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4

As Engrossed: S2/23/11

A Bill

SENATE BILL 302

5 By: Senator S. Harrelson
6 By: Representatives Williams, Vines
7

For An Act To Be Entitled

9 AN ACT TO REPEAL THE UNIFORM UNINCORPORATED NONPROFIT
10 ASSOCIATION ACT; TO ENACT THE REVISED UNIFORM
11 UNINCORPORATED NONPROFIT ASSOCIATION ACT; AND FOR
12 OTHER PURPOSES.
13
14

Subtitle

15 TO REPEAL THE UNIFORM UNINCORPORATED
16 NONPROFIT ASSOCIATION ACT AND TO ENACT
17 THE REVISED UNIFORM UNINCORPORATED
18 NONPROFIT ASSOCIATION ACT.
19
20
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Effective January 1, 2012, Arkansas Code Title 4, Chapter
25 28, Subchapter 5 is repealed.

26 ~~4-28-501. Definitions.~~

27 ~~In this subchapter:~~

28 ~~(1) "Member" means a person who, under the rules or practices of~~
29 ~~a nonprofit association, may participate in the selection of persons~~
30 ~~authorized to manage the affairs of the nonprofit association or in the~~
31 ~~development of policy of the nonprofit association.~~

32 ~~(2) "Nonprofit association" means an unincorporated~~
33 ~~organization, other than one created by a trust, consisting of two or more~~
34 ~~members joined by mutual consent for a common, nonprofit purpose. However,~~
35 ~~joint tenancy, tenancy in common, or tenancy by the entirety does not by~~
36 ~~itself establish a nonprofit association, even if the co-owners share use of~~



1 ~~the property for a nonprofit purpose.~~

2 ~~(3) "Person" means an individual, corporation, business trust,~~
3 ~~estate, trust, partnership, association, joint venture, government,~~
4 ~~governmental subdivision, agency, or instrumentality, or any other legal or~~
5 ~~commercial entity.~~

6 ~~(4) "State" means a State of the United States, the District of~~
7 ~~Columbia, the Commonwealth of Puerto Rico, or any territory or insular~~
8 ~~possession subject to the jurisdiction of the United States.~~

9
10 ~~4-28-502. Supplementary general principles of law and equity.~~
11 ~~Principles of law and equity supplement this subchapter unless~~
12 ~~displaced by a particular provision of it.~~

13
14 ~~4-28-503. Territorial application.~~

15 ~~Real and personal property in this state may be acquired, held,~~
16 ~~encumbered, and transferred by a nonprofit association, whether or not the~~
17 ~~nonprofit association or a member has any other relationship to this state.~~

18
19 ~~4-28-504. Real and personal property — Nonprofit association as~~
20 ~~legatee, devisee, or beneficiary.~~

21 ~~(a) A nonprofit association is a legal entity separate from its~~
22 ~~members for the purposes of acquiring, holding, encumbering, and transferring~~
23 ~~real and personal property.~~

24 ~~(b) A nonprofit association in its name may acquire, hold, encumber,~~
25 ~~or transfer an estate or interest in real or personal property.~~

26 ~~(c) A nonprofit association may be a beneficiary of a trust or~~
27 ~~contract, a legatee, or a devisee.~~

28
29 ~~4-28-505. Statement of authority as to real property.~~

30 ~~(a) A nonprofit association may execute and record a statement of~~
31 ~~authority to transfer an estate or interest in real property in the name of~~
32 ~~the nonprofit association.~~

33 ~~(b) An estate or interest in real property in the name of a nonprofit~~
34 ~~association may be transferred by a person so authorized in a statement of~~
35 ~~authority recorded in the office of the circuit clerk in the county in which~~
36 ~~a transfer of the property would be recorded.~~

1 ~~(c) A statement of authority must set forth:~~

2 ~~(1) the name of the nonprofit association;~~

3 ~~(2) the federal tax identification number, if any, of the~~
4 ~~nonprofit association;~~

5 ~~(3) the address in this State, including the street address, if~~
6 ~~any, of the nonprofit association, or, if the nonprofit association does not~~
7 ~~have an address in this State, its address out of State;~~

8 ~~(4) that it is an unincorporated nonprofit association; and~~

9 ~~(5) the name or title of a person authorized to transfer an~~
10 ~~estate or interest in real property held in the name of the nonprofit~~
11 ~~association.~~

