CORPORATIONS

CHAPTER 86

HOUSE BILL NO. 1493
(Representatives Coats, Stenson)
(Senators Evanson, Tallackson)

NDEA SECURITIES EXEMPTION

AN ACT to create and enact a new subsection to section 10-04-05 and a new subsection to section 10-04-06 of the North Dakota Century Code, relating to securities issued by the North Dakota education association dues credit trust and to transactions in securities issued by the North Dakota education association dues credit trust.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 10-04-05 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Securities issued by the North Dakota education association dues credit trust to members of the North Dakota education association.

SECTION 2. A new subsection to section 10-04-06 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

The offer or sale of a security issued by the North Dakota education association dues credit trust to members of the North Dakota education association.

Approved March 15, 1993
Filed March 16, 1993

CHAPTER 87

HOUSE BILL NO. 1374
(Representatives Hanson, Nicholas, A. Olson)
(Senators Marks, Redlin, Traynor)

NONPROFIT CORPORATE FARMLAND OWNERSHIP

AN ACT to amend and reenact section 10-06-04.3 of the North Dakota Century Code or in the alternative to amend and reenact section 10-06.1-10 of the North Dakota Century Code as created in section 2 of Senate Bill No. 2223, as approved by the fifty-third legislative assembly, relating to acquisition of farmland or ranchland by nonprofit organizations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. If Senate Bill No. 2223 does not become effective, section 10-06-04.3 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-06-04.3. Acquisition of certain farmland or ranchland by certain nonprofit organizations. A nonprofit organization may acquire farmland or ranchland only in accordance with the following:

1. Unless it is permitted to own farmland or ranchland under section 10-06-04.1, the nonprofit organization must, before January 1, 1985, have been either incorporated in this state or issued a certificate of authority to do business in this state or, before January 1, 1987, have been incorporated in this state if the nonprofit organization was created or authorized under Public Law No. 99-294 [100 Stat. 418]. A nonprofit organization created or authorized under Public Law 99-294 [100 Stat. 418] may acquire no more than twelve thousand acres [4856.228 hectares] of land from interest derived from state, federal, and private sources held in its trust fund.

2. The land may be acquired only for the purpose of conserving natural areas and habitats for biota, and, after acquisition:

   a. The land must be maintained and managed ~~solely~~ for the purpose of conserving natural area and habitat for biota.

   b. Any agricultural use of the land is ~~incidental to and~~ in accordance with the management of the land for conservation and ~~the~~ agricultural use, and is by an individual or by a person allowed to engage in farming or ranching under section 10-06-07.

   c. If any parcel of the land is open to hunting, it must be open to hunting by the general public.

   d. The nonprofit organization must fully comply with all state laws relating to the control of noxious and other weeds and insects.

3. Before any farmland or ranchland may be purchased by any nonprofit organization for the purpose of conserving natural areas and habitats for biota, the governor must approve the proposed acquisition. A nonprofit organization that desires to purchase farmland or ranchland for the purpose of conserving natural areas and habitats for biota shall first submit a proposed acquisition plan to the agriculture commissioner who shall convene an advisory committee consisting of the director of the parks and outdoor recreation sites division, the state engineer, the commissioner of agriculture, ~~the state forester,~~ the director of the game and fish department, the president of the North Dakota farmers union, the president of the North Dakota farm bureau, and the manager of the Garrison Diversion Conservancy District, for acquisition plans containing lands within the Garrison Diversion Conservancy District, or their designees. The advisory committee shall ~~review~~ hold a public hearing with the board of county commissioners concerning the proposed acquisition plan and shall make recommendations to the governor within ~~thirty~~ forty-five days after receipt of the proposed acquisition plan. The governor shall approve or disapprove any proposed acquisition plan, or any part thereof, within thirty days after receipt of the recommendations from the advisory committee.

4. Land acquired in accordance with this section may not be conveyed to the United States or any agency or instrumentality of the United States.

5. On failure to qualify to continue ownership under subsection 2, the land is disposed of within five years of that failure to qualify.

SECTION 2. AMENDMENT. Section 10-06.1-10 of the North Dakota Century Code as created by Senate Bill No. 2223, as approved by the fifty-third legislative assembly, is amended and reenacted as follows:

10-06.1-10. Acquisition of certain farmland or ranchland by certain nonprofit organizations. A nonprofit organization may acquire farmland or ranchland only in accordance with the following:

1. Unless it is permitted to own farmland or ranchland under section 10-06.1-09, the nonprofit organization must have been either incorporated in this state or issued a certificate of authority to do business in this state before January 1, 1985, or, before January 1, 1987, have been incorporated in this state if the nonprofit organization was created or authorized under Public Law No. 99-294 [100 Stat. 418]. A nonprofit organization created or authorized under Public Law No. 99-294 [100 Stat. 418] may acquire no more than twelve thousand acres [4856.228 hectares] of land from interest derived from state, federal, and private sources held in its trust fund.

2. The land may be acquired only for the purpose of conserving natural areas and habitats for biota, and, after acquisition:

   a. The land must be maintained and managed ~~solely~~ for the purpose of conserving natural area and habitat for biota.

   b. Any agricultural use of the land is ~~incidental to and~~ in accordance with the management of the land for conservation and ~~the~~ agricultural use, and is by a sole proprietorship or partnership, or a corporation

or limited liability company allowed to engage in farming or ranching under section 10-06.1-12.

c. If any parcel of the land is open to hunting, it must be open to hunting by the general public.

d. The nonprofit organization must fully comply with all state laws relating to the control of noxious and other weeds and insects.

3. Before any farmland or ranchland may be purchased by any nonprofit organization for the purpose of conserving natural areas and habitats for biota, the governor must approve the proposed acquisition. A nonprofit organization that desires to purchase farmland or ranchland for the purpose of conserving natural areas and habitats for biota shall first submit a proposed acquisition plan to the agriculture commissioner who shall convene an advisory committee consisting of the director of the parks and outdoor recreation sites division, the state engineer, the commissioner of agriculture, the state forester, the director of the game and fish department, the president of the North Dakota farmers union, the president of the North Dakota farm bureau, and the manager of the Garrison Diversion Conservancy District for acquisition plans containing lands within the Garrison Diversion Conservancy District, or their designees. The advisory committee shall ~~review~~ hold a public hearing with the board of county commissioners concerning the proposed acquisition plan and shall make recommendations to the governor within ~~thirty~~ forty-five days after receipt of the proposed acquisition plan. The governor shall approve or disapprove any proposed acquisition plan, or any part thereof, within thirty days after receipt of the recommendations from the advisory committee.

4. Land acquired in accordance with this section may not be conveyed to the United States or any agency or instrumentality of the United States.

5. On failure to qualify to continue ownership under subsection 2, the land must be disposed of within five years of that failure to qualify.

Approved April 14, 1993
Filed April 15, 1993

CHAPTER 88

HOUSE BILL NO. 1508
(Representative Austin)

COOPERATIVE FILING CHANGES

AN ACT to create and enact sections 10-15-12.1 and 10-15-52.6 to the North Dakota Century Code, relating to change of a cooperative's registered office or registered agent; to amend and reenact sections 10-15-13, 10-15-36, 10-15-38, 10-15-46, 10-15-51, 10-15-52.1, and 10-15-52.3 of the North Dakota Century Code, relating to cooperative requirements; and to repeal section 10-15-52.2 of the North Dakota Century Code, relating to amendment to articles of association of foreign cooperatives.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 10-15-12.1 of the North Dakota Century Code is created and enacted as follows:

10-15-12.1. Change of registered office or registered agent - Change of name of registered agent.

1. A cooperative may change its registered office, change its registered agent, or state a change in the name of its registered agent by filing with the secretary of state, with the fees provided in section 10-15-54, a statement containing:

   a. The name of the cooperative.

   b. If the address of its registered office is to be changed, the new address of its registered office.

   c. If its registered agent is to be changed, the name of its new registered agent.

   d. If the name of its registered agent is to be changed, the name of its registered agent as changed.

   e. A statement that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.

   f. A statement that the change of registered office or registered agent was authorized by a resolution approved by the board.

2. A registered agent of a cooperative may resign by filing with the secretary of state a signed written notice of resignation, including a statement that a signed copy of the notice has been given to the cooperative at its principal executive office or to a legal representative of the cooperative. The appointment of the agent terminates thirty days after the notice is filed with the secretary of state.

3. If the business address or the name of a registered agent changes, the agent shall change the address of the registered office or the name of the registered agent, as the case may be, of each cooperative represented by that agent by filing the statement required by subsection 1 with the secretary of state, except that the statement need only be signed by the registered agent, need not be responsive to subdivison c or f of subsection 1, and must state that a copy of the statement has been mailed to each of those affected cooperatives or their legal representative.

SECTION 2. AMENDMENT. Section 10-15-13 of the North Dakota Century Code is amended and reenacted as follows:

10-15-13. Service of process. The registered agent appointed by a cooperative shall be an agent of the cooperative and any nonresident director upon whom any process, notice, or demand required or permitted by law to be served upon the cooperative or its directors may be served.

Whenever a cooperative ~~shall fail to~~ does not appoint or maintain a registered agent in this state, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the secretary of state shall be an agent of such cooperative upon whom any such process, notice, or demand may be served. Service on the secretary of state of any such process, notice, or demand ~~shall~~ must be made by delivering to and leaving with him, or with any clerk having charge of the corporation department of his office, ~~duplicate~~ an original and two copies of such process, notice, or demand. In the event any such process, notice, or demand is served on the secretary of state, he shall immediately cause one of the copies thereof to be forwarded by registered or certified mail, addressed to the cooperative at ~~its registered office~~ the address of the principal place of business or to the nonresident director at his ~~filed~~ last reported address, as the case may be. Any service so had on the secretary of state shall be returnable in not less than thirty days.

The secretary of state shall keep a record of all processes, notices, and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto.

Nothing herein contained shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a cooperative or its directors in any other manner permitted by law.

SECTION 3. AMENDMENT. Section 10-15-36 of the North Dakota Century Code is amended and reenacted as follows:

[1] **10-15-36. Annual reports - Filing thereof - Fees - Penalties.**

1. A cooperative and a foreign cooperative shall file an annual report signed by a principal officer or the general manager setting forth:

   a. Its name and complete address of its principal place of business.

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[1] NOTE: Section 10-15-36 was also amended by section 5 of House Bill No. 1211, chapter 75.

b. The names and addresses of its directors and principal officers.

c. A statement, by class and par value, of the amount of stock which it has authority to issue, and the amount issued.

d. A statement as to the general type of business engaged in during the prior year.

2. Such annual report shall be made on forms ~~furnished~~ prescribed by the secretary of state, and the information therein contained shall be given as of the date of the execution of the report. ~~Each December the secretary of state shall forward report blanks to each cooperative in good standing required to make an annual report.~~

3. The annual report shall be delivered to the secretary of state between January first and March thirty-first of each year following incorporation. A fee of ten dollars shall be paid to the secretary of state for filing the report. If the report does not conform to requirements, it shall be returned to the cooperative for necessary corrections. The penalties for failure to file such report shall not apply if it is corrected and returned within thirty days after ~~receipt thereof~~ the annual report was returned by the secretary of state. The secretary of state may extend the filing date for the annual report of any cooperative ~~whenever in his discretion he considers such an extension of time advisable and proper~~ if a written application for an extension is received on or before March thirty-first.

4. Any report filed after March thirty-first may be filed only upon payment to the secretary of state of the following fees:

a. If filed prior to May first, fifteen dollars.

b. If filed thereafter but not later than the following ~~December first~~ March thirty-first, twenty-five dollars.

5. If the report is not filed before ~~the following December second,~~ May first, the secretary of state shall notify any cooperative or foreign cooperative failing to file its annual report that the cooperative is not in good standing and ~~shall be considered to be inactive~~ that it may be dissolved or its authority may be revoked. If the cooperative or foreign cooperative files its annual report after the notice with a fee of twenty-five dollars, the secretary of state will restore the certificate of incorporation or authority to good standing. Until restored to good standing, the secretary of state may not accept for filing any document respecting such cooperative except those incident to its dissolution or withdrawal. ~~The secretary of state,~~ If the annual report of a cooperative is not filed on or before ~~the first day of July~~ March thirty-first of ~~each~~ the year following the year a cooperative is found to be ~~inactive, shall certify to the attorney general the names of all cooperatives which have failed to file their reports in accordance with this section, together with the facts pertinent thereto, and shall also mail a copy of such certificate to the cooperative involved. Upon the receipt of such certification, the attorney general may in his discretion file an action in the name of the state against such cooperative for its dissolution~~ not in good standing, the cooperative ceases to exist and is

considered involuntarily dissolved by operation of law. The secretary of state shall note the dissolution of the cooperative on the records of the secretary of state and shall give notice of the action to the dissolved cooperative. Notice by the secretary of state must be mailed to the last reported address of the principal place of business.

If the annual report of a foreign cooperative is not filed on or before March thirty-first of the year following the year it is found to be not in good standing, the foreign cooperative forfeits its authority to transact business in North Dakota. The secretary of state shall note the revocation on the records of the secretary of state and shall give notice of the action to the revoked foreign cooperative. Notice by the secretary of state must be mailed to the last reported address of the principal place of business. The secretary of state's determination that a certificate of authority must be revoked under this section is final.

6. ~~The~~ A cooperative which was dissolved for failure to file an annual report, or a foreign cooperative whose authority was forfeited for failure to file an annual report, may be ~~restored to good standing~~ reinstated by ~~delivering to~~ filing the ~~secretary of state a current~~ past due annual report and ~~by~~ paying ~~twenty-five~~ fifty dollars ~~for each calendar year or part thereof during which it was not in good standing, not exceeding a total of one hundred fifty dollars~~. The fees must be paid and the report filed within one year following the date of the involuntary dissolution or revocation. Reinstatement under this section does not affect the rights or liability of any person for the time from the dissolution or revocation to the reinstatement.

7. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years.

SECTION 4. AMENDMENT. Section 10-15-38 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-15-38. Filing amendments - Limitation of action.

1. Amendments to articles must be signed and acknowledged by an officer of the cooperative~~, be sealed with the cooperative's seal,~~ and set forth:

   a. The name of the cooperative.

   b. The amendments and date of adoption.

   c. The number of members.

   d. The number of members voting for and against the amendment.

2. One copy of the amendment must be retained in the records of the association, and one copy must be filed in the office of the secretary of state.

3. No amendment may affect any existing claim for relief or proceedings to which the cooperative is a party or existing rights of persons other than members or stockholders.

4. No action may be maintained to invalidate any amendment because of the manner of its adoption unless commenced within two years after the date of filing.

5. A cooperative that amends its name and is the owner of a trademark or trade name, is a general partner named in a fictitious name certificate, or is a general partner in a limited partnership which is on file with the secretary of state, must change or amend its name in each registration when it files an amendment.

SECTION 5. AMENDMENT. Section 10-15-46 of the North Dakota Century Code is amended and reenacted as follows:

10-15-46. Involuntary dissolution.

1. A cooperative may be dissolved involuntarily by a decree of the district court where the principal office or registered agent is located in an action commenced by the attorney general when any of the following is established:

   a. ~~The cooperative failed to file its annual report as required by this chapter.~~

   ~~b.~~ The cooperative's certificate of association was procured through fraud.

   ~~c.~~ b. The cooperative has continued to exceed or abuse the authority conferred upon it by this chapter.

   ~~d.~~ c. The cooperative failed to comply with a court order for the production of books, records, or other documents of the cooperative as provided in section 10-15-35.

2. If the cooperative cures its defaults ~~other than those~~ under ~~subdivisions b and c~~ subdivision c of subsection 1 prior to the entry of the court's final decree and pays all penalties and court costs that have accrued, the claim for relief with respect to the defaults so cured will abate.

SECTION 6. AMENDMENT. Section 10-15-51 of the North Dakota Century Code is amended and reenacted as follows:

10-15-51. Admission of foreign cooperatives. A foreign cooperative is authorized to do business in this state ~~upon issuance of~~ when the secretary of state issues a certificate of authority ~~to that effect by the secretary of state~~. In order to procure such certificate, ~~it~~ the foreign cooperative shall make application therefor to the secretary of state, and file ~~a certified copy of the articles of association and all amendments on file in~~ with a certificate of good standing or certificate of existence duly authenticated by the incorporating officer of the state or country of incorporation. The application shall set forth:

1. The name of the cooperative and the state or country under the laws of which it is incorporated.

2. The date of incorporation and the period of duration of the corporation.

3. The address of the principal office of the cooperative ~~in the state or country under the laws of which it is incorporated~~.

4. The address of the proposed registered office of the cooperative in this state, and the name of its proposed registered agent in this state at such address.

5. The purpose or purposes of the cooperative which it proposes to pursue in the transaction of business in this state.

6. The names and respective addresses of the directors and officers of the cooperative.

7. ~~A statement of its aggregate number of members, and of the number of members by classes, if any.~~

~~8.~~ ~~A statement of the aggregate amount of authorized and issued capital stock itemized by classes, par value of stock, stock without par value, and series, if any, within a class.~~

~~9.~~ Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such cooperative is entitled to a certificate of authority to transact business in this state ~~and to determine and assess fees payable~~.

Such application shall be made on forms prescribed ~~and furnished~~ by the secretary of state and shall be executed ~~in duplicate~~ by ~~the~~ an officer of the cooperative ~~by its president or a vice president and by its secretary or an assistant secretary~~.

SECTION 7. AMENDMENT. Section 10-15-52.1 of the North Dakota Century Code is amended and reenacted as follows:

10-15-52.1. Merger of foreign cooperative authorized to transact business in this state. Whenever a foreign cooperative authorized to transact business in this state ~~shall be~~ is a party to a statutory merger permitted by the laws of the state or country under the laws of which it is associated, and such cooperative ~~shall be~~ is not the surviving cooperative~~, it shall~~, within thirty days after such merger becomes effective, the surviving cooperative shall file with the secretary of state a ~~copy~~ certificate of ~~the articles~~ fact of merger duly authenticated by the proper officer of the state or country under the laws of which such statutory merger was effected. ~~It shall not be necessary for such cooperative to procure either a new or amended certificate of authority to transact business in this state unless the name of such cooperative be changed thereby or unless the cooperative desires to pursue in this state other or additional purposes than those which it is then authorized to transact in this state.~~

SECTION 8. AMENDMENT. Section 10-15-52.3 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-15-52.3. Amended certificate of authority. A foreign cooperative authorized to transact business in this state must procure an amended certificate of authority if it changes its cooperative name or desires to pursue in this state purposes other than those set forth in its prior application for a certificate of authority by making application to the secretary of state.

The requirements in respect to the application and the issuance of an amended certificate of authority and the effect thereof are the same as an original application for a certificate of authority.

In addition, an application must be accompanied by a certificate of fact of amendment duly authenticated by the proper officer of the state or country where the cooperative is incorporated.

A foreign cooperative which amends its name and applies for an amended certificate of authority, and is the owner of a trademark or trade name, is a general partner named in a fictitious name certificate, or is a general partner in a limited partnership which is on file with the secretary of state, must change or amend its name in each registration when it files an application for an amended certificate of authority.

SECTION 9. Section 10-15-52.6 of the North Dakota Century Code is created and enacted as follows:

10-15-52.6. Change of registered office or registered agent of foreign cooperative.

1. A foreign cooperative authorized to transact business in this state may change its registered office or its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:

   a. The name of the cooperative.

   b. If the address of its registered office is to be changed, the new address of its registered office.

   c. If its registered agent is to be changed, the name of its new registered agent.

   d. That the addresses of its registered office and the business office of its registered agent, as changed, will be identical.

   e. That the change was authorized by resolution duly adopted by its board of directors.

