- 6 with or without the association's goodwill, outside the ordinary course of its activities;
- 7 (e) dissolve under [section 26(1)(b)] or merge under [section 29];
- 8 (f) undertake any other act outside the ordinary course of the association's activities; or
- 9 (g) determine the policy and purposes of the association.
- 10 (2) An unincorporated nonprofit association must have the approval of the members to do any other act
- 11 or exercise a right that the governing principles require to be approved by members.

12

13 **NEW SECTION. Section 15. Member meetings -- procedural requirements.** (1) Unless the governing

14 principles provide otherwise:

- 15 (a) approval of a matter by the members requires the affirmative vote of at least a majority of the votes
- 16 cast at a meeting of members; and
- 17 (b) each member is entitled to one vote on each matter that is submitted for approval by the members.
- 18 (2) The governing principles may provide for the:
- 19 (a) calling, location, and timing of member meetings;
- 20 (b) notice and quorum requirements for member meetings;
- 21 (c) conduct of member meetings;
- 22 (d) taking of action by the members by consent without a meeting or casting ballots; and
- 23 (e) participation by members in a member meeting by telephone or other means of electronic
- 24 communication.
- 25 (3) If the governing principles do not provide for a matter described in subsection (2), customary usages
- 26 and principles of parliamentary law and procedure apply.

27

28 **NEW SECTION. Section 16. Duties of member.** (1) A member does not have any fiduciary duty to an

29 unincorporated nonprofit association or to another member solely by reason of being a member.

- 30 (2) A member shall discharge the duties to the unincorporated nonprofit association and the other

1 members and exercise any rights under [sections 1 through 31] consistent with the governing principles and the  
2 contractual obligation of good faith and fair dealing.

3  
4 **NEW SECTION. Section 17. Admission, suspension, dismissal, or expulsion of members.** (1) A  
5 person becomes a member and may be suspended, dismissed, or expelled in accordance with the governing  
6 principles of the unincorporated nonprofit association. If there are no applicable governing principles, a person  
7 may become a member or be suspended, dismissed, or expelled from an association only by a vote of its  
8 members. A person may not be admitted as a member without the person's consent.

9 (2) Unless the governing principles provide otherwise, the suspension, dismissal, or expulsion of a  
10 member does not relieve the member from any unpaid capital contribution, dues, assessments, fees, or other  
11 obligation incurred or commitment made by the member before the suspension, dismissal, or expulsion.

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13 **NEW SECTION. Section 18. Member's resignation.** (1) A member may resign as a member in  
14 accordance with the governing principles. In the absence of applicable governing principles, a member may  
15 resign at any time.

16 (2) Unless the governing principles provide otherwise, resignation of a member does not relieve the  
17 member from any unpaid capital contribution, dues, assessments, fees, or other obligation incurred or  
18 commitment made by the member before resignation.

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20 **NEW SECTION. Section 19. Membership interest not transferable.** Except as otherwise provided  
21 in the governing principles, a member's interest or any right under the governing principles is not transferable.

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23 **NEW SECTION. Section 20. Selection of managers -- management rights of managers.** Except  
24 as otherwise provided in [sections 1 through 31] or the governing principles:

- 25 (1) only the members may select a manager or managers;  
26 (2) a manager may be a member or a nonmember;  
27 (3) if a manager is not selected, all members are managers;  
28 (4) each manager has equal rights in the management and conduct of the activities of the unincorporated  
29 nonprofit association;  
30 (5) all matters relating to the association's activities are decided by its managers except for matters

1 reserved for approval by members in [section 14]; and

2 (6) a difference among managers is decided by a majority of the managers.

3

4 **NEW SECTION. Section 21. Duties of managers.** (1) A manager owes to the unincorporated nonprofit  
5 association and to its members the duties of loyalty and care.