12 ~~(d) A statement of authority must be executed in the same manner as an~~
13 ~~affidavit by a person who is not the person authorized to transfer the estate~~
14 ~~or interest.~~

15 ~~(e) A filing officer may collect a fee for recording a statement of~~
16 ~~authority in the amount authorized for recording a transfer of real property.~~

17 ~~(f) An amendment, including a cancellation, of a statement of~~
18 ~~authority must meet the requirements for execution and recording of an~~
19 ~~original statement. Unless canceled earlier, a recorded statement of~~
20 ~~authority or its most recent amendment is canceled by operation of law five~~
21 ~~years after the date of the most recent recording.~~

22 ~~(g) If the record title to real property is in the name of a nonprofit~~
23 ~~association and the statement of authority is recorded in the office of the~~
24 ~~circuit clerk in the county in which a transfer of real property would be~~
25 ~~recorded, the authority of the person named in a statement of authority to~~
26 ~~transfer is conclusive in favor of a person who gives value without notice~~
27 ~~that the person lacks authority.~~

28
29 ~~4-28-506. Liability in tort and contract.~~

30 ~~(a) A nonprofit association is a legal entity separate from its~~
31 ~~members for the purposes of determining and enforcing rights, duties, and~~
32 ~~liabilities in contract and tort.~~

33 ~~(b) A person is not liable for a breach of a nonprofit association's~~
34 ~~contract merely because the person is a member, is authorized to participate~~
35 ~~in the management of the affairs of the nonprofit association, or is a person~~
36 ~~considered to be a member by the nonprofit association.~~

1 ~~(c) A person is not liable for a tortious act or omission for which a~~
2 ~~nonprofit association is liable merely because the person is a member, is~~
3 ~~authorized to participate in the management of the affairs of the nonprofit~~
4 ~~association, or is a person considered as a member by the nonprofit~~
5 ~~association.~~

6 ~~(d) A tortious act or omission of a member or other person for which a~~
7 ~~nonprofit association is liable is not imputed to a person merely because the~~
8 ~~person is a member of the nonprofit association, is authorized to participate~~
9 ~~in the management of the affairs of the nonprofit association, or is a person~~
10 ~~considered as a member by the nonprofit association.~~

11 ~~(e) A member of, or a person considered to be a member by, a nonprofit~~
12 ~~association may assert a claim against the nonprofit association. A nonprofit~~
13 ~~association may assert a claim against a member or a person considered to be~~
14 ~~a member by the nonprofit association.~~

15
16 ~~4-28-507. Capacity to assert and defend—Standing.~~

17 ~~(a) A nonprofit association, in its name, may institute, defend,~~
18 ~~intervene, or participate in a judicial, administrative, or other~~
19 ~~governmental proceeding or in an arbitration, mediation, or any other form of~~
20 ~~alternative dispute resolution.~~

21 ~~(b) A nonprofit association may assert a claim in its name on behalf~~
22 ~~of its members if one or more members of the nonprofit association have~~
23 ~~standing to assert a claim in their own right, the interests the nonprofit~~
24 ~~association seeks to protect are germane to its purposes, and neither the~~
25 ~~claim asserted nor the relief requested requires the participation of a~~
26 ~~member.~~

27
28 ~~4-28-508. Effect of judgment or order.~~

29 ~~A judgment or order against a nonprofit association is not by itself a~~
30 ~~judgment or order against a member or a person authorized to participate in~~
31 ~~the management of the affairs of the nonprofit association.~~

32
33 ~~4-28-509. Disposition of personal property of inactive nonprofit~~
34 ~~association.~~

35 ~~If a nonprofit association has been inactive for three years or longer,~~
36 ~~or a different period specified in a document of the nonprofit association, a~~

1 ~~person in possession or control of personal property of the association may~~
2 ~~transfer custody of the property;~~

3 ~~(1) if a document of a nonprofit association specifies a person~~
4 ~~to whom transfer is to be made under these circumstances, to that person; or~~

5 ~~(2) if no person is so specified, to a nonprofit association or~~
6 ~~nonprofit corporation pursuing broadly similar purposes, or to a government~~
7 ~~or governmental subdivision, agency, or instrumentality.~~