   The statement must be executed by the cooperative by its president or a vice president and delivered to the secretary of state. If a registered agent changes its name or its business address, the agent may change its name or address, as the case may be, for any cooperatives of which it is the registered agent by filing a statement as required above with one copy for each cooperative listed on the certificate. The statement need only be signed by the registered agent, need not be responsive to subdivision c or e of this section, and must recite that a copy of the statement has been mailed to each listed cooperative or to the legal representative of each. A copy of the statement must be mailed by the registered agent to each listed cooperative or the legal representative of each cooperative.

2. A registered agent of a foreign cooperative may resign upon filing a written notice with the secretary of state, including a statement that a signed copy of the notice has been given to the foreign cooperative at its principal executive office or to a legal representative of the cooperative. The appointment of the agent terminates upon the expiration

of thirty days after filing the notice with the secretary of state. The registered agent must also give a signed copy of the notice to the foreign cooperative at its principal executive office or a legal representative of the cooperative.

SECTION 10. REPEAL. Section 10-15-52.2 of the North Dakota Century Code is repealed.

Approved April 8, 1993
Filed April 9, 1993

CHAPTER 89

HOUSE BILL NO. 1077
(Judiciary Committee)
(At the request of the Supreme Court)

CONTEMPT OF COURT

AN ACT to create and enact four new sections to chapter 27-10 of the North Dakota Century Code, relating to contempt of court; to amend and reenact sections 10-15-35, 14-05-25.1, 14-06-03.1, 14-07.1-06, 14-08.1-05, 14-12.1-09, 14-17-09, 14-17-16, 27-09.1-07, 27-10-07, 27-10-08, 27-10-09, 27-10-10, 27-10-11, 27-10-13, 27-10-18, 27-10-19, 27-10-20, 27-10-23, 27-19-07, 27-20-55, 28-21-12.1, 29-10.1-39, 42-02-10, 42-02-11, 51-15-06.1, and subsection 7 of section 54-35-02 of the North Dakota Century Code, relating to contempt of court; and to repeal sections 12.1-10-01, 27-09.1-16, 27-10-03, 27-10-04, 27-10-05, 27-10-06, 27-10-12, 27-10-14, 27-10-15, 27-10-16, 27-10-17, 27-10-21, 27-10-22, 27-10-24, 27-10-25, 27-10-26, and 27-10-27 of the North Dakota Century Code, relating to contempt of court.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-15-35 of the North Dakota Century Code is amended and reenacted as follows:

10-15-35. Books and records - Penalty for refusal to produce.

1. A cooperative shall keep correct and complete books and records of account, and shall also keep minutes of the proceedings of meetings of its members, board, and executive committee. The cooperative shall keep at its principal office records of the names and addresses of all members and stockholders with the amount of stock held by each, and of ownership of equity interests. At any reasonable time, any member or stockholder, or ~~his~~ the agent or attorney of either, upon written notice ~~stating the purposes thereof,~~ delivered or sent to the cooperative at least one week in advance, may examine ~~for a proper purpose~~ any books or records ~~pertinent to the~~ for a purpose that is proper and specified in ~~such~~ the notice.

2. In any proceedings, or upon petition ~~for such purpose~~, any court of record may, upon notice and after hearing at which proper cause is shown, and upon suitable terms, order any of the cooperative's books or records, and any other pertinent documents in its possession, or duly authenticated copies thereof, to be brought within this state. ~~Such~~ The documents ~~shall~~ must be kept at ~~such~~ the place and for ~~such~~ the time and purposes ~~as~~ the order designates. Any cooperative failing to comply with the order is subject to dissolution, and its directors and officers are ~~liable for~~ guilty of contempt of court~~, and may be punished as provided in section 12.1-10-01~~.

SECTION 2. AMENDMENT. Section 14-05-25.1 of the North Dakota Century Code is amended and reenacted as follows:

14-05-25.1. Money judgment to secure division of property enforceable by contempt proceedings - Exemptions from process not available. Failure to comply with the provisions of a divorce decree relating to distribution of the property of the parties ~~may be punished as civil~~ constitutes contempt of court. A party may also execute on a money judgment, and the obligor is entitled only to the absolute exemptions from process set forth in section 28-22-02.

SECTION 3. AMENDMENT. Section 14-06-03.1 of the North Dakota Century Code is amended and reenacted as follows:

14-06-03.1. Money judgment to secure division of property enforceable by contempt proceedings - Exemptions from process not available. Failure to comply with provisions of a decree of separation relating to distribution of the property of the parties ~~may be punished as civil~~ constitutes contempt of court. A party may also execute on a money judgment, and the obligor is entitled only to the exemptions from process set forth in section 28-22-02.

SECTION 4. AMENDMENT. Section 14-07.1-06 of the North Dakota Century Code is amended and reenacted as follows:

[1] **14-07.1-06. Penalty for violation of a protection order.** Whenever a protection order is granted pursuant to section 14-07.1-02 or 14-07.1-03 and the respondent or person to be restrained has been served a copy of the order, a violation of the order is a class A misdemeanor and also constitutes ~~criminal~~ contempt of court ~~subject to penalties therefor~~.

SECTION 5. AMENDMENT. Section 14-08.1-05 of the North Dakota Century Code is amended and reenacted as follows:

14-08.1-05. Support order to be judgment.

1. Any order directing any payment or installment of money for the support of a child is, on and after the date it is due and unpaid:

   a. A judgment by operation of law, with the full force, effect, and attributes of a judgment of the district court, including the ability to be entered in the judgment book pursuant to rule 58 of the North Dakota Rules of Civil Procedure and otherwise enforced as a judgment;

   b. Entitled as a judgment to full faith and credit in any jurisdiction which otherwise affords full faith and credit to judgments of the district court; and

   c. Not subject to retroactive modification.

2. Failure to comply with the provisions of a judgment or order of the court for the support of a child ~~may be punished as civil~~ constitutes contempt of court. All remedies for the enforcement of judgments apply. A party or the party's assignee may also execute on the judgment, and the obligor is entitled only to the exemptions from process set forth in section 28-22-02.

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[1] NOTE: Section 14-07.1-06 was also amended by section 2 of Senate Bill No. 2369, chapter 147.

SECTION 6. AMENDMENT. Section 14-12.1-09 of the North Dakota Century Code is amended and reenacted as follows:

14-12.1-09. How duties of support enforced. All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this chapter including a proceeding for ~~civil~~ contempt of court. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

SECTION 7. AMENDMENT. Section 14-17-09 of the North Dakota Century Code is amended and reenacted as follows:

[2] **14-17-09. Pretrial proceedings.**

1. As soon as practicable after an action to declare the existence or nonexistence of the father and child relationship has been brought, an informal hearing must be held. The court may order that the hearing be held before a referee. The public must be barred from the hearing. A record of the proceeding or any portion thereof must be kept if any party requests, or the court orders. Rules of evidence need not be observed.

2. Upon refusal of any witness, including a party, to testify under oath or produce evidence, the court may order ~~him~~ the witness to testify under oath and produce evidence concerning all relevant facts. If the refusal is upon the ground that ~~his~~ the witness's testimony or evidence might tend to incriminate ~~him~~ the witness, the court may grant ~~him~~ the witness immunity from all criminal liability on account of the testimony or evidence ~~he~~ the witness is required to produce. An order granting immunity bars prosecution of the witness for any offense shown in whole or in part by testimony or evidence ~~he~~ the witness is required to produce, except for perjury committed in ~~his~~ the witness's testimony. The refusal of a witness, who has been granted immunity, to obey an order to testify or produce evidence ~~is a civil~~ constitutes contempt of ~~the~~ court.

3. Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged.

SECTION 8. AMENDMENT. Section 14-17-16 of the North Dakota Century Code is amended and reenacted as follows:

14-17-16. Enforcement of judgment or order.

1. If existence of the father and child relationship is declared, or paternity or a duty of support has been acknowledged or adjudicated under this chapter or under prior law, the obligation of the father may be enforced in the same or other proceedings by the mother, the child, the public authority that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, support, or funeral, or by any other

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[2] NOTE: Section 14-17-09 was also amended by section 19 of House Bill No. 1181, chapter 152.

person, including a private agency, to the extent he has furnished or is furnishing these expenses.

2. The court may order support payments to be made to the mother, the clerk of the court, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the court.

3. Willful failure to obey the judgment or order of the court ~~is a civil~~ constitutes contempt of ~~the~~ court. All remedies for the enforcement of judgments apply.

SECTION 9. AMENDMENT. Section 27-09.1-07 of the North Dakota Century Code is amended and reenacted as follows:

[3] **27-09.1-07. Juror qualification form.**

1. From time to time and in a manner prescribed by the court, the clerk shall mail to the prospective juror a qualification form accompanied by instructions to fill out and return the form by mail to the clerk within ten days after its receipt. The juror qualification form ~~shall be~~ is subject to approval by the state court administrator as to matters of form and ~~shall~~ must elicit the name, address of residence, and age of the prospective juror and whether the prospective juror:

   a. Is a citizen of the United States and a resident of the county;

   b. Is able with reasonable accommodation to communicate and understand the English language;

   c. Has any physical or mental disability impairing the prospective juror's capacity to render satisfactory jury service; and

   d. Has lost the right to vote because of imprisonment resulting from conviction of a felony (section 27-09.1-08).

   The juror qualification form ~~shall~~ must contain the prospective juror's declaration that the responses are true to the best of the prospective juror's knowledge and the prospective juror's acknowledgment that a willful misrepresentation of a material fact may be punished by a fine of not more than five hundred dollars or imprisonment in the county jail for not more than thirty days, or both. Notarization of the juror qualification form ~~shall~~ is not ~~be~~ required. If the prospective juror is unable to fill out the form, another person may do it for the prospective juror and shall indicate that fact and the reason therefor. If it appears there is an omission, ambiguity, or error in a returned form, the clerk shall again send the form with instructions to the prospective juror to make the necessary addition, clarification, or correction and to return the form to the clerk within ten days after its second receipt.

2. Any prospective juror who fails to return a completed juror qualification form as instructed shall be directed by the clerk to appear forthwith

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[3] NOTE: Section 27-09.1-07 was also amended by section 1 of Senate Bill No. 2356, chapter 320.

before the clerk to fill out the juror qualification form. At the time of the prospective juror's appearance for jury service, or at the time of any interview before the court or clerk, the prospective juror may be required to fill out another juror qualification form in the presence of the court or clerk, at which time the prospective juror may be questioned, but only with regard to responses to questions contained on the form and grounds for excuse or disqualification. Any information thus acquired by the court or clerk shall be noted on the juror qualification form.

3. ~~A prospective juror who fails to appear as directed by the clerk pursuant to subsection 1 shall be ordered by the court to appear and show cause for failure to appear as directed. If the prospective juror fails to appear pursuant to the court's order or fails to show good cause for failure to appear as directed by the clerk, the prospective juror is guilty of criminal contempt and upon conviction may be fined not more than one hundred dollars or imprisoned in the county jail for not more than three days, or both.~~

~~4.~~ Any person who willfully misrepresents a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror is guilty of a class B misdemeanor.

SECTION 10. A new section to chapter 27-10 of the North Dakota Century Code is created and enacted as follows:

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

1. "Contempt of court" means:

   a. Intentional misconduct in the presence of the court which interferes with the court proceeding or with the administration of justice, or which impairs the respect due the court;

   b. Intentional nonpayment of a sum of money ordered by the court to be paid in a case where by law execution cannot be awarded for the collection of the sum;

   c. Intentional disobedience, resistance, or obstruction of the authority, process, or order of a court or other officer including a referee or magistrate;

   d. Intentional refusal of a witness to appear for examination, to be sworn or to affirm, or to testify after being ordered to do so by the court;

   e. Intentional refusal to produce a record, document, or other object after being ordered to do so by the court; or

   f. Any other act or omission specified in the court rules or by law as a ground for contempt of court.

2. "Court" means a court of record of this state.

3. "Punitive sanction" includes a sanction of imprisonment if the sentence is for a definite period of time. A sanction requiring payment of a sum of money is punitive if the sanction is not conditioned upon performance or

nonperformance of an act, and if the sanction's purpose is to uphold the authority of the court.

4. "Remedial sanction" includes a sanction that is conditioned upon performance or nonperformance of an act required by court order. A sanction requiring payment of a sum of money is remedial if the sanction is imposed to compensate a party or complainant, other than the court, for loss or injury suffered as a result of the contempt.

SECTION 11. A new section to chapter 27-10 of the North Dakota Century Code is created and enacted as follows:

Power of court to punish for contempt of court.

1. A court of record of this state may impose a remedial or punitive sanction for contempt of court under this chapter.

2. Upon the trial of an action or issue by a referee appointed by the court, the commission of any offense that constitutes contempt of court must be deemed contempt of the court appointing the referee, and the offense may be punished by the court in the manner and upon the proceedings in this chapter provided, except that the offense may be presented to the court by a report of the referee instead of by affidavit.

SECTION 12. A new section to chapter 27-10 of the North Dakota Century Code is created and enacted as follows:

Nonsummary procedure for remedial and punitive sanctions - Joint hearing and trial - Summary procedure - Appeal.

1. a. The court on its own motion or motion of a person aggrieved by contempt of court may seek imposition of a remedial sanction for the contempt by filing a motion for that purpose in the proceeding to which the contempt is related. The court, after notice and hearing, may impose a remedial sanction authorized by this chapter.

   b. The state's attorney of a county, the attorney general, or a special prosecutor appointed by the court may seek the imposition of a punitive sanction by issuing a complaint charging a person with contempt of court and reciting the sanction sought to be imposed. The state's attorney, attorney general, or special prosecutor may initiate issuance of the complaint or may issue the complaint on the request of a party to an action or proceeding in a court or of the judge presiding in an action or proceeding. A judge is disqualified from presiding at the trial of an alleged contemnor if a reasonable likelihood or appearance of bias or prejudice will otherwise exist, if the contempt alleged involves disrespect or criticism of the judge, or if the judge has personal knowledge of disputed evidentiary facts. The person charged is entitled to a trial by jury.

   c. The court may hold a hearing on a motion for a remedial sanction jointly with a trial on a complaint seeking a punitive sanction.

2. The judge presiding in an action or proceeding may impose a punitive sanction upon a person who commits contempt of court in the actual

presence of the court. The judge shall impose the punitive sanction immediately after the contempt of court and only for the purpose of preserving order in the court and protecting the authority and dignity of the court.

3. An appeal may be taken to the supreme court from any order or judgment finding a person guilty of contempt. An order or judgment finding a person guilty of contempt is a final order or judgment for purposes of appeal.

SECTION 13. A new section to chapter 27-10 of the North Dakota Century Code is created and enacted as follows:

Remedial sanctions - Punitive sanctions for nonsummary and summary procedure - Past conduct.

1. A court may impose one or more of the following remedial sanctions:

   a. Payment of a sum of money sufficient to compensate a party or complainant, other than the court, for a loss or injury suffered as a result of the contempt, including an amount to reimburse the party for costs and expenses incurred as a result of the contempt;

   b. Imprisonment if the contempt of court is of a type included in subdivision b, c, d, or e of subsection 1 of section 10 of this Act. The imprisonment may extend for as long as the contemnor continues the contempt or six months, whichever is shorter;

   c. A forfeiture not to exceed two thousand dollars for each day the contempt continues;

   d. An order designed to ensure compliance with a previous order of the court; or

   e. A sanction other than the sanctions specified in subdivisions a through d if the court expressly finds that those sanctions would be ineffectual to terminate a continuing contempt.

2. a. A court, after a finding of contempt of court in a nonsummary procedure under subdivision b of subsection 1 of section 12 of this Act, may impose for each separate contempt of court a fine not exceeding one thousand dollars, imprisonment in the county jail for not more than one year, or both.

   b. A court, after a finding of contempt of court in the summary procedure under subsection 2 of section 12 of this Act, may impose for each separate contempt of court a fine of not more than five hundred dollars, imprisonment in the county jail for not more than thirty days, or both.

3. A punitive sanction may be imposed for past conduct that was a contempt of court even though similar present conduct is a continuing contempt of court.

SECTION 14. AMENDMENT. Section 27-10-07 of the North Dakota Century Code is amended and reenacted as follows:

27-10-07. Order to show cause or warrant of attachment for contempt not committed in presence of judge. ~~When~~ In addition to the procedure set out in section 12 of this Act, when an act punishable as ~~a criminal or civil~~ contempt ~~by a court of record of this state~~ is not committed in the immediate view and presence of the court, the court, upon being satisfied ~~by affidavit~~ of the commission of the offense, ~~shall~~ may:

1. ~~Make an order requiring~~ Order the accused to show cause at a specified time and place ~~therein specified~~ why ~~he~~ the accused should not be punished for the alleged offense; or

2. Issue a warrant of attachment directed to the sheriff of any county where the accused may be found commanding ~~him~~ the sheriff to arrest ~~the accused~~ and bring ~~him~~ the accused before the court ~~forthwith or~~ at a specified time and place ~~therein specified~~ to answer for the alleged offense.

SECTION 15. AMENDMENT. Section 27-10-08 of the North Dakota Century Code is amended and reenacted as follows:

27-10-08. Nature of proceedings upon order to show cause or warrant of attachment for contempt. An order to show cause issued pursuant to section 27-10-07 may be made in the action or proceeding in or respecting which the offense was committed, either before or after the final judgment or order therein, and is equivalent to a notice of motion. The subsequent proceedings ~~thereupon~~ must be taken in the action or proceeding as upon a motion made therein. ~~If an attachment is issued pursuant to section 27-10-07, it must be deemed an original special proceeding by the state as plaintiff against the accused as defendant.~~

SECTION 16. AMENDMENT. Section 27-10-09 of the North Dakota Century Code is amended and reenacted as follows:

27-10-09. Papers to be served on person arrested for contempt. When a person accused of ~~a criminal or civil~~ contempt is arrested under a warrant of attachment, a copy of the warrant and of the affidavit or report of a referee upon which it is issued must be served upon the accused.

SECTION 17. AMENDMENT. Section 27-10-10 of the North Dakota Century Code is amended and reenacted as follows:

27-10-10. Amount of undertaking for appearance of accused may be fixed and endorsed on warrant by judge. When a warrant of attachment of a person accused of ~~a civil or criminal~~ contempt is issued, the court, by an endorsement thereon, may fix a sum in which the accused may give an undertaking for ~~his~~ the accused's appearance to answer.

SECTION 18. AMENDMENT. Section 27-10-11 of the North Dakota Century Code is amended and reenacted as follows:

27-10-11. Duties of sheriff after arrest if undertaking not given by accused. When a person accused of ~~a criminal or civil~~ contempt is arrested upon a warrant of attachment, the sheriff, if the amount of the undertaking for the appearance of the accused is not endorsed on the warrant, or if such an endorsement is made and an undertaking is not given as prescribed in section ~~27-10-12~~ 27-10-10, shall keep the accused in ~~his~~ custody until the further direction of the court. When from sickness or other cause the accused is physically unable to attend before the court,

that fact is a sufficient excuse to the sheriff for not producing ~~him~~ the accused as required by the warrant. In that case, the sheriff shall produce ~~him~~ the accused as directed by the court after ~~he~~ the accused becomes able to attend. The sheriff in any case need not confine the accused in prison or otherwise restrain ~~him of his liberty~~ the accused except so far as is necessary in order to secure ~~his~~ the accused's personal attendance.