6 (2) A manager shall manage the unincorporated nonprofit association in good faith, in a manner the  
7 manager reasonably believes to be in the best interests of the association, and with such care, including  
8 reasonable inquiry, as a prudent person would reasonably exercise in a similar position and under similar  
9 circumstances. A manager may rely in good faith on any opinion, report, statement, or other information provided  
10 by another person that the manager reasonably believes is a competent and reliable source for the information.

11 (3) After full disclosure of all material facts, a specific act or transaction that would otherwise violate the  
12 fiduciary duty of loyalty by a manager may be authorized or ratified by a majority of the members that are not  
13 interested directly or indirectly in the act or transaction.

14 (4) A manager that makes a business judgment in good faith satisfies the duties specified in subsection  
15 (1) if the manager:

16 (a) is not interested, directly or indirectly, in the subject of the business judgment and is otherwise able  
17 to exercise independent judgment;

18 (b) is informed with respect to the subject of the business judgment to the extent the manager reasonably  
19 believes to be appropriate under the circumstances; and

20 (c) believes that the business judgment is in the best interests of the unincorporated nonprofit association  
21 and in accordance with its purposes.

22 (5) The governing principles in a record may limit or eliminate the liability of a manager to the  
23 unincorporated nonprofit association or its members for damages for any action taken, or for failure to take any  
24 action, as a manager, except liability for:

25 (a) the amount of financial benefit improperly received by a manager;

26 (b) an intentional infliction of harm on the association or one or more of its members;

27 (c) an intentional violation of criminal law;

28 (d) breach of the fiduciary duty of loyalty; or

29 (e) improper distributions.

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1            **NEW SECTION. Section 22. Procedural requirements for manager meetings.** (1) The governing  
2 principles may provide for the:

- 3            (a) calling, location, and timing of manager meetings;  
4            (b) notice and quorum requirements for manager meetings;  
5            (c) conduct of manager meetings;  
6            (d) taking of action by the managers by consent without a meeting; and  
7            (e) participation by managers in a manager meeting by telephone or other means of electronic  
8 communication.

9            (2) If the governing principles do not provide for a matter described in subsection (1), customary usages  
10 and principles of parliamentary law and procedure apply.

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12           **NEW SECTION. Section 23. Right of member or manager to information.** (1) On reasonable notice,  
13 a member or manager of an unincorporated nonprofit association may inspect and copy during the association's  
14 regular operating hours, at a reasonable location specified by the association, any record maintained by the  
15 association regarding its activities, financial condition, and other circumstances, to the extent the information is  
16 material to the member's or manager's rights and duties under the governing principles.

17            (2) An unincorporated nonprofit association may impose reasonable restrictions on access to and use  
18 of information to be furnished under this section, including designating the information confidential and imposing  
19 obligations of nondisclosure and safeguarding on the recipient.

20            (3) An unincorporated nonprofit association may charge a person that makes a demand under this  
21 section reasonable copying costs, limited to the costs of labor and materials.

22            (4) A former member or manager is entitled to information to which the member or manager was entitled  
23 while a member or manager if the information pertains to the period during which the person was a member or  
24 manager, the former member or manager seeks the information in good faith, and the former member or manager  
25 satisfies subsections (1) through (3).

26  
27           **NEW SECTION. Section 24. Distributions prohibited -- compensation and other permitted**  
28 **payments.** (1) Except as otherwise provided in subsection (2), an unincorporated nonprofit association may not  
29 pay dividends or make distributions to a member or manager.

30            (2) An unincorporated nonprofit association may:

- 1 (a) pay reasonable compensation or reimburse reasonable expenses to a member or manager for  
2 services rendered;
- 3 (b) confer benefits on a member or manager in conformity with its nonprofit purposes;
- 4 (c) repurchase a membership and repay a capital contribution made by a member to the extent  
5 authorized by its governing principles; or
- 6 (d) make distributions of property to members upon winding up and termination to the extent permitted  
7 by [section 27].