8
9 ~~4-28-510. Appointment of agent to receive service of process.~~

10 ~~(a) A nonprofit association may file in the office of the Secretary of~~
11 ~~State a statement appointing an agent authorized to receive service of~~
12 ~~process.~~

13 ~~(b) A statement appointing an agent must set forth:~~

14 ~~(1) the name of the nonprofit association;~~

15 ~~(2) the federal tax identification number, if any, of the~~
16 ~~nonprofit association;~~

17 ~~(3) the address in this State, including the street address, if~~
18 ~~any, of the nonprofit association, or, if the nonprofit association does not~~
19 ~~have an address in this State, its address out of State; and~~

20 ~~(4) the information required by § 4-20-105(a).~~

21 ~~(c) A statement appointing an agent or a statement amending or~~
22 ~~canceling a previous statement shall be signed by a person authorized to~~
23 ~~manage the affairs of the nonprofit association.~~

24
25 ~~4-28-511. Claim not abated by change.~~

26 ~~A claim against a nonprofit association does not abate merely because~~
27 ~~of a change in its members or persons authorized to manage the affairs of the~~
28 ~~nonprofit association.~~

29
30 ~~4-28-512. Venue.~~

31 ~~For purposes of venue, a nonprofit association is a resident of the~~
32 ~~county in which it has an office.~~

33
34 ~~4-28-513. Summons and complaint—Service on whom.~~

35 ~~In an action or proceeding against a nonprofit association a summons~~
36 ~~and complaint must be served on an agent authorized by appointment to receive~~

1 ~~service of process, an officer, managing or general agent, or a person~~
2 ~~authorized to participate in the management of its affairs. If none of them~~
3 ~~can be served, service may be made on a member.~~

4
5 ~~4-28-514. Uniformity of application and construction.~~

6 ~~This subchapter shall be applied and construed to effectuate its~~
7 ~~general purpose to make uniform the law with respect to the subject of this~~
8 ~~subchapter among States enacting it.~~

9
10 ~~4-28-515. Short title.~~

11 ~~This subchapter may be cited as the Uniform Unincorporated Nonprofit~~
12 ~~Association Act.~~

13
14 ~~4-28-516. Transition concerning real and personal property.~~

15 ~~If, before August 1, 1997, an estate or interest in real or personal~~
16 ~~property was by terms of the transfer purportedly transferred to a nonprofit~~
17 ~~association but under the law the estate or interest did not vest in the~~
18 ~~nonprofit association, on August 1, 1997 the estate or interest vests in the~~
19 ~~nonprofit association, unless the parties have treated the transfer as~~
20 ~~ineffective.~~

21
22 ~~4-28-517. Savings clause.~~

23 ~~This subchapter does not affect an action or proceeding commenced or~~
24 ~~right accrued before August 1, 1997.~~

25
26 SECTION 2. Arkansas Code Title 4, Chapter 28, is amended to add an
27 additional subchapter to read as follows:

28 Subchapter 6 – Revised Uniform Unincorporated Nonprofit Association Act

29 4-28-601. Short title.

30 This subchapter may be cited as the Revised Uniform Unincorporated
31 Nonprofit Association Act.

32
33 4-28-602. Definitions.

34 In this subchapter:

35 (1) “Established practices” means the practices used by an
36 unincorporated nonprofit association without material change during the most

1 recent five years of its existence, or if it has existed for less than five
2 years, during its entire existence.

3 (2) "Governing principles" means the agreements, whether oral,
4 in a record, or implied from its established practices, that govern the
5 purpose or operation of an unincorporated nonprofit association and the
6 rights and obligations of its members and managers. The term includes any
7 amendment or restatement of the agreements constituting the governing
8 principles.

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

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

16 (5) "Person" means an individual, corporation, business trust,
17 statutory entity trust, estate, trust, partnership, limited liability
18 company, cooperative, association, joint venture, public corporation,
19 government or governmental subdivision, agency, or instrumentality, or any
20 other legal or commercial entity.

21 (6) "Record" means information that is inscribed on a tangible
22 medium or that is stored in an electronic or other medium and is retrievable
23 in perceivable form.

24 (7) "State" means a state of the United States, the District of
25 Columbia, Puerto Rico, United States Virgin Islands, or any territory or
26 insular possession subject to the jurisdiction of the United States.