SECTION 19. AMENDMENT. Section 27-10-13 of the North Dakota Century Code is amended and reenacted as follows:

27-10-13. Procedure on return of warrant of attachment or order to show cause for contempt. When a person accused of ~~a criminal or civil~~ contempt is produced by virtue of a warrant of attachment, or appears upon the return of such a warrant or of an order to show cause, the court~~, unless the accused admits the offense charged, shall cause a complaint in the form of an affidavit to be filed specifying the facts and circumstances of the offense charged against him. The accused, under oath, shall make written answer thereto by affidavit within such reasonable time as the court allows therefor and either party may produce affidavits or other proof contradicting or corroborating such answer. Upon the original affidavits, the answer, and subsequent proofs, the court shall determine whether the accused has committed the offense charged~~ shall proceed pursuant to subsection 1 of section 12 of this Act.

SECTION 20. AMENDMENT. Section 27-10-18 of the North Dakota Century Code is amended and reenacted as follows:

27-10-18. Procedure when person arrested gives undertaking for appearance but fails to appear. When a person arrested by authority of a warrant of attachment for contempt has given an undertaking ~~for his appearance~~ as prescribed in this chapter and fails to appear on the return day of the warrant, the court may issue another warrant or may make an order directing the undertaking to be prosecuted, or both.

SECTION 21. AMENDMENT. Section 27-10-19 of the North Dakota Century Code is amended and reenacted as follows:

27-10-19. Undertaking may be ordered prosecuted by and in behalf of party aggrieved - Extent of recovery. An order directing an undertaking given for the appearance of a person accused of ~~a criminal or civil~~ contempt to be prosecuted, in the discretion of the court, may direct the prosecution thereof by and in the name of any party aggrieved by the misconduct of the accused. In such a case, the plaintiff may recover damages to the extent of the loss or injury sustained ~~by him~~ by reason of the misconduct, together with the costs and expenses of prosecuting the proceedings in which the warrant was issued, but ~~such~~ the recovery may not exceed the sum specified in the undertaking.

SECTION 22. AMENDMENT. Section 27-10-20 of the North Dakota Century Code is amended and reenacted as follows:

27-10-20. When undertaking ordered prosecuted in name of state - Disposition of moneys collected. In an order for the prosecution of an undertaking given for the appearance of a person accused of ~~a criminal or civil~~ contempt, the court, whenever it thinks proper to do so, may, or whenever no party is aggrieved by the misconduct of ~~such~~ the person, shall, direct ~~such~~ a prosecution to be made in the name of this state by the attorney general or by the state's attorney of the county in which the undertaking was given. In an action brought pursuant to such

direction, the state is entitled to recover the entire sum specified in the undertaking. Out of the money collected, the court which directed the prosecution must order the person at whose instance a warrant was issued to be paid such a sum as it thinks proper to satisfy the costs and expenses incurred by ~~him~~ the person and to compensate ~~him~~ the person for the loss or injury sustained ~~by him~~ by reason of the misconduct. The residue of the money must be paid into the treasury of this state to the credit of the school fund.

SECTION 23. AMENDMENT. Section 27-10-23 of the North Dakota Century Code is amended and reenacted as follows:

27-10-23. Contempt of witness before notary public, officer, board, or tribunal. If a witness fails to attend for examination when duly required to do so, or refuses to be sworn, or to answer as a witness, before a notary public or any other officer, board, or tribunal authorized by law to require ~~his~~ the witness's attendance for examination and to take testimony, ~~such~~ the notary public, officer, board, or tribunal shall certify ~~such~~ that fact to the judge of the district court of the county in which ~~such~~ the witness resides or in which ~~such~~ the witness may be present. ~~Such~~ The judge, by order, then shall require ~~such~~ the witness to attend ~~before him for~~ an examination before the judge at a specified time and place ~~specified in the order~~. Upon the return day of the order, the examination of the witness must be conducted before the judge, and for the failure of ~~such~~ the witness to attend, or to be sworn, or to answer as a witness, or for a refusal of ~~such~~ the witness to do any act required of ~~him~~ the witness by law, ~~he~~ the witness may be punished as for a contempt in the manner provided in this chapter.

SECTION 24. AMENDMENT. Section 27-19-07 of the North Dakota Century Code is amended and reenacted as follows:

27-19-07. Contempt powers. In addition to other authority conferred by this chapter, the courts of this state have the power to hold persons in ~~civil or criminal~~ contempt of court in order to maintain the dignity of the courts and enforce their orders.

SECTION 25. AMENDMENT. Section 27-20-55 of the North Dakota Century Code is amended and reenacted as follows:

27-20-55. Contempt powers. The court may punish a person for contempt of court ~~for disobeying an order of the court or for obstructing or interfering with the proceedings of the court or the enforcement of its orders subject to the laws relating to the procedures therefor and the limitations thereon~~ under chapter 27-10.

SECTION 26. AMENDMENT. Section 28-21-12.1 of the North Dakota Century Code is amended and reenacted as follows:

28-21-12.1. Property delivery - Penalty. Any person who has received notice of levy in accordance with this chapter and fails to surrender and deliver ~~such~~ the property levied on under section 28-21-08 upon demand of the sheriff is guilty of a class B misdemeanor and may be ~~subject to civil~~ guilty of contempt of court.

SECTION 27. AMENDMENT. Section 29-10.1-39 of the North Dakota Century Code is amended and reenacted as follows:

29-10.1-39. Violation constitutes contempt. Any person who willfully violates any provision of this chapter is guilty of ~~criminal~~ contempt of court.

SECTION 28. AMENDMENT. Section 42-02-10 of the North Dakota Century Code is amended and reenacted as follows:

42-02-10. Injunction - Penalty for violation. Any person violating the terms of an injunction for the abatement of a nuisance in any place in the state of North Dakota ~~shall be~~ is guilty of ~~criminal~~ contempt ~~under section 12.1-10-01~~ of court.

SECTION 29. AMENDMENT. Section 42-02-11 of the North Dakota Century Code is amended and reenacted as follows:

42-02-11. Contempt proceeding. A contempt proceeding arising out of the violation of any injunction granted under the provisions of this chapter ~~shall~~ must be conducted in the manner prescribed for the conduct of such proceeding in ~~title 27~~ chapter 27-10.

SECTION 30. AMENDMENT. Section 51-15-06.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

51-15-06.1. Assurance of discontinuance. The attorney general may accept an assurance of discontinuance of any act or practice the attorney general determines to be in violation of this chapter or chapter 51-12, 51-13, 51-14, or 51-18 from any person the attorney general alleges is engaging in, or has engaged in, the act or practice. The assurance of discontinuance must be in writing and must be filed with and is subject to the approval of the district court of the county in which the alleged violator resides or has as a principal place of business or in Burleigh County. An assurance of discontinuance may not be considered an admission of a violation. However, failure to comply with an assurance of discontinuance which has been approved by the district court is ~~punishable as criminal~~ contempt of court.

SECTION 31. AMENDMENT. Subsection 7 of section 54-35-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7. To issue subpoenas or subpoenas duces tecum in the manner provided in sections 54-03.2-08 and 54-03.2-09. Committees of the council may issue subpoenas and subpoenas duces tecum in the same manner if specifically authorized by the council. Failure to obey a subpoena issued by the council, or one of its committees, is ~~a civil~~ contempt.

[4] **SECTION 32. REPEAL.** Sections 12.1-10-01, 27-09.1-16, 27-10-03, 27-10-04, 27-10-05, 27-10-06, 27-10-12, 27-10-14, 27-10-15, 27-10-16, 27-10-17, 27-10-21, 27-10-22, 27-10-24, 27-10-25, 27-10-26, and 27-10-27 of the North Dakota Century Code are repealed.

Approved March 19, 1993
Filed March 19, 1993

[4] NOTE: Section 27-10-05 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

CHAPTER 90

SENATE BILL NO. 2469
(Senator Nelson)

RESERVED CORPORATE NAME CANCELLATION

AN ACT to amend and reenact section 10-19.1-14 of the North Dakota Century Code, relating to reserved corporate name requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-19.1-14 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-19.1-14. Reserved name.

1. The exclusive right to the use of a corporate name otherwise permitted by section 10-19.1-13 may be reserved by any person.

2. The reservation must be made by filing with the secretary of state a request that the name be reserved, together with the fees provided in chapter 10-23. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months. The reservation may be renewed for successive twelve-month periods.

3. The right to the exclusive use of a corporate name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee, together with the fees provided in chapter 10-23.

4. The right to the exclusive use of a corporate name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of cancellation, together with the fees provided in chapter 10-23.

5. The secretary of state may destroy all reserved name requests and index thereof one year after expiration.

Approved March 23, 1993
Filed March 23, 1993

CHAPTER 91

HOUSE BILL NO. 1506
(Representative C. Carlson)

CORPORATE NAME CHANGES

AN ACT to create and enact a new subsection to section 10-23-04 and a new subsection to section 10-28-01 of the North Dakota Century Code, relating to the filing fee for cancellation of a reserved corporate name; to amend and reenact sections 10-19.1-16, 10-19.1-23, 10-22-09, 10-22-13, 10-24-07.1, 10-24-09, 10-24-36, 10-27-09, and 10-27-13 of the North Dakota Century Code, relating to requirements of filings with the secretary of state by domestic and foreign business and nonprofit corporations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-19.1-16 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **10-19.1-16. Change of registered office or registered agent - Change of name of registered agent.**

1. A corporation may change its registered office, change its registered agent, or state a change in the name of its registered agent by filing with the secretary of state, along with the fees provided in chapter 10-23, a statement containing:

   a. The name of the corporation.

   b. The present record address of its registered office.

   c. The name of its registered agent.

   d. If the address of its registered office is to be changed, the new address of its registered office.

   e. If its registered agent is to be changed, the name of its new registered agent.

   f. If the name of its registered agent is to be changed, the name of its registered agent as changed.

   g. A statement that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.

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[1] NOTE: Section 10-19.1-16 was also amended by section 10 of Senate Bill No. 2223, chapter 54.

h. A statement that the change of registered office or registered agent was authorized by resolution approved by the board.

2. A registered agent of a corporation may resign by filing with the secretary of state a signed written notice of resignation, including a statement that a signed copy of the notice has been given to the corporation at its principal executive office or to a legal representative of the corporation. The appointment of the agent terminates thirty days after the notice is filed with the secretary of state.

3. If the business address or the name of a registered agent changes, the agent shall change the address of the registered office or the name of the registered agent, as the case may be, of each corporation represented by that agent by filing with the secretary of state a statement as required in subsection 1, except that it need be signed only by the registered agent, need not be responsive to subdivision e or h, and must state that a copy of the statement has been mailed to each of those corporations or to the legal representative of each of those corporations.

4. The fee prescribed in chapter 10-23 for change of registered office must be refunded when in the secretary of state's opinion a change of address of registered office results from rezoning or postal reassignment.

SECTION 2. AMENDMENT. Section 10-19.1-23 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-19.1-23. Filing articles of amendment. An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to law and that all fees have been paid as provided in chapter 10-23, then the articles of amendment must be recorded in the office of the secretary of state.

A corporation which amends its name and is the owner of a trademark or trade name, is a general partner named in a fictitious name certificate, or is a general partner in a limited partnership which is on file with the secretary of state, must change or amend its name in each registration when it files an amendment.

SECTION 3. AMENDMENT. Section 10-22-09 of the North Dakota Century Code is amended and reenacted as follows:

10-22-09. Change of registered office or registered agent of foreign corporation.

1. A foreign corporation authorized to transact business in this state may change its registered office or its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:

   a. The name of the corporation.

   b. ~~The address of its then registered office.~~

   ~~c.~~ When changing the address of its registered office, the address to which the registered office is to be changed.

   ~~d. The name of its current registered agent.~~

~~e.~~ c. When changing its registered agent, the name of its successor registered agent.

~~f.~~ d. That the addresses of its registered office and the business office of its registered agent, as changed, will be identical.

~~g.~~ e. That the change was authorized by resolution duly adopted by its board of directors.

The statement must be executed by the corporation by its president or a vice president and delivered to the secretary of state. If the registered agent is changed, the consent of the successor agent to act in that capacity must accompany the filing. ~~If a~~ A registered agent ~~changes~~ may change its business address ~~to a place within the same county it may change such address~~ and the address of the registered office of any corporations of which it is the registered agent by filing a statement as required above with one copy for each corporation listed on the certificate, except that it need be signed only by the registered agent, need not be responsive to subdivision e c or ~~g~~ e and must recite that a copy of the statement has been mailed to each listed corporation. If the secretary of state finds that the statement conforms with this section, the secretary of state shall file the statement, and upon the filing the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, becomes effective.

The fee prescribed in chapter 10-23 for change of registered office must be refunded when in the secretary of state's opinion a change of address of registered office results from rezoning or postal reassignment.

2. Any registered agent of a foreign corporation may resign upon filing a written notice ~~executed in duplicate~~, with the secretary of state, who shall mail a copy thereof to the foreign corporation at its principal executive office. The appointment of the agent terminates upon the expiration of thirty days after receipt of the notice by the secretary of state.

SECTION 4. AMENDMENT. Section 10-22-13 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-22-13. Amended certificate of authority. A foreign corporation authorized to transact business in this state shall procure an amended certificate of authority when the corporation changes its name or when purposes other than those set forth in its last application for a certificate of authority are sought by making application to the secretary of state. The application, together with the required fee, must be filed within thirty days of the corporate action necessitating the filing.

The requirements for the form and contents of the application, the manner of its execution, its filing with the secretary of state, the issuance of an amended certificate of authority, and the effect of the amended certificate are the same as the original application for a certificate of authority.

An application must be accompanied by a certified statement of amendment duly authenticated by the proper officer of the state or country where the corporation is incorporated.

A foreign corporation which amends its name and applies for an amended certificate of authority, and is the owner of a trademark or trade name, is a general partner named in a fictitious name certificate, or is a general partner in a limited partnership which is on file with the secretary of state, must change or amend its name in each registration when it files an application for an amended certificate of authority.

SECTION 5. A new subsection to section 10-23-04 of the North Dakota Century Code is created and enacted as follows:

Filing a cancellation of reserved corporate name, ten dollars.

SECTION 6. AMENDMENT. Section 10-24-07.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-24-07.1. Reserved name.

1. The exclusive right to the use of a corporate name permitted by section 10-24-07 may be reserved by any person.

2. The reservation must be made by filing with the secretary of state a request that the name be reserved, with the fees provided in chapter 10-28. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months. The reservation may be renewed for successive twelve-month periods.

3. The right to the exclusive use of a corporate name reserved under this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee, with the fees provided in chapter 10-28.

4. The right to the exclusive use of a corporate name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of cancellation, together with the fees provided in chapter 10-28.

SECTION 7. AMENDMENT. Section 10-24-09 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-24-09. Change of registered office or registered agent. A corporation may change its registered office or registered agent upon filing in the office of the secretary of state a statement setting forth:

1. The name of the corporation.

2. ~~The address of its then registered office.~~

~~3.~~ If the address of its registered office is to be changed, the address to which the registered office is to be changed.

~~4. The name of its then registered agent.~~

~~5.~~ 3. If its registered agent is to be changed, the name of its successor registered agent.

~~6.~~ 4. That the address of its registered office and the address of the office of its registered agent, as changed, will be identical.

~~7.~~ 5. That the change was authorized by resolution duly adopted by its board of directors.

The statement must be executed by an officer of the corporation and delivered to the secretary of state with proof of the registered agent's consent if the registered agent is changed. If the secretary of state finds that the statement conforms to the provisions of chapters 10-24 through 10-28, the secretary of state shall file the statement and upon such filing the change of address of the registered office or the appointment of a new registered agent becomes effective.

The fee prescribed in chapter 10-28 for change of registered office must be refunded when in the secretary of state's opinion a change of address of registered office results from rezoning or postal reassignment.

Any registered agent of a corporation may resign as agent upon filing a written notice with the secretary of state, who shall forthwith mail a copy to the corporation ~~in care of an officer who is not the resigning registered agent~~ at the last known address ~~of the officer~~. The appointment of the agent shall terminate thirty days after receipt of the notice by the secretary of state.

SECTION 8. AMENDMENT. Section 10-24-36 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-24-36. Filing of articles of amendment. The articles of amendment must be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law and that all fees have been paid as prescribed in chapters 10-24 through 10-28, the secretary of state shall endorse on the articles of amendment the word "filed" and the month, day, and year of the filing.

A corporation which amends its name and is the owner of a trademark or trade name, is a general partner named in a fictitious name certificate, or is a general partner in a limited partnership which is on file with the secretary of state, must change or amend its name in each registration when it files an amendment.

SECTION 9. AMENDMENT. Section 10-27-09 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-27-09. Change of registered office or registered agent of foreign corporation. A foreign corporation authorized to conduct affairs in this state may change its registered office or its registered agent upon filing in the office of the secretary of state a statement setting forth:

1. The name of the corporation.

2. ~~The address of its then registered office.~~

~~3.~~ If the address of its registered office is to be changed, the address to which the registered office is to be changed.

~~4. The name of its then registered agent.~~

~~5.~~ 3. If its registered agent is to be changed, the name of its successor registered agent.

~~6.~~ 4. That the address of its registered office and the address of the office of its registered agent, as changed, will be identical.

~~7.~~ 5. That the change was authorized by resolution duly adopted by its board of directors.

The statement must be executed by an officer of the corporation and delivered to the secretary of state with proof of the registered agent's consent if the registered agent is changed. If the secretary of state finds that the statement conforms to the provisions of this chapter, the secretary of state shall file the statement and upon filing the change of address of the registered office or the appointment of a new registered agent becomes effective.

The fee prescribed in chapter 10-28 for change of registered office must be refunded when in the secretary of state's opinion a change of address of registered office results from rezoning or postal reassignment.

Any registered agent in this state appointed by a foreign corporation may resign by filing a written notice with the secretary of state who shall forthwith mail a copy to the foreign corporation at its principal office ~~in the state or country under the laws of which it is incorporated~~. The appointment of the registered agent shall terminate thirty days after receipt of the notice by the secretary of state.

SECTION 10. AMENDMENT. Section 10-27-13 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-27-13. Amended certificate of authority. A foreign corporation authorized to conduct affairs in this state shall procure an amended certificate of authority if it changes its corporate name or desires to pursue in this state purposes other than those set forth in its prior application for a certificate of authority by making application to the secretary of state.

The requirements in respect to the form and contents of the application, the manner of its execution or its filing with the secretary of state, the issuance of an amended certificate of authority, and the effect thereof are the same as in the case of an original application for a certificate of authority.

A foreign corporation which amends its name and applies for an amended certificate of authority, and is the owner of a trademark or trade name, is a general partner named in a fictitious name certificate, or is a general partner in a limited partnership which is on file with the secretary of state, must change or amend its name in each registration when it files an application for an amended certificate of authority.

SECTION 11. A new subsection to section 10-28-01 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Filing a cancellation of reserved corporate name, ten dollars.