8

9 **NEW SECTION. Section 25. Reimbursement -- indemnification -- advancement -- insurance.** (1)  
10 Except as otherwise provided in the governing principles, an unincorporated nonprofit association shall reimburse  
11 a member or manager for authorized expenses reasonably incurred in the course of the member's or manager's  
12 activities on behalf of the association.

13 (2) An unincorporated nonprofit association may indemnify a member or manager for any debt,  
14 obligation, or other liability incurred in the course of the member's or manager's activities on behalf of the  
15 association if the person seeking indemnification has complied with [section 16] and [section 21]. Governing  
16 principles in a record may broaden or limit indemnification.

17 (3) If a person is made or threatened to be made a party in an action or proceeding based on that  
18 person's activities on behalf of an unincorporated nonprofit association and the person makes a request in a  
19 record to the association, a majority of the disinterested managers may approve in a record advance payment,  
20 or reimbursement, by the association, of all or a part of the reasonable expenses, including attorney's fees and  
21 costs, incurred by the person before the final disposition of the proceeding. To be entitled to an advance payment  
22 or reimbursement, the person must state in a record that the person has a good faith belief that the criteria for  
23 indemnification in subsection (2) have been satisfied and that the person will repay the amounts advanced or  
24 reimbursed if the criteria for payment have not been satisfied. The governing principles in a record may broaden  
25 or limit the advance payments or reimbursements.

26 (4) An unincorporated nonprofit association may purchase and maintain insurance on behalf of a  
27 member or manager against liability asserted against or incurred by the member or manager in that capacity or  
28 arising from that status, whether or not the association has authority under [sections 1 through 31] to reimburse,  
29 indemnify, or advance expenses to the member or manager against the liability.

30 (5) The rights of reimbursement, indemnification, and advancement of expenses under this section apply

1 to a former member or manager for an activity undertaken on behalf of the unincorporated nonprofit association  
2 while a member or manager.

3  
4 **NEW SECTION. Section 26. Dissolution.** (1) An unincorporated nonprofit association may be  
5 dissolved as follows:

6 (a) if the governing principles provide a time or method for dissolution, at that time or by that method;

7 (b) if the governing principles do not provide a time or method for dissolution, upon approval by the  
8 members;

9 (c) if no member can be located and the association's operations have been discontinued for at least  
10 3 years, by the managers or, if the association has no current manager, by its last manager;

11 (d) by court order; or

12 (e) under law other than [sections 1 through 31].

13 (2) After dissolution, an unincorporated nonprofit association continues in existence until its activities  
14 have been wound up and it is terminated pursuant to [section 27].

15  
16 **NEW SECTION. Section 27. Winding up and termination.** Winding up and termination of an  
17 unincorporated nonprofit association must proceed in accordance with the following rules:

18 (1) All known debts and liabilities must be paid or adequately provided for.

19 (2) Any property subject to a condition requiring return to the person designated by the donor must be  
20 transferred to that person.

21 (3) Any property subject to a trust must be distributed in accordance with the trust agreement.

22 (4) Any remaining property must be distributed as follows:

23 (a) as required by law other than [sections 1 through 31] that requires assets of an association to be  
24 distributed to another person with similar nonprofit purposes;

25 (b) in accordance with the association's governing principles or in the absence of applicable governing  
26 principles, to the members of the association per capita or as the members direct; or

27 (c) if neither subsection (4)(a) nor (4)(b) applies, under Title 70, chapter 9, part 8.

28  
29 **NEW SECTION. Section 28. Appointment of registered agent.** (1) An unincorporated nonprofit  
30 association may deliver to the secretary of state for filing a statement appointing an agent authorized to receive

1 service of process.

2 (2) A statement appointing a registered agent must state:

3 (a) the name of the unincorporated nonprofit association; and

4 (b) the name and street and mailing addresses in this state of the registered agent.