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

31 (A) a trust;

32 (B) a marriage, domestic partnership, common law domestic
33 relationship, civil union, or other domestic living arrangement;

34 (C) an organization formed under any other statute that
35 governs the organization and operation of unincorporated associations;

36 (D) a joint tenancy, tenancy in common, or tenancy by the

1 entireties even if the co-owners share use of the property for a nonprofit
2 purpose; or

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

6
7 4-28-603. Relation to other law.

8 (a) Principles of law and equity supplement this subchapter unless
9 displaced by a particular provision of it.

10 (b) A statute governing a specific type of unincorporated nonprofit
11 association prevails over an inconsistent provision in this subchapter, to
12 the extent of the inconsistency.

13 (c) This subchapter supplements the law of this state that applies to
14 nonprofit associations operating in this state. If a conflict exists, that
15 law applies.

16
17 4-28-604. Governing law.

18 (a) Except as otherwise provided in subsection (b), the law of this
19 state governs the operation in this state of all unincorporated nonprofit
20 associations formed or operating in this state.

21 (b) Unless the governing principles specify a different jurisdiction,
22 the law of the jurisdiction in which an unincorporated nonprofit association
23 has its main place of activities governs the internal affairs of the
24 association.

25
26 4-28-605. Legal entity; Perpetual existence; Powers.

27 (a) An unincorporated nonprofit association is a legal entity distinct
28 from its members and managers.

29 (b) An unincorporated nonprofit association has perpetual duration
30 unless the governing principles specify otherwise.

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

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

36

1 4-28-606. Ownership and transfer of property.

2 (a) An unincorporated nonprofit association may acquire, hold,
3 encumber, or transfer in its name an interest in real or personal property.

4 (b) An unincorporated nonprofit association may be a beneficiary of a
5 trust or contract, a legatee or a devisee.

6
7 4-28-607. Statement of authority as to real property.

8 (a) In this section, "statement of authority" means a statement
9 authorizing a person to transfer an interest in real property held in the
10 name of an unincorporated nonprofit association.

11 (b) An interest in real property held in the name of an unincorporated
12 nonprofit association may be transferred by a person authorized to do so in a
13 statement of authority recorded by the association in the office in the
14 county in which a transfer of the property would be recorded.

15 (c) A statement of authority must set forth:

16 (1) the name of the unincorporated nonprofit association;

17 (2) the address in this state, including the street address, if
18 any, of the association or, if the association does not have an address in
19 this state, its out-of-state address;

20 (3) that the association is an unincorporated nonprofit
21 association; and

22 (4) the name, title, or position of a person authorized to
23 transfer an interest in real property held in the name of the association.

24 (d) A statement of authority must be executed in the same manner as an
25 affidavit by a person other than the person authorized in the statement to
26 transfer the interest.

27 (e) A filing officer may collect a fee for recording a statement of
28 authority in the amount authorized for recording a transfer of real property.

29 (f) A document amending, revoking, or canceling a statement of
30 authority or stating that the statement is unauthorized or erroneous must
31 meet the requirements for executing and recording an original statement.

32 (g) Unless canceled earlier, a recorded statement of authority and its
33 most recent amendment expire five years after the date of the most recent
34 recording.

35 (h) If the record title to real property is in the name of an
36 unincorporated nonprofit association and the statement of authority is

1 recorded in the office of the county in which a transfer of the property
2 would be recorded, the authority of the person named in the statement to
3 transfer is conclusive in favor of a person that gives value without notice
4 that the person lacks authority.

5
6 4-28-608. Liability.

7 (a) A debt, obligation, or other liability of an unincorporated
8 nonprofit association, whether arising in contract, tort, or otherwise:

9 (1) is solely the debt, obligation, or other liability of the
10 association; and

11 (2) does not become a debt, obligation, or other liability of a
12 member or manager solely because the member acts as a member or the manager
13 acts as a manager.

14 (b) A person's status as a member or manager does not prevent or
15 restrict law other than this subchapter from imposing liability on the person
16 or the association because of the person's conduct.

17
18 4-28-609. Assertion and defense of claims.

19 (a) An unincorporated nonprofit association may sue or be sued in its
20 own name.