Approved April 8, 1993
Filed April 9, 1993

CHAPTER 92

SENATE BILL NO. 2222
(Senators W. Stenehjem, Langley, Krebsbach)
(Representatives Gorman, Mahoney, Shide)

LIMITED LIABILITY COMPANIES

AN ACT to create and enact chapter 10-32, a new section to chapter 57-38, section 57-38-60.2, and a new section to chapter 57-38.1 of the North Dakota Century Code, relating to enactment of the North Dakota Limited Liability Company Act, the income tax filing method of a limited liability company, and personal liability for income taxes of a governor or manager of a limited liability company; and to amend and reenact sections 10-30.1-01, 10-30.1-04, 10-30.1-06, 10-30.2-01, 10-30.2-11, 10-30.2-12, 10-30.2-14, 40-57.1-02, 40-57.1-04.3, 40-57.2-01, 40-57.3-03, subsection 5 of section 57-38-01, subdivision q of subsection 1 of section 57-38-01.2, subsection 3 of section 57-38-30.5, subsection 3 of section 57-38-45, and subsection 3 of section 57-38-67 of the North Dakota Century Code, relating to limited liability companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-30.1-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-30.1-01. Definitions. As used in this chapter, unless the context otherwise requires, the term:

1. "Qualified entity" means a business that:

   a. Is a small business concern as defined under Public Law No. 85-536, § 2[3], 72 Stat. 384; 15 U.S.C. 632, as amended.

   b. Is a business which through a process employing knowledge and labor adds value to a product for resale.

   c. Has its principal office in this state and is primarily doing business within this state.

   However, after July 1, 1989, a "qualified entity" does not include any business or an affiliate of a business that owns tax-exempt securities.

2. "Taxpayer" includes any individual, corporation, or fiduciary subject to a tax or a duty to file a tax return imposed by chapter 57-38.

3. "Venture capital corporation" means a corporation or limited liability company that is organized for the specific purposes and under the specific conditions provided for in this chapter.

SECTION 2. AMENDMENT. Section 10-30.1-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-30.1-04. Venture capital corporation - Incorporation.

1. To carry out the purposes of this chapter, venture capital corporations may be formed under chapters 10-19.1 through 10-23 if a corporation, or under chapter 10-32 if a limited liability company. The articles of incorporation or articles of organization of a venture capital corporation must comply with subsections 2 through 9.

2. The purpose of a venture capital corporation must be solely to raise funds to be used to make investments in, and provide financing to, qualified entities in a manner that will encourage capital investment in the state, encourage the establishment or expansion of business and industry, provide additional jobs within the state, and encourage research and development activities in the state.

3. Each director or governor of a venture capital corporation must be a North Dakota resident, and must have a minimum investment in the venture capital corporation of one thousand dollars.

4. A venture capital corporation will provide financing to qualified entities to be used solely for the purpose of enhancing the production capacity of the qualified entity or the ability of the qualified entity to do business in this state. The venture capital corporation may establish and regulate terms and conditions, consistent with this chapter, with respect to the financing. The financing may include any combination of equity investments, loans, guarantees, and commitments for financing, but no more than twenty percent of the stated capital of a venture capital corporation may be invested in any one qualified entity. For purposes of this chapter, "one qualified entity" means a single entity or a group of affiliated entities that are engaged in a unitary business.

5. No business may be transacted or indebtedness incurred by the venture capital corporation, except such as is incidental to the venture capital corporation's organization or to obtaining subscriptions to or payment for its shares or membership interests, until the venture capital corporation receives consideration for such shares or membership interests equal to at least five hundred thousand dollars, which amount will be the initial stated capital of the venture capital corporation.

6. All consideration received from the sale of shares or membership interests must be placed in an interest-bearing escrow account in the Bank of North Dakota, except that up to ten percent of the proceeds may be withheld for use in activities incidental to the venture capital corporation's organization or to obtaining subscriptions to or payment for its shares or membership interests.

7. If at any time within one year of the issuance of the certificate of incorporation or certificate of organization of the venture capital corporation its stated capital equals at least five hundred thousand dollars, or such greater amount established by the articles of incorporation or bylaws or the articles of organization and operating agreement of the venture capital corporation, the funds held in escrow pursuant to subsection 6 must be released to the venture capital corporation for use and disposition according to its articles of incorporation and bylaws or the articles of organization and operating agreement.

8. If within one year of the issuance of the certificate of incorporation or certificate of organization of the venture capital corporation its stated capital has not at any time equaled at least five hundred thousand dollars, or such greater amount established by the articles of incorporation or bylaws or by the articles of organization and operating agreement of the venture capital corporation, its certificate of incorporation or certificate of organization will be terminated, the venture capital corporation must be dissolved, and all funds held in escrow pursuant to subsection 6, and all other remaining funds, must be returned to the investors in proportion to their investments.

9. Prior to any investment in a venture capital corporation, the venture capital corporation must make written disclosure of the provisions contained in subsections 5 through 8 to the potential investor.

10. If a venture capital corporation does not invest or provide financing with eighty percent of the funds received from investors

within two years of receiving the funds, the venture capital corporation must be dissolved and all funds held by the corporation must be returned to the investors in proportion to their investments.

SECTION 3. AMENDMENT. Section 10-30.1-06 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-30.1-06. Amount of tax credit. Subject to sections 10-30.1-07 and 10-30.1-08, the maximum amount of tax credit a taxpayer may receive is equal to twenty-five percent of the taxpayer's investment in any venture capital corporations, up to a total tax credit of two hundred fifty thousand dollars under this chapter. However, a taxpayer is not entitled to a tax credit if the taxpayer has purchased stock or membership interests from and sold stock or membership interests back to the venture capital corporation in a manner that indicates that the sole purpose of the taxpayer's activities was to avoid paying state income tax by receiving additional tax credits.

SECTION 4. AMENDMENT. Section 10-30.2-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-30.2-01. Definitions. As used in this chapter, unless the context otherwise requires, the term:

1. "Board of directors" means the board of directors of the corporation.

2. "Corporation" means the corporation established by section 10-30.2-02.

3. "North Dakota business" means a business owned by a North Dakota resident, a partnership, association, limited liability company, or corporation domiciled in North Dakota, or a limited liability company or corporation, including a wholly owned subsidiary of a foreign limited liability company or corporation, that does business primarily in North Dakota or does substantially all of its production in North Dakota.

4. "Professional investor" means any bank, bank holding company, savings institution, trust company, credit union, insurance company, or any

person, limited liability company, partnership, or other entity whose principal business is making venture capital investments.

5. "Shareholder" means a registered owner of shares in the corporation.

SECTION 5. AMENDMENT. Section 10-30.2-11 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[1] **10-30.2-11. Tax credits for investment by banks, savings and loan associations, trust companies, and insurance companies.** A bank, savings and loan association, trust company, or insurance company that invests in stock issued by the corporation, or in a separate legal entity such as a limited partnership or limited liability company created by the corporation as an affiliate for the purpose of obtaining investment capital from the public, is entitled, subject to section 10-30.2-13, to a credit in an amount equal to twenty-five percent of the total amount invested against the tax liability imposed against the taxpayer pursuant to sections 26.1-03-17, 57-35-02, 57-35.1-02, and 57-35.2-02, if applicable. The tax credit allowed under this section must be credited against the taxpayer's tax liability for the taxable year in which full consideration for the investment is paid by the taxpayer. The amount by which the credit allowed by this section exceeds the taxpayer's tax liability in that year may be carried forward for seven taxable years.

SECTION 6. AMENDMENT. Section 10-30.2-12 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[2] **10-30.2-12. Income tax credits for investment.** A taxpayer that invests in stock issued by the corporation, or in a separate legal entity such as a limited partnership or limited liability company created by the corporation as an affiliate for the purpose of obtaining investment capital from the public, is entitled, subject to section 10-30.2-13, to a credit in the amount equal to twenty-five percent of the total amount invested against any state income tax liability imposed against the taxpayer. The tax credit allowed under this section must be credited against the taxpayer's tax liability for the taxable year in which full consideration for the investment is paid by the taxpayer. The amount by which the credit allowed by this section exceeds the taxpayer's tax liability in that year may be carried forward for seven taxable years. No taxpayer claiming a credit under this section is eligible to claim a credit for the same investment under chapter 10-30.1.

SECTION 7. AMENDMENT. Section 10-30.2-14 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-30.2-14. State and board of director immunity from liability. The state of North Dakota and the board of directors are not liable for any damage incurred by an investor in the corporation, or a separate legal entity such as a limited

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[1] NOTE: Section 10-30.2-11 was also amended by section 3 of Senate Bill No. 2449, chapter 72.

[2] NOTE: Section 10-32.2-12 was also amended by section 4 of Senate Bill No. 2449, chapter 72.

partnership or limited liability company created by the corporation as an affiliate for the purpose of obtaining investment capital from the public.

SECTION 8. Chapter 10-32 of the North Dakota Century Code is created and enacted as follows:

10-32-01. Citation. This chapter may be cited as the "North Dakota Limited Liability Company Act".

10-32-02. Definitions. For the purposes of this chapter, unless the language or context clearly indicates that a different meaning is intended:

1. "Acquiring organization" means the foreign or domestic limited liability company or foreign or domestic corporation that acquires in an exchange the shares of a domestic or foreign corporation or the membership interests of a limited liability company.

2. "Address" means mailing address, including a zip code. In the case of a registered office or principal executive office, the term means the mailing address and the actual office location which may not be a post-office box.

3. "Agreement to give transfer consent" means a member-control agreement under section 10-32-50, or a part of a member-control agreement, under which the members agree in advance to give any consent referred to in subsection 2 of section 10-32-32.

4. "Articles" or "articles of organization" means:

   a. In the case of a limited liability company organized under this chapter, articles of organization, articles of amendment, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of membership interests, articles of merger, articles of abandonment, and articles of termination.

   b. In the case of a foreign limited liability company, the term includes all documents serving a similar function required to be filed with the secretary of state or other state office of the limited liability company's state of organization.

5. "Board" or "board of governors" means the board of governors of a limited liability company.

6. "Board member" means:

   a. An individual serving on the board of governors in the case of a limited liability company; and

   b. An individual serving on the board of directors in the case of a corporation.

7. "Business continuation agreement" means a member-control agreement under section 10-32-50, or a part of a member-control agreement, made after the limited liability company has incurred an event of dissolution, under which the members:

a. Agree that, despite any dissolution, winding up and termination of the limited liability company as a legal entity, its business will be continued in a successor organization through a merger, transfer of assets, transfer of membership interests, or otherwise; and

b. Specify the terms and conditions under which the business continuation will occur.

8. "Class", when used with reference to membership interests, means a category of membership interests which differs in one or more rights or preferences from another category of membership interests of the limited liability company.

9. "Closely held limited liability company" means a limited liability company that does not have more than thirty-five members.

10. "Constituent organization" means a limited liability company or a domestic or foreign corporation that is a party to a merger or an exchange.

11. "Contribution agreement" means an agreement between a person and a limited liability company under which:

a. The person agrees to make a contribution in the future; and

b. The limited liability company agrees that, at the time specified for the contribution in the future, the limited liability company will accept the contribution and reflect the contribution in the required records.

12. "Contribution allowance agreement" means an agreement between a person and a limited liability company under which:

a. The person has the right, but not the obligation, to make a contribution in the future; and

b. The limited liability company agrees that, if the person makes the specified contribution at the time specified in the future, the limited liability company will accept the contribution and reflect the contribution in the required records.

13. "Dissolution" means that the limited liability company has incurred an event under subsection 1 of section 10-32-109, subject only to sections 10-32-116 and 10-32-124, that obligates the limited liability company to wind up its affairs and to terminate its existence as a legal entity.

14. "Dissolution avoidance consent" means the consent of all remaining members:

a. Given, as provided in subdivision e of subsection 1 of section 10-32-109, after the occurrence of any event that terminates the continued membership of a member in the limited liability company; and

b. That the limited liability company must be continued as a legal entity without dissolution.

15. "Distribution" means a direct or indirect transfer of money or other property, other than its own membership interests, with or without consideration, or an incurrence or issuance of indebtedness, by a limited liability company to any of its members in respect of membership interests. A distribution may be in the form of an interim distribution or a termination distribution, or as consideration for the purchase, redemption, or other acquisition of its membership interests, or otherwise.

16. "Filed with the secretary of state" means that a signed original of a document together with the fees provided in section 10-32-150, has been delivered to the secretary of state and has been determined by the secretary of state to conform to law. The secretary of state shall endorse on the original the word "Filed" and the month, day, and year of filing, and record the document in the office of the secretary of state.

17. "Financial rights" means a member's rights:

    a. To share in profits and losses as provided in section 10-32-36;

    b. To share in distributions as provided in section 10-32-60;

    c. To receive interim distributions as provided in section 10-32-61; and

    d. To receive termination distributions as provided in subdivision c of subsection 1 of section 10-32-131.

18. "Foreign limited liability company" means a limited liability company organized for profit which is organized under laws other than the laws of this state for a purpose or purposes for which a limited liability company may be organized under this chapter.

19. "Good faith" means honesty in fact in the conduct of the act or transaction concerned.

20. "Governance rights" means all of a member's rights as a member in the limited liability company other than financial rights and the right to assign financial rights.

21. "Governing board" means:

    a. The board of governors in the case of a limited liability company; and

    b. The board of directors in the case of a corporation.

22. "Governor" means an individual serving on the board of governors.

23. "Intentionally" means that the person referred to either has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result. A person "intentionally" violates a statute if the person intentionally does the act or causes the result prohibited by the statute, or if the person intentionally fails to do the act or cause the result required by the statute, even though the person may not know of the existence or constitutionality of the statute or the scope or meaning of the terms used in the statute.

24. "Knows" or has "knowledge" means the person has actual knowledge of a fact. A person does not "know" or have "knowledge" of a fact merely because the person has reason to know of the fact.

25. "Legal representative" means a person empowered to act for another person, including an agent, manager, officer, partner, or associate of an organization; a trustee of a trust; a personal representative; an executor of a will; an administrator of an estate; a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator of the person or estate of a person.

26. "Limited liability company" means a limited liability company, other than a foreign limited liability company, organized under this chapter.

27. "Manager" means a person elected, appointed, or otherwise designated as a manager by the board of governors, and any other person considered elected as a manager pursuant to section 10-32-92.

28. "Member" means a person reflected in the required records of a limited liability company as the owner of some governance rights of a membership interest of the limited liability company.

29. "Membership interest" means a member's interest in a limited liability company consisting of a member's financial rights, a member's right to assign financial rights as provided in section 10-32-31, a member's governance rights, and a member's right to assign governance rights as provided in section 10-32-32.

30. "Notice" is given by a member of a limited liability company to the limited liability company or a manager of a limited liability company when in writing and mailed or delivered to the limited liability company or the manager at the registered office or principal executive office of the limited liability company.

    a. In all other cases, notice is given to a person:

        (1) When mailed to the person at an address designated by the person or at the last known address of the person;

        (2) When handed to the person; or

        (3) When left at the office of the person with a clerk or other person in charge of the office; or

            (a) If there is no one in charge, when left in a conspicuous place in the office; or

            (b) If the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion who is residing there.

    b. Notice by mail is given when deposited in the United States mail with sufficient postage affixed.

    c. Notice is considered received when it is given.

31. "Operating agreement" means rules, resolutions, or other provisions that:

a. Relate to the management of the business or the regulation of the affairs of the limited liability company; and

b. Have been made expressly part of the operating agreement by the action, taken from time to time under section 10-32-69, by the board of governors or the members.

32. "Organization" means a domestic or foreign limited liability company, corporation, partnership, limited partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity.

33. "Owners" means:

a. Members in the case of a limited liability company; and

b. Shareholders in the case of a corporation.

34. "Ownership interests" means:

a. Membership interests in the case of a limited liability company; and

b. Shares in the case of a corporation.

35. "Parent" of a specified limited liability company means a limited liability company or corporation that directly, or indirectly through related limited liability companies or corporations, owns more than fifty percent of the voting power of the membership interests entitled to vote for governors of the specified limited liability company.

36. "Person" includes an individual and an organization.

37. "Pertains" means a contribution "pertains":

a. To a particular series when the contribution is made in return for a membership interest in that particular series.

b. To a particular class when the class has no series and the contribution is made in return for a membership interest in the class.

A contribution that pertains to a series does not pertain to the class of which the series is a part.

38. "Principal executive office" means an office where the elected or appointed president of the limited liability company has an office. If the limited liability company has no elected or appointed president, "principal executive office" means the registered office of the limited liability company.

39. "Registered office" means the place in this state designated in the articles of organization as the registered office of the limited liability company.

40. "Related limited liability company" of a specified limited liability company means a parent or subsidiary of the specified limited liability

company or another subsidiary of a parent of the specified limited liability company.

41. "Required records" are those records required to be maintained under section 10-32-51.

42. "Security" has the meaning given it in subsection 13 of section 10-04-02.

43. "Series" means a category of membership interests, within a class of membership interests, that has some of the same rights and preferences as other membership interests within the same class, but that differ in one or more rights and preferences from another category of membership interests within that class.

44. "Signed" means that the signature of a person has been placed on a document, as provided in subsection 39 of section 41-01-11, and, with respect to a document required by this chapter to be filed with the secretary of state, means that the document has been signed by a person authorized to do so by this chapter, the articles of organization or operating agreement or a resolution approved by the affirmative vote of the required proportion or number of governors or the required proportion of the voting power of membership interests present and entitled to vote. A signature on a document not required by this chapter to be filed with the secretary of state may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, or in any other manner reproduced on the document.

45. "Subsidiary" of a specified limited liability company means:

    a. A limited liability company having more than fifty percent of the voting power of its membership interests entitled to vote for governors owned directly, or indirectly through related limited liability companies or corporations, by the specified limited liability company; or

    b. A corporation having more than fifty percent of the voting power of its shares entitled to vote for directors owned directly, or indirectly through related limited liability companies or corporations, by the specified limited liability company.

46. "Successor organization" means an organization that, pursuant to a business continuation agreement or an order of the court under subsection 6 of section 10-32-119, continues the business of the dissolved and terminated limited liability company.

47. "Surviving organization" means the foreign or domestic limited liability company or domestic or foreign corporation resulting from a merger.

48. "Termination" means the end of a limited liability company's existence as a legal entity and occurs when a notice of termination is:

    a. Filed with the secretary of state under section 10-32-117 together with the fees provided in section 10-32-150; or

b. Is considered filed with the secretary of state under subdivision c of subsection 2 of section 10-32-106 together with the fees provided in section 10-32-150.

49. "Vote" includes authorization by written action.

50. "Winding up" means the period triggered by dissolution during which the limited liability company ceases to carry on its business, except to the extent necessary for concluding its affairs, and disposes of its assets under section 10-32-131.

51. "Written action" means a written document signed by all of the persons required to take the action described. The term also means the counterparts of a written document signed by any of the persons taking the action described. Each counterpart constitutes the action of the persons signing it, and all the counterparts, taken together, constitute one written action by all of the persons signing them.

10-32-03. Reservation of legislative power. The legislative assembly has the power to prescribe such regulations, provisions, and limitations as it determines to be advisable, which are binding upon any and all limited liability companies subject to this chapter. The legislative assembly may amend, repeal, or modify this chapter.

1. Every grant of limited liability company power is subject to alteration, suspension, or repeal in the discretion of the legislative assembly. Any statute of this state relating to limited liability companies may be repealed or amended. The alteration, suspension, amendment, or repeal, or the dissolution of any limited liability company, does not take away or impair any remedy given against the limited liability company, its members, or managers for any liability which has been previously incurred.

2. Either or both houses of the legislative assembly may examine the affairs and conditions of any limited liability company in this state at any time. For that purpose, any committee appointed by the legislative assembly:

   a. May administer all necessary oaths to the governors, managers, and members of a limited liability company;

   b. May examine them on oath in relation to its affairs and condition;

   c. May examine the safes, books, papers, and documents belonging to such limited liability company or pertaining to its affairs and condition; and

   d. May compel the production of all keys, books, papers, and documents by a summary process to be issued on application to any district court or any district judge under the rules the court prescribes.