5 (3) A statement appointing a registered agent must be signed by a person authorized to manage the  
6 affairs of the unincorporated nonprofit association. The signing of the statement is an affirmation of fact that the  
7 person is authorized to manage the affairs of the unincorporated nonprofit association and that the agent has  
8 consented to serve.

9 (4) An amendment to or cancellation of a statement appointing a registered agent must meet the  
10 requirements for signing an original statement. An agent may resign by delivering a resignation to the office of  
11 the secretary of state for filing and giving notice to the unincorporated nonprofit association at the address most  
12 recently supplied to the agent by the association.

13 (5) The secretary of state may collect a fee for filing a statement appointing a registered agent, an  
14 amendment, a cancellation, or a resignation in the amount charged for filing similar documents.

15 (6) A statement appointing a registered agent takes effect on filing by the secretary of state and is  
16 effective for 5 years after the date of filing unless canceled or terminated earlier.

17 (7) A statement appointing a registered agent may not be rejected for filing because the name of the  
18 unincorporated nonprofit association signing the statement is not distinguishable on the records of the secretary  
19 of state from the name of another entity appearing in those records. The filing of such a statement does not make  
20 the name of the association signing the statement unavailable for use by another entity.

21 (8) The only duty under [sections 1 through 31] of a registered agent is to forward to the unincorporated  
22 nonprofit association at the address most recently supplied to the agent by the association any process, notice,  
23 or demand pertaining to the association which is served on or received by the agent.

24

25 **NEW SECTION. Section 29. Mergers.** (1) In this section:

26 (a) "Entity":

27 (i) means a person that has:

28 (A) a legal existence separate from any person that has a right to vote or consent with respect to any  
29 of the entity's internal affairs; or

30 (B) the power to acquire an interest in real property in its own name; and

- 1 (ii) does not include:
- 2 (A) an individual;
- 3 (B) a trust with a predominantly donative purpose or a charitable trust;
- 4 (C) an association or relationship that is not described in subsection (1)(a)(i) and is not a partnership
- 5 solely by reason of 35-10-202(3) or a similar provision of the law of another jurisdiction;
- 6 (D) a decedent's estate; or
- 7 (E) a government or a governmental subdivision, agency, or instrumentality.
- 8 (b) "Merging entity" means an entity that is a party to a merger and exists immediately before the merger
- 9 becomes effective.
- 10 (c) "Organic rules" means the public organic record and private organic rules of an entity.
- 11 (d) "Private organic rules" means the rules, whether or not in a record, that govern the internal affairs
- 12 of an entity, are binding on all its equity owners or persons with the right to vote or consent with respect to any
- 13 of its internal affairs, and are not part of its public organic record, if any.
- 14 (e) "Public organic record" means the record the filing of which by the secretary of state forms an entity
- 15 and any amendment to or restatement of that record.
- 16 (f) "Surviving entity" means the entity that continues in existence after or is created by a merger.
- 17 (2) An unincorporated nonprofit association may be a merging entity or surviving entity in a merger with
- 18 any entity that is authorized by law to merge with an unincorporated nonprofit association.
- 19 (3) A merger involving an unincorporated nonprofit association is subject to the following rules:
- 20 (a) Each constituent entity shall comply with its governing law.
- 21 (b) Each party to the merger shall approve a plan of merger. The plan, which must be in a record, must
- 22 include the following provisions:
- 23 (i) the name and form of each entity that is a party to the merger;
- 24 (ii) the name and form of the surviving entity and, if the surviving entity is to be created by the merger,
- 25 a statement to that effect;
- 26 (iii) if the surviving entity is to be created by the merger, the surviving entity's organic rules that are
- 27 proposed to be in a record;
- 28 (iv) if the surviving entity is not to be created by the merger, any amendments to be made by the merger
- 29 to the surviving entity's organic rules that are, or are proposed to be, in a record; and
- 30 (v) the terms and conditions of the merger, including the manner and basis for converting the interests

1 in each merging entity into any combination of money, interests in the surviving entity, and other consideration  
2 except that the plan of merger may not permit members of an unincorporated nonprofit association to receive  
3 merger consideration if a distribution of such consideration would not be permitted in the absence of a merger  
4 under [section 24] and [section 27].