21 (b) A member or manager may assert a claim the member or manager has
22 against the unincorporated nonprofit association. An association may assert
23 a claim it has against a member or manager.

24
25 4-28-610. Effect of judgment or order.

26 A judgment or order against an unincorporated nonprofit association is
27 not by itself a judgment or order against a member or manager.

28
29 4-28-611. Appointment of agent to receive service of process.

30 (a) An unincorporated nonprofit association may file in the office of
31 the Secretary of State a statement appointing an agent authorized to receive
32 service of process.

33 (b) A statement appointing an agent must set forth:

34 (1) the name of the unincorporated nonprofit association; and

35 (2) the name of the person in this state authorized to receive
36 service of process and the person's address, including the street address, in

1 this state.

2 (c) A statement appointing an agent must be signed and acknowledged by
3 a person authorized to manage the affairs of the unincorporated nonprofit
4 association and by the person appointed as the agent. By signing and
5 acknowledging the statement the person becomes the agent.

6 (d) An amendment to or cancellation of a statement appointing an agent
7 to receive service of process must meet the requirements for executing of an
8 original statement. An agent may resign by filing a resignation in the
9 office of the Secretary of State and giving notice to the association.

10 (e) The Secretary of State may collect a fee for filing a statement
11 appointing an agent to receive service of process, an amendment, a
12 cancellation, or a resignation in the amount charged for filing similar
13 documents.

14
15 4-28-612. Service of process.

16 In an action or proceeding against an unincorporated nonprofit
17 association, process may be served on an agent authorized by appointment to
18 receive service of process, on a manager of the association, or in any other
19 manner authorized by the law of this state.

20
21 4-28-613. Action or proceeding not abated by change.

22 An action or proceeding against an unincorporated nonprofit association
23 does not abate merely because of a change in its members or managers.

24
25 4-28-614. Venue.

26 Unless otherwise provided by law other than this subchapter, venue of
27 an action against an unincorporated nonprofit association brought in this
28 state is determined under the statutes applicable to an action brought in
29 this state against a corporation.

30
31 4-28-615. Member not agent.

32 A member is not an agent of the association solely by reason of being a
33 member.

34
35 4-28-616. Approval by members.

36 (a) Except as otherwise provided in the governing principles, an

1 unincorporated nonprofit association must have the approval of its members
2 to:

3 (1) admit, suspend, dismiss, or expel a member;

4 (2) select or dismiss a manager;

5 (3) adopt, amend, or repeal the governing principles;

6 (4) sell, lease, exchange, or otherwise dispose of all, or
7 substantially all, of the association's property, with or without the
8 association's goodwill, outside the ordinary course of its activities;

9 (5) dissolve under § 4-28-628(a)(2) or merge under § 4-28-630;

10 (6) undertake any other act outside the ordinary course of the
11 association's activities; or

12 (7) determine the policy and purposes of the association.

13 (b) An unincorporated nonprofit association must have the approval of
14 the members to do any other act or exercise a right that the governing
15 principles require to be approved by members.

16
17 4-28-617. Meetings of members; Voting, notice, and quorum
18 requirements.

19 (a) Unless the governing principles provide otherwise:

20 (1) approval of a matter by members requires an affirmative
21 majority of the votes cast at a meeting of members; and

22 (2) each member is entitled to one vote on each matter that is
23 submitted for approval by members.

24 (b) Notice and quorum requirements for member meetings and the conduct
25 of meetings of members are determined by the governing principles.

26
27 4-28-618. Duties of member.

28 (a) A member does not have a fiduciary duty to an unincorporated
29 nonprofit association or to another member solely by being a member.

30 (b) A member shall discharge the duties to the unincorporated
31 nonprofit association and the other members and exercise any rights under
32 this subchapter consistent with the governing principles and the obligation
33 of good faith and fair dealing.

34
35 4-28-619. Admission, suspension, dismissal, or expulsion of members.

36 (a) A person becomes a member and may be suspended, dismissed, or

1 expelled in accordance with the association's governing principles. If there
2 are no applicable governing principles, a person may become a member or be
3 suspended, dismissed, or expelled from an association only by a vote of its
4 members. A person may not be admitted as a member without the person's
5 consent.

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

11
12 4-28-620. Member's resignation.