10-32-04. Purposes. A limited liability company may be organized under this chapter for any business purpose, unless some other statute of this state requires organization for any of those purposes under a different law. Unless otherwise provided in its articles of organization, a limited liability company has general business purposes.

10-32-05. Organizers. One or more individuals of the age of eighteen years or more may act as organizers of a limited liability company by filing with the secretary of state articles of organization for the limited liability company.

10-32-06. Two-member requirement. A limited liability company must have two or more members at the time of its formation. A limited liability company must be dissolved under subdivision e of subsection 1 of section 10-32-109 whenever the limited liability company ceases to have at least two members unless the remaining member admits a new member within ninety days of the termination of the continued membership of the former member.

10-32-07. Articles of organization.

1. The articles of organization must contain:

   a. The name of the limited liability company;

   b. The address of the principal executive office;

   c. The address of the registered office of the limited liability company and the name of its registered agent at that address;

   d. The name and address of each organizer;

   e. The limited period of existence for the limited liability company, which must be a period of thirty years or less from the date the articles of organization are filed with the secretary of state;

   f. A statement as to whether upon the occurrence of any event under subdivision e of subsection 1 of section 10-32-109 that terminates the continued membership of a member in the limited liability company, the remaining members will have the power to avoid dissolution by giving dissolution avoidance consent; and

   g. A statement as to whether the members have the power to enter into a business continuation agreement.

2. The following provisions govern a limited liability company unless modified in the articles of organization:

   a. A limited liability company has general business purposes (section 10-32-04);

   b. A limited liability company has certain powers (section 10-32-23);

   c. The power to adopt, amend, or repeal the operating agreement is vested in the board of governors (section 10-32-68);

   d. A limited liability company must allow cumulative voting for governors (section 10-32-76);

   e. The affirmative vote of a majority of governors present is required for an action of the board of governors (section 10-32-83);

   f. A written action by the board of governors taken without a meeting must be signed by all governors (section 10-32-84);

g. The board may accept contributions, make contribution agreements, and make contribution allowance agreements (subsection 1 of section 10-32-56 and sections 10-32-58 and 10-32-59);

h. All membership interests are ordinary membership interests entitled to vote and are of one class with no series (subdivisions a and b of subsection 5 of section 10-32-56);

i. All membership interests have equal rights and preferences in all matters not otherwise provided for by the board of governors (subdivision b of subsection 5 of section 10-32-56);

j. The restatement of value of previous contributions is to be determined according to a specified process (subsections 3 and 4 of section 10-32-57);

k. A member has certain preemptive rights, unless otherwise provided by the board of governors (section 10-32-37);

l. The affirmative vote of the owners of a majority of the voting power of the membership interests present and entitled to vote at a duly held meeting is required for an action of the members, except where this chapter requires the affirmative vote of a majority of the voting power of all membership interests entitled to vote (subsection 1 of section 10-32-43);

m. The voting power of each membership interest is in proportion to the value reflected in the required records of the contributions of the members (section 10-32-45);

n. Members share in distributions in proportion to the value reflected in the required records of the contributions of members (section 10-32-60);

o. Members share profits and losses in proportion to the value reflected in the required records of the contributions of members (section 10-32-36);

p. A written action by the members taken without a meeting must be signed by all members (section 10-32-43);

q. Members have no right to receive distributions in kind and the limited liability company has only limited rights to make distributions in kind (section 10-32-62); and

r. A member is not subject to expulsion (subsection 2 of section 10-32-30).

3. The following provisions govern a limited liability company unless modified either in the articles of organization or in the operating agreement:

a. Governors serve for an indefinite term that expires at the next regular meeting of members (section 10-32-72);

b. The compensation of governors is fixed by the board of governors (section 10-32-74);

c. A certain method must be used for removal of governors (section 10-32-78);

d. A certain method must be used for filling board of governor vacancies (section 10-32-79);

e. If the board of governors fails to select a place for a board meeting, it must be held at the principal executive office (subsection 1 of section 10-32-80);

f. A governor may call a board of governors meeting, and the notice of the meeting need not state the purpose of the meeting (subsection 3 of section 10-32-80);

g. A majority of the board of governors is a quorum for a board meeting (section 10-32-82);

h. A committee consists of one or more individuals, who need not be governors, appointed by affirmative vote of a majority of the governors present (subsection 2 of section 10-32-85);

i. The board may establish a special litigation committee (section 10-32-85);

j. The president and treasurer have specified duties, until the board of governors determines otherwise (section 10-32-89);

k. Managers may delegate some or all of their duties and powers, if not prohibited by the board of governors from doing so (section 10-32-95);

l. Regular meetings of members need not be held, unless demanded by a member under certain conditions (section 10-32-38);

m. In all instances where a specific minimum notice period has not otherwise been fixed by law, not less than ten days' notice is required for a meeting of members (subsection 2 of section 10-32-40);

n. For a quorum at a members' meeting there is required a majority of the voting power of the membership interests entitled to vote at the meeting (section 10-32-44);

o. The board of governors may fix a date up to fifty days before the date of a members' meeting as the date for the determination of the members entitled to notice of and entitled to vote at the meeting (subsection 1 of section 10-32-45);

p. Indemnification of certain persons is required (section 10-32-99);

q. The board of governors may authorize, and the limited liability company may make, distributions not prohibited, limited, or restricted by an agreement (subsection 1 of section 10-32-64); and

r. Members have no right to interim distributions except as provided through the operating agreement or an act of the board of governors (section 10-32-61).

4. The following provisions relating to the management of the business or the regulation of the affairs of a limited liability company may be included either in the articles of organization or, except for naming persons to serve as the first board of governors, fixing a greater than majority governor or member vote, establishing the rights and priorities for distributions and the rights to share in profits and losses, or giving or prescribing the manner of giving voting rights to persons other than members otherwise than pursuant to the articles of organization, or eliminating or limiting a governor's personal liability, in the operating agreement:

a. The persons to serve as the first board of governors may be named in the articles of organization (subsection 1 of section 10-32-69);

b. A manner for increasing or decreasing the number of governors may be provided (section 10-32-70);

c. Additional qualifications for governors may be imposed (section 10-32-71);

d. Governors may be classified (section 10-32-75);

e. The day or date, time, and place of board of governors meetings may be fixed (subsection 1 of section 10-32-80);

f. Absent governors may be permitted to give written consent or opposition to a proposal (section 10-32-81);

g. A larger than majority vote may be required for board of governor action (section 10-32-83);

h. Authority to sign and deliver certain documents may be delegated to a manager or agent of the limited liability company other than the president (section 10-32-89);

i. Additional managers may be designated (section 10-32-90);

j. Additional powers, rights, duties, and responsibilities may be given to managers (section 10-32-91);

k. A method for filling vacant offices may be specified (subsection 3 of section 10-32-94);

l. The day or date, time, and place of regular member meetings may be fixed (subsection 3 of section 10-32-38);

m. Certain persons may be authorized to call special meetings of members (subsection 1 of section 10-32-39);

n. Notices of member meetings may be required to contain certain information (subsection 3 of section 10-32-40);

o. A larger than majority vote may be required for member action (section 10-32-42);

p. Voting rights may be granted in or pursuant to the articles of organization to persons who are not members (subsection 3 of section 10-32-45);

q. Limited liability company actions giving rise to dissenter rights may be designated (subdivision d of subsection 1 of section 10-32-55); and

r. A governor's personal liability to the limited liability company or its members for monetary damages for breach of fiduciary duty as a governor may be eliminated or limited in the articles (subsection 4 of section 10-32-86).

5. The articles of organization may contain other provisions not inconsistent with law relating to the management of the business or the regulation of the affairs of the limited liability company.

6. It is not necessary to set forth in the articles of organization any of the limited liability company powers granted by this chapter.

10-32-08. Filing of articles of organization. An original of the articles of organization must be filed with the secretary of state. If the secretary of state finds that the articles of organization conform to law and that all fees have been paid under section 10-32-150, the secretary of state shall issue a certificate of organization to the organizers or their representative.

10-32-09. Effective date of organization. The limited liability company existence begins upon the issuance of the certificate of organization. A certificate of organization is conclusive evidence that all conditions precedent and required to be performed by the organizers have been performed and that the limited liability company has been organized under this chapter, except as against this state in a proceeding to cancel or revoke the certificate of organization or in a judicial intervention proceeding pursuant to section 10-32-119.

10-32-10. Limited liability company name.

1. The limited liability company name:

a. Must be in the English language or in any other language expressed in English letters or characters;

b. Must contain the words "limited liability company", or must contain the abbreviation "L.L.C." or, in the case of an organization formed pursuant to chapter 10-31, must contain the words "professional limited liability company", or the abbreviation "P.L.C.";

c. May not contain the word "corporation" or "incorporated" and may not contain the abbreviation of either or both of these words;

d. May not contain a word or phrase that indicates or implies that it is organized for a purpose other than a legal business purpose; and

e. May not be the same as, or deceptively similar to, the name of a domestic or foreign limited liability company, corporation, or limited

partnership, whether profit or nonprofit, authorized to do business in this state, or a name the right to which is, at the time of organization, reserved in the manner provided in section 10-32-11, or is a fictitious name registered with the office of the secretary of state in the manner provided in chapter 45-11 or is a trade name registered with the office of the secretary of state in the manner provided in chapter 47-25 unless there is filed with the articles of organization one of the following:

(1) The written consent of the domestic or foreign limited liability company, corporation, or limited partnership authorized to do business in this state having a deceptively similar name or the holder of a reserved name or registered trade name to use the deceptively similar name; or

(2) A certified copy of a final judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.

2. The secretary of state shall determine whether a limited liability company name is deceptively similar to another name for purposes of this chapter.

3. This section and section 10-32-11 do not:

a. Abrogate or limit:

(1) The law of unfair competition or unfair practices;

(2) Chapter 47-25;

(3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, service marks;

(4) Any other rights to the exclusive use of names or symbols.

b. Derogate the common law or the principles of equity.

4. A limited liability company that is merged with another limited liability company or domestic or foreign corporation, or that is organized by the reorganization of one or more limited liability companies or domestic or foreign corporations, or that acquires by sale, lease, or other disposition to or exchange with a limited liability company all or substantially all of the assets of another limited liability company or domestic or foreign corporation including its name, may have the same name as that used in this state by any of the other limited liability companies or domestic or foreign corporations, if the other limited liability company or domestic or foreign corporation was organized under the laws of, or is authorized to transact business in, this state.

5. The use of a name by a limited liability company in violation of this section does not affect or vitiate its limited liability company existence, but a court in this state may, upon application of the state or of an interested or affected person, enjoin the limited liability company from doing business under a name assumed in violation of this section,

although its articles of organization may have been filed with the secretary of state and a certificate of organization issued.

10-32-11. Reserved name.

1. The exclusive right to the use of a limited liability company name otherwise permitted by section 10-32-10 may be reserved by any person.

2. The reservation is made by filing with the secretary of state a request that the name be reserved together with the fees provided in section 10-32-150. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months. The reservation may be renewed for successive twelve-month periods.

3. The right to the exclusive use of a limited liability company name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee together with the fees provided in section 10-32-150.

4. The right to the exclusive use of a limited liability company name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the cancellation together with the fees provided in section 10-32-150.

10-32-12. Registered office and agent.

1. A limited liability company shall continuously maintain a registered office in this state. A registered office need not be the same as the principal place of business, or the principal executive office of the limited liability company.

2. A limited liability company shall designate in its articles of organization a registered agent. The registered agent may be an individual residing in this state, a domestic corporation or a domestic limited liability company, or a foreign corporation or foreign limited liability company authorized to transact business in this state. The registered agent must maintain a business office that is identical with the registered office. Proof of the registered agent's consent to serve in such capacity must be filed with the secretary of state, together with the fees provided in section 10-32-150.

10-32-13. Change of registered office or agent.

1. A limited liability company may change its registered office, change its registered agent, or state a change in the name of its registered agent, by filing with the secretary of state, along with the fees provided in section 10-32-150, a statement containing:

   a. The name of the limited liability company;

   b. If the address of its registered office is to be changed, the new address of its registered office;

c. If its registered agent is to be designated or changed, the name of its new registered agent;

d. If the name of its registered agent is to be changed, the name of its registered agent as changed;

e. A statement that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical; and

f. A statement that the change of registered office or registered agent was authorized by resolution approved by the board of governors.

2. A registered agent of a limited liability company may resign by filing with the secretary of state a signed written notice of resignation, including a statement that a signed copy of the notice has been given to the limited liability company at its principal executive office, or to a legal representative of the limited liability company. The appointment of the agent terminates thirty days after the notice is filed with the secretary of state.

3. If the business address or name of a registered agent changes, the agent shall change the address of the registered office or the name of the registered agent, as the case may be, of each limited liability company represented by that agent by filing with the secretary of state a statement as required in subsection 1, except that it need be signed only by the registered agent, need not be responsive to subdivision c or f of subsection 1, and must state that a copy of the statement has been mailed to each of those limited liability companies or to the legal representative of each of those limited liability companies.

10-32-14. Amendment of articles of organization. The articles of organization of a limited liability company may be amended at any time to include or modify any provision that is required or permitted to appear in the articles or to omit any provision not required to be included in the articles, except that when articles are amended to restate them, the name and address of each organizer may be omitted. Unless otherwise provided in this chapter, the articles may be amended or modified only in accordance with sections 10-32-14 through 10-32-18.

10-32-15. Procedure for amendment before contribution. Before any contribution is reflected in the required records of a limited liability company, the articles of organization may be amended pursuant to section 10-32-67 by the organizers or by the board of governors.

10-32-16. Procedure for amendment after contribution.

1. After any contribution has been reflected in the required records of a limited liability company, the articles of organization may be amended in the manner set forth in this section.

2. A resolution approved by the affirmative vote of a majority of the governors present, or proposed by a member or members owning five percent or more of the voting power of the members entitled to vote, that sets forth the proposed amendment must be submitted to a vote at the next regular or special meeting of the members of which notice has not yet been

given but still can be timely given. Any number of amendments may be submitted to the members and voted upon at one meeting, but the same or substantially the same amendment proposed by a member or members need not be submitted to the members or be voted upon at more than one meeting during a fifteen-month period. The resolution may amend the articles of organization in their entirety to restate and supersede the original articles of organization and all amendments to them.

3. Written notice of the members' meeting setting forth the substance of the proposed amendment must be given to each member in the manner provided in section 10-32-40 for the giving of notice of meetings of members.

4. The proposed amendment is adopted:

   a. When approved by the affirmative vote of the owners of a majority of the voting power of the members present and entitled to vote; or

   b. If the articles of organization provide for a specified proportion equal to or larger than the majority necessary to transact a specified type of business at a meeting, or if it is proposed to amend the articles to provide for a specified proportion equal to or larger than the majority necessary to transact a specified type of business at a meeting, the affirmative vote necessary to add the provision to, or to amend an existing provision in, the articles of organization is the larger of:

      (1) The specified proportion or number or, in the absence of a specific provision, the affirmative vote necessary to transact the type of business described in the proposed amendment at a meeting immediately before the effectiveness of the proposed amendment; or

      (2) The specified proportion or number that would, upon effectiveness of the proposed amendment, be necessary to transact the specified type of business at a meeting.

10-32-17. Class or series voting on amendments. The owners of the outstanding membership interests of a class or series are entitled to vote as a class or series upon a proposed amendment, whether or not entitled to vote on the amendment by the provisions of the articles of organization, if the amendment would:

1. Effect an exchange, reclassification, or cancellation of all or part of the membership interests of the class or series;

2. Effect an exchange, or create a right of exchange, of all or any part of the membership interests of another class or series for the membership interests of the class or series;

3. Change the rights or preferences of the membership interests of the class or series;

4. Change the membership interests of the class or series into the same or a different number of membership interests of the same or another class or series;

5. Create a new class or series of membership interests having rights and preferences prior and superior to the membership interests of that class or series, or increase the rights and preferences or the number of membership interests, of a class or series having rights and preferences prior or superior to the membership interests of that class or series;

6. Divide the membership interests of the class into series and determine the designation of each series and the variations in the relative rights and preferences between the membership interests of each series or authorize the board of governors to do so;

7. Limit or deny any existing preemptive rights of the membership interests of the class or series; or

8. Cancel or otherwise affect distributions on the membership interests of the class or series.

10-32-18. Articles of amendment. When an amendment has been adopted, articles of amendment must be prepared that contain:

1. The name of the limited liability company;

2. The amendment adopted;

3. If the amendment provides for but does not establish the manner for effecting an exchange, reclassification, division, combination, or cancellation of membership interests, a statement of the manner in which it will be effected; and

4. A statement that the amendment has been adopted pursuant to this chapter.

10-32-19. Effect of amendment.

1. An amendment does not affect an existing cause of action in favor of or against the limited liability company, nor a pending suit to which the limited liability company is a party, nor the existing rights of persons other than members.

2. If the limited liability company name is changed by the amendment, a suit brought by or against the limited liability company under its former name does not abate for that reason.

10-32-20. Filing of articles of amendment. An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to law, and that all fees have been paid as provided in section 10-32-150, then the articles of amendment must be recorded in the office of the secretary of state.

10-32-21. Effective date of articles of amendment. Articles of amendment are effective upon acceptance by the secretary of state or at another time within thirty days after acceptance if the articles of amendment so provide.

10-32-22. Amendment of articles of organization in court-supervised reorganization.

1. Whenever a plan of reorganization of a limited liability company has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of the limited liability company, pursuant to the provisions of any applicable statute of the United States relating to reorganization or limited liability companies, the articles may be amended, in the manner provided in this section, in as many respects as may be necessary to carry out the plan and to put it into effect, so long as the articles as amended contain only provisions which might be lawfully contained in original articles of organization at the time of making the amendment. In particular, and without limitation upon any general power of amendment, the articles may be amended for such purpose so as to:

   a. Change the limited liability company name, period of duration, or organizational purposes of the limited liability company.

   b. Repeal, alter, or amend the operating agreement of the limited liability company.

   c. Change the preferences, limitations, relative rights in respect of all or any part of the membership interests of the limited liability company, and classify, reclassify, or cancel all or any part thereof.

   d. Authorize the issuance of bonds, debentures, or other obligations of the limited liability company, whether convertible into membership interests of any class or bearing warrants or other evidence of optional rights to purchase or subscribe for membership interests of any class, and fix the terms and conditions thereof.

   e. Constitute or reconstitute and classify or reclassify the board of governors and appoint governors and managers in place of or in addition to all or any of the governors or managers then in office.

2. Amendments to the articles pursuant to subsection 1 must be made in the following manner:

   a. Articles of amendment approved by decree or order of the court must be executed and verified in duplicate by the person or persons designated or appointed by the court for that purpose and must set forth the name of the limited liability company, the amendments of the articles approved by the court, the date of the decree or order approving the articles of amendment, the title of the proceedings in which the decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the limited liability company pursuant to the provisions of an applicable statute of the United States.

   b. An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to law, and that all fees have been paid as provided in section 10-32-150, then the articles of amendment must be recorded in the office of the secretary of state.

3. The articles of amendment become effective upon their acceptance by the secretary of state or at any other time within thirty days after their acceptance if the articles of amendment so provide.

4. The articles are deemed to be amended accordingly, without any action by the governors or members of the limited liability company and with the same effect as if the amendment had been adopted by the unanimous action of the governors and members.

10-32-23. Powers.

1. A limited liability company has the powers set forth in this section, subject to any limitations provided in any other statute of this state or in its articles of organization.

2. A limited liability company has a limited duration of thirty years from the date the articles of organization are filed with the secretary of state, unless the articles of organization state a shorter duration.