5 (c) The plan of merger must be approved by the members of each unincorporated nonprofit association  
6 that is a merging entity. If a plan of merger would impose personal liability for an obligation of an entity on a  
7 member of an association that is a merging entity, the plan may not take effect unless it is approved in a record  
8 by the member.

9 (d) Subject to the contractual rights of third parties, after a plan of merger is approved and at any time  
10 before the merger is effective, a merging entity may amend the plan or abandon the merger as provided in the  
11 plan, or except as otherwise prohibited in the plan, with the same consent as was required to approve the plan.

12 (e) Following approval of the plan, a merger under this section is effective:

13 (i) if a merging entity is required to give notice to or obtain the approval of a governmental agency or  
14 officer in order to be a party to a merger, when the notice has been given and the approval has been obtained;  
15 and

16 (ii) if the surviving entity:

17 (A) is an unincorporated nonprofit association, as specified in the plan of merger and upon compliance  
18 by any merging entity that is not an association with any requirements, including any required filings in the office  
19 of the secretary of state, of the entity's governing statute; or

20 (B) is not an unincorporated nonprofit association, as provided by the statute governing the surviving  
21 entity.

22 (4) When a merger becomes effective:

23 (a) the surviving entity continues or comes into existence;

24 (b) each merging entity that is not the surviving entity ceases to exist;

25 (c) all property of each merging entity vests in the surviving entity without transfer, reversion, or  
26 impairment;

27 (d) all debts, obligations, or other liabilities of each merging entity continue as debts, obligations, or other  
28 liabilities of the surviving entity;

29 (e) the name of the surviving entity may be substituted for the name of any merging entity that is a party  
30 to any pending action or proceeding;

1 (f) except as otherwise provided by law other than [sections 1 through 31], all the rights, privileges,  
2 immunities, powers, and purposes of each merging entity vest in the surviving entity;

3 (g) except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger  
4 take effect;

5 (h) the merger does not affect the personal liability, if any, of a member or manager of a merging entity  
6 for a debt, obligation, or other liability incurred before the merger is effective; and

7 (i) a surviving entity that is not organized in this state is subject to the jurisdiction of the courts of this  
8 state to enforce any debt, obligation, or other liability owed by a merging entity, if before the merger the merging  
9 entity was subject to suit in this state for the debt, obligation, or other liability.

10 (5) Property held for a charitable purpose under the law of this state by a merging entity immediately  
11 before a merger under this section becomes effective may not, as a result of the merger, be diverted from the  
12 objects for which it was donated, granted, or devised, unless, to the extent required by or pursuant to the law of  
13 this state concerning cy pres or other law dealing with nondiversion of charitable assets, the entity obtains an  
14 appropriate order of the appropriate court specifying the disposition of the property.

15 (6) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation,  
16 subscription, or conveyance inures to the surviving entity if it:

17 (a) is made to a merging entity that is not the surviving entity; and

18 (b) takes effect or remains payable after the merger.

19 (7) A trust obligation that would govern property if transferred to the nonsurviving entity applies to  
20 property that is transferred to the surviving entity under this section.

21  
22 **NEW SECTION. Section 30. Uniformity of application and construction.** In applying and construing  
23 this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its  
24 subject matter among states that enact it.

25  
26 **NEW SECTION. Section 31. Relation to electronic signatures in global and national commerce**  
27 **act.** [Sections 1 through 31] modify, limit, and supersede the Electronic Signatures in Global and National  
28 Commerce Act, 15 U.S.C. 7001, et seq., but do not modify, limit, or supersede section 101(c) of that act, 15  
29 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15  
30 U.S.C. 7003(b).