13 (a) A member may resign as a member in accordance with the governing
14 principles. In the absence of applicable governing principles, a member may
15 resign at any time.

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

20
21 4-28-621. Membership interest not transferable.

22 Except as otherwise provided in the governing principles, a member's
23 interest or any right under the governing principles is not transferable.

24
25 4-28-622. Selection of managers; Management rights of managers.

26 Except as otherwise provided in this subchapter or the governing
27 principles:

28 (1) only the members may select a manager or managers;

29 (2) a manager may be a member or a nonmember;

30 (3) if a manager is not selected, all members are managers;

31 (4) each manager has equal rights in the management and conduct
32 of the association's activities;

33 (5) all matters relating to the association's activities are
34 decided by its managers except for matters reserved for approval by members
35 in § 4-28-616; and

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

1 managers.

2
3 4-28-623. Duties of managers.

4 (a) A manager owes to the unincorporated nonprofit association and to
5 its members the fiduciary duties of loyalty and care.

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

14 (c) After full disclosure of all material facts, a specific act or
15 transaction that would otherwise violate the duty of loyalty by a manager may
16 be authorized or ratified by a majority of the members that are not
17 interested directly or indirectly in the act or transaction.

18 (d) A manager that makes a business judgment in good faith satisfies
19 the duties specified in subsection (a) if the manager:

20 (1) is not interested, directly or indirectly, in the subject of
21 the business judgment and is otherwise able to exercise independent judgment;

22 (2) is informed with respect to the subject of the business
23 judgment to the extent the manager reasonably believes to be appropriate
24 under the circumstances; and

25 (3) believes that the business judgment is in the best interests
26 of the unincorporated nonprofit association and in accordance with its
27 purposes.

28 (e) The governing principles in a record may limit or eliminate the
29 liability of a manager to the unincorporated nonprofit association or its
30 members for damages for any action taken, or for failure to take any action,
31 as a manager, except liability for:

32 (1) the amount of financial benefit improperly received by a
33 manager;

34 (2) an intentional infliction of harm on the association or one
35 or more of its members;

36 (3) an intentional violation of criminal law;

1 (4) breach of the duty of loyalty; or

2 (5) improper distributions.

3
4 4-28-624. Notice and quorum requirements for meetings of managers.

5 Notice and quorum requirements for meetings of managers and the conduct
6 of meetings of managers are determined by the governing principles.

7
8 4-28-625. Right of member or manager to information.

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

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

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

23 (d) A former member or manager is entitled to information to which the
24 member or manager was entitled while a member or manager if the information
25 pertains to the period during which the person was a member or manager, the
26 former member or manager seeks the information in good faith, and the former
27 member or manager satisfies subsections (a) through (c) of this
28 section.

29 (e) This section shall not affect a record or information that
30 may be accessed by the public under the Freedom of Information Act of
31 1967, § 25-19-101 et seq.

32 4-28-626. Distributions prohibited; Compensation and other permitted
33 payments.

34 (a) Except as otherwise provided in subsection (b), an unincorporated
35 nonprofit association may not pay dividends or make distributions to a member

1 or manager.

2 (b) An unincorporated nonprofit association may:

3 (1) pay reasonable compensation or reimburse reasonable expenses
4 to a member or manager for services rendered;

5 (2) confer benefits on a member or manager in conformity with
6 its nonprofit purposes;

7 (3) repurchase a membership and repay a capital contribution
8 made by a member to the extent authorized by its governing principles; or

9 (4) make distributions of property to members upon winding up
10 and termination to the extent permitted by § 4-28-629.

11
12 4-28-627. Reimbursement; Indemnification; Advancement of expenses.

13 (a) Except as otherwise provided in the governing principles, an
14 unincorporated nonprofit association shall reimburse a member or manager for
15 authorized expenses reasonably incurred in the course of the member's or
16 manager's activities on behalf of the association.

17 (b) An unincorporated nonprofit association may indemnify a member or
18 manager for any debt, obligation, or other liability incurred in the course
19 of the member's or manager's activities on behalf of the association if the
20 person seeking indemnification has complied with §§ 4-28-618 and 4-28-623.
21 Governing principles in a record may broaden or limit indemnification.