3. A limited liability company may sue and be sued, and complain, defend, and participate as a party or otherwise in any legal, administrative, or arbitration proceeding in its limited liability company name.

4. A limited liability company may purchase, lease, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property, or any interest in property, wherever situated.

5. A limited liability company may sell, convey, mortgage, create a security interest in, lease, exchange, transfer, or otherwise dispose of all or any part of its real or personal property, or any interest in this property, wherever situated.

6. A limited liability company may purchase, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, exchange, mortgage, lend, create a security interest in, or otherwise dispose of and otherwise use and deal in and with, securities or other interests in, or obligations of, a person or direct or indirect obligations of any domestic or foreign government or instrumentality thereof.

7. A limited liability company may make contracts and incur liabilities, borrow money, and secure any of its obligations by mortgage of or creation of a security interest in all or any of its property, franchises, and income.

8. A limited liability company may invest and reinvest its funds.

9. A limited liability company may take and hold real and personal property, whether or not of a kind sold or otherwise dealt in by the limited liability company, as security for the payment of money loaned, advanced, or invested.

10. A limited liability company may conduct its business, carry on its operations, have offices, and exercise the powers granted by this chapter anywhere in the universe.

11. Except as otherwise prohibited by law, a limited liability company may make donations, irrespective of limited liability company benefit, for:

    a. The public welfare;

    b. Social, community, charitable, religious, educational, scientific, civic, literary, and testing for public safety purposes and for similar or related purposes;

    c. For the purpose of fostering national or international amateur sports competition; and

    d. The prevention of cruelty to children and animals.

12. A limited liability company may pay pensions, retirement allowances, and compensation for past services to and for the benefit of, and establish, maintain, continue, and carry out, wholly or partially at the expense of the limited liability company, employee or incentive benefit plans, trusts, and provisions to or for the benefit of, any or all of its and its related limited liability companies' managers, governors, employees, and agents and the families, dependents, and beneficiaries of any of them. It may indemnify and purchase and maintain insurance for and on behalf of a fiduciary of any of these employee benefit and incentive plans, trusts, and provisions.

13. A limited liability company may participate in any capacity in the promotion, organization, ownership, management, and operation of any organization or in any transaction, undertaking, or arrangement that the participating limited liability company would have power to conduct by itself, whether or not the participation involves sharing or delegation of control with or to others.

14. A limited liability company may provide for its benefit life insurance and other insurance with respect to the services of any or all of its managers, governors, employees, and agents, or on the life of a member for the purpose of acquiring at the death of the member any or all membership interests in the limited liability company owned by the member.

15. A limited liability company may have, alter at its pleasure, and use a limited liability company seal as provided in section 10-32-24.

16. A limited liability company may adopt, amend, and repeal an operating agreement relating to the management of the business or the regulation of the affairs of the limited liability company as provided in section 10-32-68.

17. A limited liability company may establish committees of the board of governors, elect or appoint persons to the committees, and define their duties as provided in section 10-32-85 and fix their compensation.

18. A limited liability company may elect or appoint managers, employees, and agents of the limited liability company and define their duties and fix their compensation.

19. A limited liability company may accept contributions under section 10-32-56 and may enter into contribution agreements under section 10-32-58 and contribution allowance agreements under section 10-32-59.

20. A limited liability company may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist persons as provided in section 10-32-97.

21. A limited liability company may make advances to its governors, managers, and employees and those of its subsidiaries as provided in section 10-32-98.

22. A limited liability company shall indemnify those persons against certain expenses and liabilities only as provided in section 10-32-99.

23. A limited liability company may conduct all or part of its business under one or more trade names.

24. A limited liability company may have and exercise all other powers necessary or convenient to effect any or all of the business purposes for which the limited liability company is organized.

10-32-24. Limited liability company seal. A limited liability company may have a limited liability company seal. The use or nonuse of a limited liability company seal does not affect the validity, recordability, or enforceability of a document or act. If a limited liability company has a limited liability company seal, the use of the seal by the limited liability company on a document is not necessary.

10-32-25. Defense of ultra vires. No act of a limited liability company and no conveyance or transfer of real or personal property to or by a limited liability company is invalid by reason of the fact that the limited liability company was without capacity or power to do such act or to make or receive such conveyance or transfer but such lack of capacity or power may be asserted:

1. In a proceeding by a member against the limited liability company to enjoin the doing of any act or acts or the transfer of real or personal property by or to the limited liability company. If the unauthorized acts or transfers sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the limited liability company is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the limited liability company or to other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract. However, anticipated profits to be derived from the performance of the contract may not be awarded by the court as a loss or damage sustained.

2. In a proceeding by the limited liability company, whether acting directly or through a receiver, trustee or other legal representative, or through members in a representative suit, against the incumbent or former managers or governors of the limited liability company.

3. In a proceeding by the attorney general, as provided in this chapter to dissolve the limited liability company or to enjoin the limited liability company from the transaction of unauthorized business.

10-32-26. Unauthorized assumption of limited liability company powers - Liability. All persons who assume to act as a limited liability company without authority are jointly and severally liable for all debts and liabilities incurred or arising as a result.

10-32-27. Transaction of business outside North Dakota. By enacting this chapter the legislative assembly recognizes the limited liability company as an important and constructive form of business organization. The legislative assembly understands that:

1. Businesses organized under this chapter will often transact business in other states;

2. For businesses organized under this chapter to function effectively and for this chapter to be a useful enactment, this chapter must be accorded the same comity and full faith and credit that states typically accord to each other's corporate laws; and

3. Specifically, it is essential that other states recognize both the legal existence of limited liability companies formed under this chapter and the legal status of all members of these limited liability companies.

The legislative assembly therefore specifically seeks that, subject to any reasonable registration requirements, other states extend to this chapter the same full faith and credit under section 1 of article IV of the Constitution of the United States, and the same comity, that North Dakota extends to statutes that other states enact to provide for the establishment and operation of business organizations.

10-32-28. Nature of a membership interest and statement of interest owned.

1. A membership interest is personal property. A member has no interest in specific limited liability company property. All property of the limited liability company is property of the limited liability company itself.

2. At the request of any member, the limited liability company shall state in writing the particular membership interest owned by that member as of the moment the limited liability company makes the statement. The statement must describe the member's right to vote, to share in profits and losses, and to share in distributions, as well as any assignment of the member's rights then in effect. The statement is not a certificated security, is not a negotiable instrument, and may not serve as a vehicle by which a transfer of any membership interest may be effected.

3. For the purpose of any law relating to security interests, a membership interest and financial rights are each a general intangible, and not a certificated security and not an uncertificated security.

10-32-29. Personal liability.

1. Subject to subsection 3, a member, governor, manager, or other agent of a limited liability company is not, merely on account of this status,

personally liable for the acts, debts, liabilities, or obligations of the limited liability company.

2. However, all persons who assume to act as a limited liability company without authority, are jointly and severally liable for all debts and liabilities incurred or arising as a result.

3. The case law that states the conditions and circumstances under which the corporate veil of a corporation may be pierced under North Dakota law also applies to limited liability companies.

4. The limited liability described in subsections 1 and 3 continues in full force regardless of any dissolution, winding up, and termination of a limited liability company.

10-32-30. Termination of a membership interest.

1. A member always has the power, though not necessarily the right, to terminate its membership by resigning or retiring at any time. A member's resignation or retirement, whether rightful or wrongful, causes dissolution under subdivision e of subsection 1 of section 10-32-109 unless dissolution avoidance consent is obtained from the remaining members. A member has no power to transfer all or part of the member's membership interest, except as provided in sections 10-32-31 and 10-32-32.

2. Unless otherwise provided in the articles of organization, a member may not be expelled.

3. If for any reason the continued membership of a member is terminated and:

   a. If dissolution under subdivision e of subsection 1 of section 10-32-109 is avoided through dissolution avoidance consent, then the member whose membership has terminated loses all governance rights and will be considered merely an assignee of the financial rights owned before the termination of membership; or

   b. If dissolution under subdivision e of subsection 1 of section 10-32-109 is not avoided through dissolution avoidance consent, the member whose continued membership has terminated retains all governance rights owned before the termination of the membership and may exercise those rights through the winding up and termination of the limited liability company.

4. If a member resigns or retires in contravention of the articles of organization or a member-control agreement, then:

   a. The member who has wrongfully resigned or retired is liable to all of the other members and to the limited liability company to the extent damaged by the wrongful resignation or retirement; and

   b. If dissolution avoidance consent is not obtained but the business of the limited liability company is continued under a business continuation agreement, then unless otherwise provided in the business continuation agreement:

(1) The member who has wrongfully resigned or retired has the right as against the successor organization to have the value of the resigned or retired membership interest determined and paid in cash; but

(2) In ascertaining the value of the resigned or retired membership interest, the value of the goodwill of the business must not be considered.

10-32-31. Assignment of financial rights.

1. Except as provided in subsection 3, a member's financial rights are transferable in whole or in part.

2. An assignment of a member's financial rights entitles the assignee to receive, to the extent assigned, only the share of profits and losses and the distributions to which the assignor would otherwise be entitled. An assignment of a member's financial rights does not dissolve the limited liability company and does not entitle or empower the assignee to become a member, to exercise any governance rights, to receive any notices from the limited liability company, or to cause dissolution. The assignment may not allow the assignee to control the member's exercise of governance rights.

3. A restriction on the assignment of financial rights may be imposed in the articles, in the operating agreement, by a resolution adopted by the members, or by an agreement among or other written action by members or among them and the limited liability company. A restriction is not binding with respect to financial rights reflected in the required records before the adoption of the restriction, unless the owners of those financial rights are parties to the agreement or voted in favor of the restriction.

4. A written restriction on the assignment of financial rights that is not manifestly unreasonable under the circumstances and is noted conspicuously in the required records may be enforced against the owner of the restricted financial rights or a successor or transferee of the owner, including a pledgee or a legal representative. Unless noted conspicuously in the required records, a restriction, even though permitted by this section, is ineffective against a person without knowledge of the restriction.

10-32-32. Assignment of a complete membership interest and of governance rights coupled with an assignment of financial rights.

1. A member may assign the member's full membership interest only by assigning all of the member's governance rights coupled with a simultaneous assignment to the same assignee of all the member's financial rights. A member's governance rights are assignable, in whole or in part, only as provided in this section.

2. Subject to subsection 6, a member may, without the consent of any other member, assign governance rights, in whole or in part, to another person already a member at the time of the assignment. Any other assignment of any governance rights is effective only if all the members, other than the

member seeking to make the assignment, approve the assignment by unanimous written consent.

3. When an assignment of governance rights coupled with financial rights is effective under subsection 2:

   a. The assignee becomes a member, if not already a member; and

   b. If the assignor does not retain any governance rights, the assignor ceases to be a member, and the unanimous written consent required under subsection 2, also constitutes the dissolution avoidance consent necessary to avoid dissolution that would otherwise ensue under subdivision e of subsection 1 of section 10-32-109 on account of the assignor ceasing to be a member.

4. When an assignment is effective under subsection 2:

   a. The assignee is liable for any obligations of the assignor under section 10-32-56, including liability for unperformed promises that have been reflected as contributions in the required records, and section 10-32-65 existing at the time of transfer, except to the extent that, at the time the assignee became a member, the liability was unknown to the assignee, and could not be ascertained from the required records; and

   b. The assignor is not released from liability to the limited liability company for obligations of the assignor existing at the time of transfer under sections 10-32-56 and 10-32-65.

5. If any purported or attempted assignment of governance rights is ineffective for failure to obtain the consent required in subsection 2:

   a. The purported or attempted assignment is ineffective in its entirety; and

   b. Any assignment of financial rights that accompanied the purported or attempted assignment of governance rights is void.

6. Restrictions on the transfer of governance rights may be imposed following the same procedures and under the same conditions as stated in subsections 3 and 4 of section 10-32-31 for restricting the transfer of financial rights.

10-32-33. Effective date of assignments. Any permissible assignment of financial rights under section 10-32-31 and of governance rights coupled with financial rights under section 10-32-32 will be effective as to and binding on the limited liability company only when the assignee's name, address, and the nature and extent of the assignment are reflected in the required records of the limited liability company.

10-32-34. Rights of judgment creditor. On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge a member's or an assignee's financial rights with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of a member's financial rights under section 10-32-31. This chapter does not deprive any member or assignee of financial rights

of the benefit of any exemption laws applicable to the membership interest. This section is the sole and exclusive remedy of a judgment creditor with respect to the judgment debtor's membership interest.

10-32-35. Powers of estate of a deceased or incompetent member.

1. If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage the member's person or property, or an order for relief under the bankruptcy code is entered with respect to the member, the member's executor, administrator, guardian, conservator, trustee, or other legal representative may exercise all of the member's rights for the purpose of settling the estate or administering the member's property. If a member is a corporation, trust, or other entity and is dissolved, terminated, or placed by a court in receivership or bankruptcy, the powers of that member may be exercised by its legal representative or successor.

2. If an event referred to in subsection 1 causes the termination of a member's membership interest and the remaining members give dissolution avoidance consent, then:

   a. As provided in subsection 3 of section 10-32-30, the terminated member's interest will be considered to be merely that of an assignee of the financial rights owned before the termination of membership; and

   b. The rights to be exercised by the legal representative of the terminated member will be limited accordingly.

10-32-36. Sharing of profits and losses. Unless otherwise provided in the articles of organization or by the board of governors under subsections 5 and 6 of section 10-32-56, the profits and losses of a limited liability company are to be allocated among the members, and among classes and series of members, in proportion to the value of the contributions of the members reflected in the required records.

10-32-37. Preemptive rights.

1. To the extent allowed by section 9 of article XII of the Constitution of North Dakota, a member of a limited liability company has the preemptive rights provided in this section, unless denied or limited in the articles of organization or by the board of governors pursuant to subdivision b of subsection 5 of section 10-32-56.

2. A preemptive right is the right of a member to make contributions of a certain amount or to make a contribution allowance agreement specifying future contributions of a certain amount before the limited liability company may accept new contributions from other persons or to make contribution allowance agreements with other persons.

3. A member has a preemptive right whenever the limited liability company proposes to accept contributions from other persons, or to make contribution allowance agreements with other persons, pertaining to membership interests of the same series or class as the series or class owned by the member.

4. No preemptive rights arise as to contributions to be accepted from others or as to contribution allowance agreements to be made with others when the contribution is:

   a. To be made in a form other than money;

   b. To be made or reflected pursuant to a plan of merger;

   c. To be made or reflected pursuant to an employee or incentive benefit plan approved at a meeting by the affirmative vote of the owners of a majority of the voting power of all membership interests entitled to vote;

   d. To be made pursuant to a previously made contribution allowance agreement; or

   e. To be made or reflected pursuant to a plan of reorganization approved by a court of competent jurisdiction pursuant to a statute of this state or of the United States.

5. The extent to which each member may make a new contribution, or obtain the right to make a new contribution under a contribution allowance agreement, by exercise of a preemptive right as to any class or series is the ratio that the value of that member's contributions, as reflected in the required records as pertaining to that class or series before the contribution, bears to the total value of all members' contributions reflected in the required records as pertaining to that class or series before the new contribution.

6. A member may waive a preemptive right in writing. The waiver is binding upon the member whether or not consideration has been given for the waiver. Unless otherwise provided in the waiver, a waiver of preemptive rights is effective only for the proposed contribution or contribution allowance agreement described in the waiver.

7. When proposing to accept new contributions, or to make contribution allowance agreements, with respect to which members have preemptive rights under this section, the board of governors shall cause notice to be given to each member entitled to preemptive rights. The notice must be given at least ten days before the date by which the member must exercise a preemptive right and must contain:

   a. The extent of the member's preemptive right, being:

      (1) In the case of a preemptive right to make a contribution, the amount of the contribution to be made; and

      (2) In the case of a preemptive right to make a contribution allowance agreement, the amount of the contribution to be allowed under that contribution allowance agreement;

   b. The method used to determine the extent of the member's preemptive right;

   c. The terms and conditions upon which the member may make a contribution or make a contribution allowance agreement; and

d. The time within which and the method by which the member must exercise the right.

8. If a member does not exercise preemptive rights to make a contribution or to make a contribution allowance agreement, then for a period not exceeding one year after the date fixed by the board of governors for the exercise of those preemptive rights and to the extent of the preemptive rights not exercised, the board of governors may accept contributions or make contribution allowance agreements on terms no less favorable to the limited liability company than those offered to the member.

9. No amendment to the articles of organization that has the effect of denying, limiting, or modifying the preemptive rights provided in this section may be adopted if the votes of a proportion of the voting power sufficient to elect a governor at an election of the entire board of governors under cumulative voting are cast against the amendment.

10-32-38. Regular meetings of members.

1. Regular meetings of members may be held on an annual or other less frequent periodic basis, but need not be held unless required by the articles of organization or operating agreement or by subsection 2.

2. If a regular meeting of members has not been held during the immediately preceding fifteen months, a member or members owning five percent or more of the voting power of all members entitled to vote may demand a regular meeting of members by written notice of demand given to the president or the secretary of the limited liability company. Within thirty days after receipt of the demand by one of those managers, the board of governors shall cause a regular meeting of members to be called and held on notice no later than ninety days after receipt of the demand. If the board of governors fails to cause a regular meeting to be called and held as required by this subsection, the member or members making the demand may call the regular meeting by giving notice as required by section 10-32-40. All necessary expenses of the notice and the meeting must be paid by the limited liability company.

3. A regular meeting, if any, must be held on the day or date and at the time and place fixed by, or in a manner authorized by, the articles or operating agreement, except that a meeting called by or at the demand of a member pursuant to subsection 2 must be held in the county where the principal executive office of the limited liability company is located.

4. At each regular meeting of members there must be an election of qualified successors for governors who serve for an indefinite term or whose terms have expired or are due to expire within six months after the date of the meeting. No other particular business is required to be transacted at a regular meeting. Any business appropriate for action by the members may be transacted at a regular meeting.

10-32-39. Special meetings of members.

1. Special meetings of the members may be called for any purpose or purposes at any time, by:

a. The president;

b. Two or more governors;

c. A person authorized in the articles or operating agreement to call special meetings; or

d. A member or members owning ten percent or more of the voting power of all membership interests entitled to vote.

2. A member or members owning ten percent or more of the voting power of all membership interests entitled to vote, may demand a special meeting of members by written notice of demand given to the president or secretary of the limited liability company and containing the purposes of the meeting. Within thirty days after receipt of the demand by one of those managers, the board of governors shall cause a special meeting of members to be called and held on notice no later than ninety days after receipt of the demand, all at the expense of the limited liability company. If the board of governors fails to cause a special meeting to be called and held as required by this subsection, the member or members making the demand may call the meeting by giving notice as required by section 10-32-40. All necessary expenses of the notice and the meeting must be paid by the limited liability company.

3. Special meetings must be held on the date and at the time and place fixed by the president, the board of governors, or a person authorized by the articles or operating agreement to call a meeting, except that a special meeting called by or at the demand of a member or members pursuant to subsection 2 must be held in the county where the principal executive office is located.

4. The business transacted at a special meeting is limited to the purposes stated in the notice of the meeting. Any business transacted at a special meeting that is not included in those stated purposes is voidable by or on behalf of the limited liability company, unless all of the members have waived notice of the meeting in accordance with subsection 4 of section 10-32-40.

10-32-40. Notice.

1. Except as otherwise provided in this chapter, notice of all meetings of members must be given to every owner of membership interests entitled to vote, except where the meeting is an adjourned meeting and the date, time, and place of the meeting were announced at the time of adjournment.

2. In all instances where a specific minimum notice period has not otherwise been fixed by law, the notice must be given at least ten days before the date of the meeting, or a shorter time provided in the articles of organization or operating agreement, and not more than fifty days before the date of the meeting.

3. The notice must contain the date, time, and place of the meeting, and any other information required by this chapter. In the case of a special meeting, the notice must contain a statement of the purposes of the meeting. The notice may also contain any other information required by

the articles of organization or operating agreement or considered necessary or desirable by the board of governors or by any other person or persons calling the meeting.

4. A member may waive notice of a meeting of members. A waiver of notice by a member entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, or by attendance. Attendance by a member at a meeting is a waiver of notice of that meeting, except where the member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

10-32-41. Electronic communications.

1. A conference among members by any means of communication through which the members may simultaneously hear each other during the conference constitutes a regular or special meeting of members, if the same notice is given of the conference to every owner of membership interests entitled to vote as would be required by this chapter for a meeting, and if the membership interests held by the members participating in the conference would be sufficient to constitute a quorum at a meeting. Participation in a conference by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 10-32-48 are met.

2. A member may participate in a regular or special meeting of members not described in subsection 1 by any means of communication through which the member, other members so participating, and all members physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 10-32-48 are met.

3. Waiver of notice of a meeting by means of communication described in subsections 1 and 2 may be given in the manner provided in subsection 4 of section 10-32-40. Participation in a meeting by means of communication described in subsections 1 and 2 is a waiver of notice of that meeting, except where the member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at the meeting and does not participate in the consideration of the item at that meeting.

10-32-42. Act of members.

1. The members shall take action by the affirmative vote of the owners of a majority of the voting power of the membership interests present and entitled to vote on that item of business except where this chapter or the articles of organization require a larger proportion. If the articles require a larger proportion than is required by this chapter for a particular action, the articles control.

2. In any case where a class or series of membership interests is entitled by this chapter, the articles of organization, the operating agreement, or

the terms of the membership interests to vote as a class or series, the matter being voted upon must also receive the affirmative vote of the owners of the same proportion of the membership interests as is required pursuant to subsection 1.

10-32-43. Action without a meeting.

1. An action required or permitted to be taken at a meeting of the members may be taken without a meeting by written action signed by all of the members entitled to vote on that action. If the articles so provide, any action may be taken by written action signed by the members who own voting power equal to the voting power that would be required to take the same action at a meeting of the members at which all members were present.

2. The written action is effective when signed by the required members, unless a different effective time is provided in the written action.

3. When written action is permitted to be taken by less than all members, all members must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A member who does not sign or consent to the written action has no liability for the action or actions taken by the written action.

10-32-44. Quorum. The owners of a majority of the voting power of the membership interests entitled to vote at a meeting are a quorum for the transaction of business, unless a larger or smaller proportion is provided in the articles or operating agreement. In no event may a quorum consist of less than one third of the membership interests entitled to vote at the meeting. If a quorum is present when a duly called or held meeting is convened, the members present may continue to transact business until adjournment, even though the withdrawal of members originally present leaves less than the proportion otherwise required for a quorum.

10-32-45. Voting rights.

1. The board of governors may fix a date not more than fifty days, or a shorter time period provided in the articles of organization or operating agreement, before the date of a meeting of members as the date for the determination of the owners of membership interests entitled to notice of and entitled to vote at the meeting. When a date is so fixed, only members on that date are entitled to notice of and permitted to vote at that meeting of members.

2. Unless otherwise provided in the articles or by the board of governors under subsections 5 and 6 of section 10-32-56, members have voting power in proportion to the value of the contributions of the members as reflected in the required records.

3. The articles of organization may give or prescribe the manner of giving a creditor, security holder, or other person a right to vote under this section, but no prescription under this subsection may have the effect of transferring from an assignor of financial rights to the assignee the assignor's voting rights.

4. Membership interests owned by two or more members may be voted by any one of them unless the limited liability company receives written notice from

any one of them denying the authority of that person to vote those membership interests.

5. Except as provided in subsection 4, an owner of a membership interest entitled to vote may vote any portion of the membership interest in any way the member chooses. If a member votes without designating the proportion voted in a particular way, the member is considered to have voted all of the membership interest in that way.

10-32-46. Voting list.

1. The manager or agent having charge of the required records reflecting the membership interests of a limited liability company, shall make, at least ten days before each meeting of members, a complete list of the members entitled to vote at the meeting or at any adjournment thereof, arranged in alphabetical order, with the address and the number of membership interests held by each, which list, for a period of ten days prior to the meeting, must be kept on file at the registered office of the limited liability company and is subject to inspection by any member at any time during usual business hours. The list must also be produced and kept open at the time and place of the meeting and is subject to the inspection of any member during the whole time of the meeting. The original membership interest records are prima facie evidence as to who are the members entitled to examine the lists or required records or to vote at any meeting of members.

2. Failure to comply with the requirements of this section does not affect the validity of any action taken at the meeting. Any manager or agent having charge of the required records who fails to prepare the list of members, or keep it on file for a period of ten days, or produce and keep it open for inspection at the meeting as provided in this section, is liable to any member suffering damage on account of such failure, to the extent of such damage.

10-32-47. Voting by organizations and legal representatives.

1. Membership interests of a limited liability company reflected in the required records as being owned by another domestic or foreign organization may be voted by the president or another legal representative of that organization.

2. Except as provided in subsection 3, membership interests of a limited liability company reflected in the required records as being owned by a subsidiary are not entitled to vote on any matter.

3. Membership interests of a limited liability company in the name of, or under the control of, the limited liability company or a subsidiary in a fiduciary capacity are not entitled to vote on any matter, except to the extent that the settlor or beneficiary possesses and exercises a right to vote or gives the limited liability company binding instructions on how to vote the membership interests.

4. Subject to section 10-32-35, membership interests under the control of a person in a capacity as a personal representative, administrator, executor, guardian, conservator, or the like may be voted by the person,

either in person or by proxy, without reflecting in the required records those membership interests in the name of the person.

5. Subject to section 10-32-35, membership interests reflected in the required records in the name of a trustee in bankruptcy or a receiver may be voted by the trustee or receiver either in person or by proxy. Membership interests under the control of a trustee in bankruptcy or a receiver may be voted by the trustee or receiver without reflecting in the required records the name of the trustee or receiver, if authority to do so is contained in an appropriate order of the court by which the trustee or receiver was appointed.

6. Membership interests reflected in the required records in the name of an organization not described in subsections 1 through 5 may be voted either in person or by proxy by the legal representative of that organization.

7. The grant of a security interest in a membership interest does not entitle the holders of the security interest to vote except as provided in section 10-32-32.

10-32-48. Proxies.

1. A member may cast or authorize the casting of a vote by filing a written appointment of a proxy with a manager of the limited liability company at or before the meeting at which the appointment is to be effective. A written appointment of a proxy may be signed by the member or authorized by the member by transmission of a telegram, cablegram, or other means of electronic transmission. The telegram, cablegram, or other means of electronic transmission must set forth or be submitted with information from which it can be determined that the telegram, cablegram, or other electronic transmission was authorized by the member. Any reproduction of the writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the original transmission could be used, if the copy, facsimile telecommunication, or other reproduction is a complete and legible reproduction of the entire original writing or transmission. An appointment of a proxy for membership interests owned jointly by two or more members is valid if signed or otherwise authorized by any one of them, unless the limited liability company receives from any one of those members written notice either denying the authority of that person to appoint a proxy or appointing a different proxy.

2. The appointment of a proxy is valid for eleven months, unless a longer period is expressly provided in the appointment. No appointment is irrevocable and any agreement purporting to grant an irrevocable proxy is void. A member who revokes a proxy is not liable in any way for damages, restitution, or other claim.

3. An appointment may be terminated at will. Termination may be made by filing written notice of the termination of the appointment with a manager of the limited liability company, or by filing a new written appointment of a proxy with a manager of the limited liability company. Termination in either manner revokes all prior proxy appointments and is effective when filed with a manager of the limited liability company.

4. The death or incapacity of a person appointing a proxy does not revoke the authority of the proxy, unless written notice of the death or incapacity is received by a manager of the limited liability company before the proxy exercises the authority under that appointment.

5. Unless the appointment specifically provides otherwise, if two or more persons are appointed as proxies for a member:

   a. Any one of them may vote the membership interests on each item of business in accordance with specific instructions contained in the appointment; and

   b. If no specific instructions are contained in the appointment with respect to voting the membership interests on a particular item of business, the membership interests must be voted as a majority of the proxies determine. If the proxies are equally divided, the membership interests must not be voted.

6. Unless the appointment of a proxy contains a restriction, limitation, or specific reservation of authority, the limited liability company may accept a vote or action taken by a person named in the appointment. The vote of a proxy is final, binding, and not subject to challenge, but the proxy is liable to the member for damages resulting from a failure to exercise the proxy or from an exercise of the proxy in violation of the authority granted in the appointment.

7. If a proxy is given authority by a member to vote on less than all items of business considered at a meeting of members, the member is considered to be present and entitled to vote by the proxy for purposes of subsection 1 of section 10-32-42 only with respect to those items of business for which the proxy has authority to vote. A proxy who is given authority by a member who abstains with respect to an item of business is considered to have authority to vote on the item of business for purposes of this subsection.

8. A member may not grant any proxy to any person who is an assignee of any member's financial rights and who is not also a member.

10-32-49. Member voting agreements.

1. Except as provided in subsection 2, a written agreement among persons who are then members or who have signed contribution agreements, relating to the voting of their membership interests, is valid and specifically enforceable by and against the parties to the agreement. The agreement may override the provisions of subsections 1 through 7 of section 10-32-48 regarding proxies.

2. Any assignee of any member's financial rights may not be a party to an agreement under subsection 1, unless that assignee is also a member. A voting agreement may not relate to the consents referred to in subsection 2 of section 10-32-32, subsection 5 of section 10-32-58, subsection 3 of section 10-32-59, or subdivision e of subsection 1 of section 10-32-109.

10-32-50. Member-control agreements.

1. A written agreement among persons who are then members or who have signed contribution agreements, relating to the control of any phase of the business and affairs of the limited liability company, its liquidation, dissolution, and termination, or the relations among members or persons who have signed contribution agreements is valid as provided in subsection 2.

   a. When this chapter provides that a particular result may or must be obtained through a provision in the articles of organization, other than a provision required by subsection 1 of section 10-32-07 to be contained in the articles, or in the operating agreement, the same result can be accomplished through a member-control agreement valid under this section or through a procedure established by a member-control agreement valid under this section.

   b. A member-control agreement may waive, in whole or in part, a member's dissenting rights under sections 10-32-54 and 10-32-55, but may not waive dissenters' rights under subdivision a of subsection 2 of section 10-32-131.

   c. A member-control agreement may not include an agreement to give transfer consent.

   d. A member-control agreement may include a business continuation agreement only if the articles of organization grant the members the power to enter into business continuation agreements.

2. A written agreement among persons described in subsection 1 that relates to the control of or the liquidation, dissolution, and termination of the limited liability company, the relations among them, or any phase of the business and affairs of the limited liability company, including, without limitation, the management of its business, the declaration and payment of distributions, the sharing of profits and losses, the election of governors or managers, the employment of members by the limited liability company, or the arbitration of disputes, is valid, if the agreement is signed by all persons who are then the members of the limited liability company, whether or not the members all have voting power, and all those who have signed contribution agreements, regardless of whether those signatories will, when members, have voting power. An agreement authorized under this section may allocate to the members authority ordinarily exercised by the board of governors, allocate to the board of governors authority ordinarily exercised by the members, or structure the governance of the limited liability company in any agreed fashion.

3. An agreement valid under subsections 1 and 2 is enforceable by persons who are parties to it and is binding upon and enforceable against only those persons and other persons having knowledge of the existence of the agreement. A signed original of the agreement must be filed with the limited liability company. The limited liability company shall note in its required records that the members' interests are governed by a member-control agreement entered into under this section. A member or any assignee of financial rights has the right upon written demand to obtain a copy of any member-control agreement from the limited liability company at the company's expense.

4. A member-control agreement valid under subsections 1 and 2 is specifically enforceable.

5. A member-control agreement may waive dissenters' rights, subject to subsection 3 of section 10-32-131.

6. A member or any assignee of financial rights has the right upon written demand to obtain a copy of any member-control agreement from the limited liability company at the company's expense.

7. If an agreement authorized under this section takes away from any person any of the authority and responsibility which that person would otherwise possess under this chapter, the effect of the agreement is also to relieve that person of liability imposed by law for acts and omissions in the possession or exercise of that authority and responsibility and to impose that liability on the person or persons possessing the authority and responsibility under the agreement.

8. This section does not apply to, limit, or restrict agreements otherwise valid, nor is the procedure set forth in this section the exclusive method of agreement among members or between the members and the limited liability company with respect to any of the matters described.

10-32-51. Required records and information.

1. A limited liability company shall keep at its principal executive office, or at another place or places within the United States determined by the board of governors:

   a. A current list of the full name and last-known business, residence, or mailing address of each member, each governor, and the president;

   b. A current list of the full name and last-known business, residence, or mailing address of each assignee of financial rights and a description of the rights assigned;

   c. A copy of the articles of organization and all amendments to the articles;

   d. Copies of any currently effective written operating agreement;

   e. Copies of the limited liability company's federal, state, and local income tax returns and reports, if any, for the three most recent years;

   f. Financial statements required by section 10-32-52;

   g. Records of all proceedings of members for the last three years;

   h. Records of all proceedings of the board of governors for the last three years;

   i. Reports made to members generally within the last three years;

   j. Member-control agreements described in section 10-32-50;

k. A statement of all contributions accepted under subsection 3 of section 10-32-56 including for each contribution:

(1) The identity of the member to whom the contribution relates;

(2) The class or series to which the contribution pertains;

(3) The amount of cash accepted by the limited liability company or promised to be paid to the limited liability company;

(4) A description of any services rendered to or for the benefit of the limited liability company or promised to be rendered to or for the benefit of the limited liability company; and

(5) The value accorded under subsection 4 of section 10-32-56 to:

(a) Any other property transferred or promised to be transferred to the limited liability company; and

(b) Any services rendered to or for the benefit of the limited liability company or promised to be rendered to or for the benefit of the limited liability company;

l. A statement of all contribution agreements made under section 10-32-58, including for each contribution agreement:

(1) The identity of the would-be contributor;

(2) The class or series to which the future contribution pertains; and

(3) As to each future contribution to be made, the same information as subdivision k of subsection 1 requires for contributions already accepted;

m. A statement of all contribution allowance agreements made under section 10-32-59, including for each contribution allowance agreement:

(1) The identity of the would-be contributor;

(2) The class or series to which the future contribution would pertain; and

(3) As to each future contribution allowed to be made, the same information as subdivision k of subsection 1 requires for contributions already accepted;

n. An explanation of any restatement of value made under section 10-32-57;

o. Any written consents obtained from members under this chapter;

p. A copy of agreements, contracts, or other arrangements or portions of them incorporated by reference under subsections 6 through 8 of section 10-32-56.

2. A member of a limited liability company has an absolute right, upon written demand, to examine and copy, in person or by a legal representative, at any reasonable time, all documents referred to in subsection 1.

3. A member of a limited liability company who has been a member for at least six months immediately preceding the member's demand or who is the holder of record of at least five percent of all membership interests of the limited liability company has a right, upon written demand, to examine and copy, in person or by a legal representative, other limited liability company records at any reasonable time only if the member demonstrates a proper purpose for the examination. A "proper purpose" is one reasonably related to the person's interest as a member of a limited liability company.

4. On application of the limited liability company, a court in this state may issue a protective order permitting the limited liability company to withhold portions of the records of proceedings of the board of governors for a reasonable period of time, not to exceed twelve months, in order to prevent premature disclosure of confidential information that would be likely to cause competitive injury to the limited liability company. A protective order may be renewed for successive reasonable periods of time, each not to exceed twelve months and in total not to exceed thirty-six months, for good cause shown. In the event a protective order is issued, the statute of limitations for any action that the member might bring as a result of information withheld automatically extends for the period of delay. If the court does not issue a protective order with respect to any portion of the records of proceedings as requested by the limited liability company, it shall award reasonable expenses, including attorney's fees and disbursements, to the member. This subsection does not limit the right of a court to grant other protective orders or impose other reasonable restrictions on the nature of the limited liability company records that may be copied or examined under subsections 2 and 3 or the use or distribution of the records by the demanding member.

5. A member who has gained access under this section to any limited liability company record may not use or furnish to another for use the limited liability company record or a portion of the contents for any purpose other than a proper purpose. Upon application of the limited liability company, a court may issue a protective order or order other relief as may be necessary to enforce the provisions of this subsection.

6. Copies of the information referred to in subsection 1 must be furnished at the expense of the limited liability company. In all other cases, the limited liability company may charge the requesting party a reasonable fee to cover the expenses of providing the copy.

7. The records maintained by a limited liability company may utilize any information storage technique, including, for example, punched holes, printed or magnetized spots, or microimages, even though that makes them illegible visually, if the records can be converted accurately and within a reasonable time, into a form that is legible visually and whose contents are assembled by related subject matter to permit convenient use by people in the normal course of business. A limited liability company shall

convert any of the records referred to in subsections 2 and 3 upon the request of a person entitled to inspect them, and the expense of the conversion must be borne by the person who bears the expense of copying pursuant to subsection 6. A copy of the conversion is admissible in evidence, and is acceptable for all other purposes, to the same extent as the existing or original records would be if they were legible visually.

10-32-52. Financial statements. A limited liability company shall, upon written request by a member, furnish annual financial statements, including at least a balance sheet as of the end of each fiscal year and a statement of income for the fiscal year, prepared on the basis of accounting methods reasonable in the circumstances. The financial statements may be consolidated statements of the limited liability company and one or more of its subsidiaries. In the case of statements audited by a public accountant, each copy must be accompanied by a report setting forth the opinion of the accountant on the statements; in other cases, each copy must be accompanied by a statement of the treasurer or other person in charge of the limited liability company's financial records stating the reasonable belief of the person that the financial statements were prepared in accordance with accounting methods reasonable in the circumstances, describing the basis of presentation, and describing any respects in which the financial statements were not prepared on a basis consistent with those prepared for the previous year.

10-32-53. Actions by members. No action may be brought in this state for violations of this chapter by a member in the right of a domestic or foreign limited liability company unless the plaintiff is a member at the time of the transaction of which plaintiff complains, or the plaintiff's membership interests thereafter devolved upon the plaintiff by operation of law from a person who was a member at such time.

1. In any action thereafter instituted in the right of any domestic or foreign limited liability company by the member, the court having jurisdiction, upon final judgment and finding that the action was brought without reasonable cause, may require the plaintiff to pay the parties named as defendant the reasonable expenses, including fees of attorneys, incurred by them in defense of such action.

2. In any action now pending or hereafter instituted or maintained in the right of any domestic or foreign limited liability company by the owner of less than five percent of the membership interests, unless the membership interest of such owner has a market value in excess of twenty-five thousand dollars, the limited liability company in whose rights such action is brought is entitled at any time before final judgment to require the plaintiff to give security for the reasonable expenses, including attorney's fees, that may be incurred by it in connection with such action or may be incurred by other parties named as defendant for which it may become legally liable. Market value must be determined on the date the plaintiff institutes the action or, in the case of an intervenor, on the date the intervenor becomes a party to the action. The amount of the security may from time to time be increased or decreased, in the discretion of the court, upon showing that the security provided has or may become inadequate or is excessive. The limited liability company has recourse to such security in such amount as the court having jurisdiction determines upon the termination of the action, whether or not the court finds the action was brought without reasonable cause.