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

35 (d) An unincorporated nonprofit association may purchase insurance on
36 behalf of a member or manager for liability asserted against or incurred by

1 the member or manager in the capacity of a member or manager, whether or not
2 the association has authority under this subchapter to reimburse, indemnify,
3 or advance expenses to the member or manager against the liability.

4 (e) The rights of reimbursement, indemnification, and advancement of
5 expenses under this section apply to a former member or manager for an
6 activity undertaken on behalf of the unincorporated nonprofit association
7 while a member or manager.

8
9 4-28-628. Dissolution.

10 (a) An unincorporated nonprofit association may be dissolved as
11 follows:

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

14 (2) if the governing principles do not provide a time or method
15 for dissolution, upon approval by the members;

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

19 (4) by court order; or

20 (5) under law other than this subchapter.

21 (b) After dissolution, an unincorporated nonprofit association
22 continues in existence until its activities have been wound up and it is
23 terminated pursuant to § 4-28-629.

24
25 4-28-629. Winding up and termination.

26 Winding up and termination of an unincorporated nonprofit association
27 must proceed in accordance with the following rules:

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

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

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

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

35 (A) as required by law other than this subchapter that
36 requires assets of an association to be distributed to another person with

1 similar nonprofit purposes;

2 (B) in accordance with the association's governing
3 principles or in the absence of applicable governing principles, to the
4 members of the association per capita or as the members direct; or

5 (C) if neither subparagraph (A) nor (B) applies, under the
6 Arkansas Unclaimed Property Act, § 18-28-201 et seq.

7
8 4-28-630. Mergers.

9 (a) In this section:

10 (1) "Constituent organization" means an organization that is
11 merged with one or more other organizations including the surviving
12 organization.

13 (2) "Nonsurviving organization" means a constituent organization
14 that is not the surviving organization.

15 (3) "Organization" means an unincorporated nonprofit
16 association, a general partnership, including a limited liability
17 partnership, limited partnership, including a limited liability limited
18 partnership, limited liability company, business or statutory trust,
19 corporation, or any other legal or commercial entity having a statute
20 governing its formation and operation. The term includes a for-profit or
21 nonprofit organization.

22 (4) "Surviving organization" means an organization into which
23 one or more other organizations are merged.

24 (b) An unincorporated nonprofit association may merge with any
25 organization that is authorized by law to merge with an unincorporated
26 nonprofit association.

27 (c) A merger involving an unincorporated nonprofit association is
28 subject to the following rules:

29 (1) Each constituent organization shall comply with its
30 governing law.

31 (2) Each party to the merger shall approve a plan of merger.
32 The plan, which must be in a record, must include the following provisions:

33 (A) the name and form of each organization that is a party
34 to the merger;

35 (B) the name and form of the surviving organization and,
36 if the surviving organization is to be created by the merger, a statement to

1 that effect;

2 (C) if the surviving organization is to be created by the
3 merger, the surviving organization's organizational documents that are
4 proposed to be in a record;

5 (D) if the surviving organization is not to be created by
6 the merger, any amendments to be made by the merger to the surviving
7 organization's organizational documents that are, or are proposed to be, in a
8 record; and

9 (E) the terms and conditions of the merger, including the
10 manner and basis for converting the interests in each constituent
11 organization into any combination of money, interests in the surviving
12 organization, and other consideration except that the plan of merger may not
13 permit members of an unincorporated nonprofit association to receive merger
14 consideration if a distribution of such consideration would not be permitted
15 in the absence of a merger under §§ 4-28-626 and 4-28-629.

16 (3) The plan of merger must be approved by the members of each
17 unincorporated nonprofit association that is a constituent organization in
18 the merger. If a plan of merger would impose personal liability for an
19 obligation of a constituent or surviving organization on a member of an
20 association that is a party to the merger, the plan may not take effect
21 unless it is approved in a record by the member.

22 (4) Subject to the contractual rights of third parties, after a
23 plan of merger is approved and at any time before the merger is effective, a
24 constituent organization may amend the plan or abandon the merger as provided
25 in the plan, or except as otherwise prohibited in the plan, with the same
26 consent as was required to approve the plan.

27 (5) Following approval of the plan, a merger under this section
28 is effective:

29 (A) if a constituent organization is required to give
30 notice to or obtain the approval of a governmental agency or officer in order
31 to be a party to a merger, when the notice has been given and the approval
32 has been obtained; and

33 (B) if the surviving organization:

34 (i) is an unincorporated nonprofit association, as
35 specified in the plan of merger and upon compliance by any constituent
36 organization that is not an association with any requirements, including any

1 required filings in the office of the Secretary of State, of the
2 organization's governing statute; or

3 (ii) is not an unincorporated nonprofit association,
4 as provided by the statute governing the surviving organization.

5 (d) When a merger becomes effective:

6 (1) the surviving organization continues or comes into
7 existence;

8 (2) each constituent organization that merges into the surviving
9 organization ceases to exist as a separate entity;

10 (3) all property owned by each constituent organization that
11 ceases to exist vests in the surviving organization;

12 (4) all debts, obligations, or other liabilities of each
13 nonsurviving organization continue as debts, obligations, or other
14 liabilities of the surviving organization;

15 (5) an action or proceeding pending by or against any
16 nonsurviving organization may be continued as if the merger had not occurred;

17 (6) except as prohibited by law other than this subchapter, all
18 of the rights, privileges, immunities, powers, and purposes of each
19 constituent organization that ceases to exist vest in the surviving
20 organization;

21 (7) except as otherwise provided in the plan of merger, the
22 terms and conditions of the plan of merger take effect;

23 (8) the merger does not affect the personal liability, if any,
24 of a member or manager of a constituent organization for a debt, obligation,
25 or other liability incurred before the merger is effective; and

26 (9) a surviving organization that is not organized in this state
27 is subject to the jurisdiction of the courts of this state to enforce any
28 debt, obligation, or other liability owed by a constituent organization, if
29 before the merger the constituent organization was subject to suit in this
30 state for the debt, obligation, or other liability.

31 (e) Property held for a charitable purpose under the law of this state
32 by a constituent organization immediately before a merger under this section
33 becomes effective may not, as a result of the merger, be diverted from the
34 objects for which it was given, unless, to the extent required by or pursuant
35 to the law of this state concerning cy pres or other law dealing with
36 nondiversion of charitable assets, the organization obtains an appropriate

1 order of the Pulaski County Circuit Court specifying the disposition of the
2 property.

3 (f) A bequest, devise, gift, grant, or promise contained in a will or
4 other instrument of donation, subscription, or conveyance that is made to a
5 nonsurviving organization and that takes effect or remains payable after the
6 merger inures to the surviving organization. A trust obligation that would
7 govern property if transferred to the nonsurviving organization applies to
8 property that is transferred to the surviving organization under this
9 section.

10
11 4-28-631. Transition concerning real and personal property.

12 (a) If, before January 1, 2012, an interest in property was by terms
13 of a transfer purportedly transferred to an unincorporated nonprofit
14 association but under the law of this state the interest did not vest in the
15 association, or in one or more persons on behalf of his association under
16 subsection (b) on January 1, 2012, the interest vests in the association,
17 unless the parties to the transfer have treated the transfer as ineffective.

18 (b) If before January 1, 2012, an interest in property was by terms of
19 a transfer purportedly transferred to an unincorporated nonprofit association
20 but the interest was vested in one or more persons to hold the interest for
21 members of the association, on or after January 1, 2012, the persons, or
22 their successors in interest, may transfer the interest to the association in
23 its name, or the association may require the interest be transferred to it in
24 its name.

25
26 4-28-632. Uniformity of application and construction.

27 In applying and construing this uniform act, consideration must be
28 given to the need to promote uniformity of the law with respect to its
29 subject matter among states that enact it.

30
31 4-28-633. Relation to Electronic Signatures in Global and National
32 Commerce Act.

33 This subchapter modifies, limits, and supersedes the federal Electronic
34 Signatures in Global and National Commerce Act, 15 U.S.C. § 7001; et seq.,
35 but does not modify, limit, or supersede section 101(c) of that act, 15
36 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices

1 described in section 103(b) of that act, 15 U.S.C. § 7003(b).

2
3 4-28-634. Savings clause.

4 This subchapter does not affect an action or proceeding commenced or
5 right accrued before this subchapter takes effect.

6
7 4-28-635. [Reserved.]

8
9 4-28-636. Effective date.

10 This subchapter takes effect January 1, 2012.

11
12 */s/S. Harrelson*

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