10-32-54. Rights of dissenting members.

1. Subject to a member-control agreement under section 10-32-50, a member of a limited liability company may dissent from, and obtain payment for the fair value of the member's membership interests in the event of, any of the following limited liability company actions:

   a. An amendment of the articles of organization that materially and adversely affects the rights or preferences of the membership interests of the dissenting member in that it:

      (1) Alters or abolishes a preferential right of the membership interests;

      (2) Creates, alters, or abolishes a right in respect of the redemption of the membership interests, including a provision respecting a sinking fund for the redemption or repurchase of the membership interests;

      (3) Alters or abolishes a preemptive right of the owner of the membership interests to make a contribution;

      (4) Excludes or limits the right of a member to vote on a matter, or to cumulate votes, except as the right may be excluded or limited through the acceptance of contributions or the making of contribution agreements pertaining to membership interests with similar or different voting rights;

      (5) Changes a member's right to resign or retire;

      (6) Establishes or changes the conditions for or consequences of expulsion;

      (7) Changes the statement required under subdivision e of subsection 1 of section 10-32-07; or

      (8) Changes the statement required under subdivision f of subsection 1 of section 10-32-07.

   b. A sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the limited liability company not made in the usual or regular course of its business, but not including a disposition in dissolution described in subsection 4 of section 10-32-113, or a disposition pursuant to an order of a court, or a disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the members in accordance with their respective membership interests within one year after the date of disposition;

   c. A plan of merger to which the limited liability company is a party, except as provided in paragraph 1 of subdivision a of subsection 2 of section 10-32-131 and subject to subsection 3 of section 10-32-131;

   d. A plan of exchange to which the limited liability company is a party as the organization whose ownership interests will be acquired by the

acquiring organization, if the membership interests being acquired are entitled to be voted on the plan;

e. Any other limited liability company action taken pursuant to a member vote with respect to which the articles of organization, the operating agreement, or a resolution approved by the board of governors directs that dissenting members may obtain payment for their membership interests; or

f. A resolution of the board of governors under subsection 2 of section 10-32-131 to implement a business continuation agreement.

2. The members of a limited liability company who have a right under this section to obtain payment for their membership interests do not have a right at law or in equity to have a limited liability company action described in subsection 1 set aside or rescinded, except when the limited liability company action is fraudulent with regard to the complaining member or the limited liability company.

10-32-55. Procedures for asserting dissenters' rights.

1. For purposes of this section:

a. "Limited liability company" means a limited liability company whose members have obtained rights to dissent under subsection 1 of section 10-32-54 and includes any successor by merger.

b. "Fair value of the membership interests" means the value of the membership interests of a limited liability company immediately before the effective date of the limited liability company action referred to in subsection 1 of section 10-32-54.

c. "Interest" means interest beginning five days after the effective date of the limited liability company action referred to in subsection 1 of section 10-32-54, up to and including the date of payment, calculated at the rate provided in section 28-20-34 for interest on verdicts and judgments.

d. "Member" includes a former member when dissenters' rights exist because:

(1) The membership of that former member has terminated causing dissolution; and

(2) The dissolved limited liability company has then either entered into a winding up merger under subsection 3 of section 10-32-112 or has disposed of its assets pursuant to a business continuation agreement under subsection 2 of section 10-32-131.

2. If a limited liability company calls a member meeting at which any action described in subsection 1 of section 10-32-54 is to be voted upon, the notice of the meeting must inform each member of the right to dissent and must include a copy of section 10-32-54 and this section, and if applicable, subsections 2 and 3 of section 10-32-131. For members who have assigned some or all of their financial rights, the description must also include the procedures under subsection 8.

3. If the proposed action must be approved by the members, a member who wishes to exercise dissenters' rights must file with the limited liability company before the vote on the proposed action a written notice of intent to demand the fair value of the membership interests owned by the member and must not vote the membership interests in favor of the proposed action.

4. After the proposed action has been approved by the board of governors and, if necessary, the members, the limited liability company shall send to all members who have complied with subsection 3 and to all members entitled to dissent if no member vote was required, a notice that contains:

   a. The address to which a demand for payment must be sent in order to obtain payment and the date by which the demand must be received;

   b. A form to be used to certify the date on which the member acquired the membership interests and to demand payment; and

   c. A copy of section 10-32-54, this section and, if applicable, subsections 2 and 3 of section 10-32-131.

5. In order to receive the fair value of the membership interests, a dissenting member must demand payment within thirty days after the notice was given, but the dissenter retains all other rights of a member until the proposed action takes effect.

6. After the limited liability company action takes effect, or after the limited liability company receives a valid demand for payment, whichever is later, the limited liability company shall remit to each dissenting member who has complied with subsections 3, 4, and 5, the amount the limited liability company estimates to be the fair value of the membership interests, plus interest, accompanied by:

   a. The limited liability company's closing balance sheet and statement of income for a fiscal year ending not more than sixteen months before the effective date of the limited liability company action, together with the latest available interim financial statements;

   b. An estimate by the limited liability company of the fair value of the membership interests and a brief description of the method used to reach the estimate; and

   c. A copy of section 10-32-54, this section, and, if applicable, subsections 2 and 3 of section 10-32-131.

7. The limited liability company may withhold the remittance described in subsection 6 from a person who was not a member on the date the action dissented from was first announced to the public. If the dissenter has complied with subsections 3, 4, and 5, the limited liability company shall forward to the dissenter the materials described in subsection 6, a statement of the reason for withholding the remittance, and an offer to pay to the dissenter the amount listed in the materials if the dissenter agrees to accept that amount in full satisfaction. The dissenter may decline the offer and demand payment under subsection 8. Failure to do so

entitles the dissenter only to the amount offered. If the dissenter makes demand, subsections 9 and 10 apply.

8. If a dissenter believes that the amount remitted under subsections 5, 6, and 7, is less than the fair value of the membership interests plus interest, the dissenter may give written notice to the limited liability company of the dissenter's own estimate of the fair value of the membership interests, plus interest, within thirty days after the limited liability company mails the remittance under subsections 5, 6, and 7, and demand payment of the difference. Otherwise, a dissenter is entitled only to the amount remitted by the limited liability company.

9. If the limited liability company receives a demand under subsection 8, it shall, within sixty days after receiving the demand, either pay to the dissenter the amount demanded or agreed to by the dissenter after discussion with the limited liability company or file in court a petition requesting that the court determine the fair value of the membership interests, plus interest. The petition must be filed in the county in which the registered office of the limited liability company is located, except that a surviving foreign corporation that receives a demand relating to the membership interests of a constituent limited liability company shall file the petition in the county in this state in which the last registered office of the constituent limited liability company was located. The petition must name as parties all dissenters who have demanded payment under subsection 8 and who have not reached agreement with the limited liability company. The jurisdiction of the court is plenary and exclusive. The court may appoint appraisers, with powers and authorities the court considers proper, to receive evidence on and recommend the amount of the fair value of the membership interests. The court shall determine whether the member or members in question have fully complied with the requirements of this section, and shall determine the fair value of the membership interests, taking into account any and all factors the court finds relevant, computed by any method or combination of methods that the court, in its discretion, sees fit to use, whether or not used by the limited liability company or by a dissenter. The fair value of the membership interests as determined by the court is binding on all members, wherever located. A dissenter is entitled to judgment for the amount by which the fair value of the membership interests as determined by the court, plus interest, exceeds the amount, if any, remitted under subsections 5, 6, and 7, but is not liable to the limited liability company for the amount, if any, by which the amount, if any, remitted to the dissenter under subsection 5 exceeds the fair value of the membership interests as determined by the court, plus interest.

10. The court shall determine the costs and expenses of a proceeding under subsection 9, including the reasonable expenses and compensation of any appraisers appointed by the court, and shall assess those costs and expenses against the limited liability company, except that the court may assess part or all of those costs and expenses against a dissenter whose action in demanding payment is found to be arbitrary, vexatious, or not in good faith.

11. If the court finds that the limited liability company has failed to comply substantially with this section, the court may assess all fees and

expenses of any experts or attorneys as the court considers equitable. These fees and expenses may also be assessed against a person who has acted arbitrarily, vexatiously, or not in good faith in bringing the proceeding, and may be awarded to a party injured by those actions.

12. The court may award, in its discretion, fees and expenses to an attorney for the dissenters out of the amount awarded to the dissenters, if any.

13. When an assignment of some or all of the financial rights of a membership interest is in effect, then as to that membership interest the provisions of subsections 1 through 12 must be followed subject to the following revisions:

a. All rights to be exercised and actions to be taken by a member under subsection 2 must be taken by the member and not by any assignee of the member's financial rights. As between the limited liability company and the assignees, the actions taken or omitted by the member bind the assignees.

b. Instead of remitting a payment under subsection 6, the limited liability company shall forward to the dissenter member:

(1) An offer to pay the fair value of the membership interests with that amount to be allocated among and paid to the member and the assignees of financial rights according to the terms of the assignments reflected in the required records; and

(2) A statement of that allocation.

c. If the dissenter member accepts the amount of the offer made under subdivision b but disputes the allocation, the dissenter shall promptly so notify the limited liability company and promptly after the notification bring an action to determine the proper allocation. The suit must be filed in the county in which the registered office of the limited liability company is located, or in the case of a surviving foreign corporation that is complying with this section following a merger or an exchange with a constituent limited liability company the suit must be filed in the county in this state in which the last registered office of the constituent limited liability company was located. The suit must name as parties the member, the limited liability company, and all assignees of the member's financial rights. Upon being served with the action, the limited liability company shall promptly pay into the court the amount offered under subdivision b and shall then be dismissed from the action.

d. If the dissenter considers the amount offered under subdivision b inadequate, the dissenter may decline the offer and demand payment under subsection 8. If the dissenter makes demand, subsections 9 and 10 apply, with the court having jurisdiction also to determine the correctness of the allocation.

e. If the member fails to take action under either subdivision c or d, then:

(1) As to the limited liability company, both the member and the assignees of the member's financial rights are limited to the amount and allocation offered under subdivision b; and

(2) The limited liability company discharges its obligation of payment by making payment according to the amount and allocation offered under subdivision b.

10-32-56. Authorization, form, and acceptance of contributions.

1. Subject to any restrictions in the articles of organization and only when authorized by the board of governors, a limited liability company may accept contributions under subsections 2 and 3, make contribution agreements under section 10-32-58, and make contribution allowance agreements under section 10-32-59.

2. A person may make a contribution to a limited liability company by paying money or transferring the ownership of an interest in property to the limited liability company for rendering services to or for the benefit of the limited liability company.

3. No purported contribution is to be treated or considered as a contribution, unless:

a. The board of governors accepts the contribution on behalf of the limited liability company and in that acceptance describes the contribution, and states the value being accorded to the contribution; and

b. The fact of contribution and the contribution's accorded value are both reflected in the required records of the limited liability company.

4. The determinations of the board of governors as to the amount or fair value or the fairness to the limited liability company of the contribution accepted or to be accepted by the limited liability company or the terms of payment or performance, including under a contribution agreement in section 10-32-58, and a contribution allowance agreement in section 10-32-59, are presumed to be proper if they are made in good faith and on the basis of accounting methods, or a fair valuation or other method, reasonable in the circumstances. Governors who are present and entitled to vote, and who, intentionally or without reasonable investigation, fail to vote against approving a consideration that is unfair to the limited liability company, or overvalue property or services received or to be received by the limited liability company as a contribution, are jointly and severally liable to the limited liability company for the benefit of the then members who did not consent to and are damaged by the action, to the extent of the damages of those members. A governor against whom a claim is asserted pursuant to this subsection, except in case of knowing participation in a deliberate fraud, is entitled to contribution on an equitable basis from other governors who are liable under this subsection.

5. All the membership interests of a limited liability company must:

a. Be of one class, without series, unless the articles of organization establish, or authorize the board of governors to establish, more than one class or series within classes;

b. Be ordinary membership interests entitled to vote as provided in section 10-32-45, and have equal rights and preferences in all matters not otherwise provided for by the board of governors unless and to the extent that the articles of organization have fixed the relative rights and preferences of different classes and series; and

c. Share profits and losses as provided in section 10-32-36 and be entitled to distributions as provided in sections 10-32-60 and 10-32-61 and subdivision c of subsection 1 of section 10-32-131.

6. Subject to any restrictions in the articles of organization, the power granted in subsection 5 may be exercised by a resolution approved by the affirmative vote of a majority of the directors present establishing a class or series, setting forth the designation of the class or series, and fixing the relative rights and preferences of the class or series.

7. A statement executed by a manager setting forth the name of the limited liability company and the text of the resolution and certifying the adoption of the resolution and the date of adoption must be filed with the secretary of state together with the fees provided in section 10-32-150 before the acceptance of any contributions for which the resolution creates rights or preferences not set forth in the articles of organization. The resolution is effective when the statement has been filed with the secretary of state unless the statement specifies a later effective date within thirty days of filing the statement with the secretary of state.

8. Without limiting the authority granted in this section, a limited liability company may have membership interests of a class or series:

a. Subject to the right of the limited liability company to redeem any of those membership interests at the price fixed for their redemption by the articles of organization or by the board of governors;

b. Entitling the members to cumulative, partially cumulative, or noncumulative distributions;

c. Having preference over any class or series of membership interests for the payment of distributions of any or all kinds;

d. Convertible into membership interests of any other class or any series of the same or another class; or

e. Having full, partial, or no voting rights, except as provided in section 10-32-17.

10-32-57. Restatement of value of previous contributions.

1. As used in this section, an "old" contribution is a contribution reflected in the required records of a limited liability company before the time the limited liability company accepts a new contribution.

2. Whenever a limited liability company accepts a new contribution, the board of governors shall restate, as required by this section, the value of all old contributions.

3. Unless otherwise provided in the articles of organization, this subsection states the method of restating the value of old contributions that pertain to the same series or class to which the new contribution pertains:

   a. State the value the limited liability company has accorded to the new contribution under subdivision a of subsection 3 of section 10-32-56;

   b. Determine what percentage the value stated under subdivision a will constitute, after the restatement required by this subsection, of the total value of all contributions that pertain to the particular series or class to which the new contribution pertains;

   c. Divide the value stated under subdivision a by the percentage determined under subdivision b, yielding the total value, after the restatement required by this subsection, of all contributions pertaining to the particular series or class;

   d. Subtract the value stated under subdivision a from the value determined under subdivision c, yielding the total value, after the restatement required by this subsection, of all the old contributions pertaining to the particular series or class;

   e. Subtract the value, as reflected in the required records before the restatement required by this subsection, of the old contributions from the value determined under subdivision d, yielding the value to be allocated among and added to the old contributions pertaining to the particular series or class; and

   f. Allocate the value determined under subdivision e proportionally among the old contributions pertaining to the particular series or class, add the allocated values to those old contributions, and change the required records accordingly.

   The values determined under subdivision e and allocated and added under subdivision f may be positive, negative, or zero.

4. Unless otherwise provided in the articles of organization, this subsection states the method of restating the value of old contributions that do not pertain to the same series or class to which the new contribution pertains:

   a. Determine the percentage by which the restatement under subsection 3 has changed the total contribution value reflected in the required records for the series or class to which the new contribution pertains; and

   b. As to each old contribution that does not pertain to the same series or class to which the new contribution pertains, change the value reflected in the required records by the percentage determined under subdivision a. The percentage determined under subdivision a may be positive, negative, or zero.

5. If a limited liability company accepts more than one contribution pertaining to the same series or class at the same time, then for the purpose of the restatement required by this section the limited liability company may consider all those new contributions as if they were a single contribution.

10-32-58. Contribution agreements.

1. A contribution agreement, whether made before or after the formation of the limited liability company, is not enforceable against the would-be contributor unless it is in writing and signed by the would-be contributor.

2. A contribution agreement is irrevocable for a period of six months unless the contribution agreement provides for, or unless all other would-be contributors who are a party to a contribution consent to, an earlier revocation.

3. A contribution agreement, whether made before or after the formation of a limited liability company, must be paid or performed in full at the time or times, or in the installments, if any, specified in the contribution agreement. In the absence of a provision in the contribution agreement specifying the time at which the contribution is to be paid or performed, the contribution must be paid or performed at the time or times determined by the board of governors, but a call made by the board of governors for payment or performance on contributions must be uniform for all membership interests of the same class or for all membership interests of the same series.

4. Unless otherwise provided in the contribution agreement, in the event of default in the payment or performance of an installment or call when due, the limited liability company may proceed to collect the amount due in the same manner as a debt due the limited liability company or, if the amount due remains unpaid for a period of twenty days after written notice of demand for payment has been given to the delinquent would-be contributor, the board of governors may declare a forfeiture of the contribution agreement or cancel it in accordance with this subsection. If a would-be contributor does not make a required contribution of property or services, the limited liability company shall require the would-be contributor to contribute cash equal to that portion of the value, as stated in the limited liability company required records, of the contribution that has not been made.

5. Upon forfeiture of a contribution agreement, the membership interests that were subject to the contribution agreement may be offered for sale by the limited liability company for a price in money equaling or exceeding the sum of the full balance owed by the delinquent would-be contributor plus the expenses incidental to the sale. Any excess of net proceeds realized by the limited liability company over the sum of the amount owed by the delinquent would-be contributor plus the expenses incidental to the sale must be paid to the delinquent would-be contributor or to a legal representative. The payment must not exceed the amount of contribution actually made by the delinquent would-be contributor.

6. If, within twenty days after the limited liability company offers to sell the membership interests that were subject to the defaulted contribution agreement, no prospective purchaser offers to purchase the membership interests for a money price sufficient to pay the sum of the full balance owed by the delinquent would-be contributor plus the expenses incidental to the sale, or if the limited liability company has refunded to the would-be contributor or a legal representative a portion of the contribution agreement price actually paid, the contribution agreement may be canceled and the limited liability company may retain the portion of the contribution agreement price actually paid that does not exceed ten percent of the contribution agreement price.

7. A would-be contributor's rights under a contribution agreement may not be assigned, in whole or in part, to a person who was not a member at the time of the assignment, unless all the members approve the assignment by unanimous written consent.

10-32-59. Contribution allowance agreements.

1. Subject to any restrictions in the articles of organization, a limited liability company may enter into contribution allowance agreements under the terms, provisions, and conditions fixed by the board of governors.

2. Any contribution allowance agreement must be in writing, and the writing must state in full, summarize, or incorporate by reference all of the agreement's terms, provisions, and conditions.

3. A would-be contributor's rights under a contribution allowance agreement may not be assigned in whole or in part to a person who was not a member at the time of the assignment, unless all of the members approve the assignment by unanimous written consent.

10-32-60. Sharing of distributions. Unless otherwise provided in the articles of organization or by the board of governors under subsections 5 through 7 of section 10-32-56, distributions of cash or other assets of a limited liability company, including distributions on termination of the limited liability company, must be allocated in proportion to the value of the contributions of the members reflected in the required records.

10-32-61. Interim distributions. Except as provided in the articles of organization, a member is entitled to receive distributions before the limited liability company's termination only as specified in the operating agreement or by the act of the board of governors.

10-32-62. Distribution in kind. Except as provided in the articles of organization, a member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash. Except as provided in the articles of organization, a member may not be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed to the member exceeds a percentage of that asset that is equal to the percentage in which the member shares in distributions from the limited liability company.

10-32-63. Status as a creditor. At the time a member becomes entitled to receive a distribution, the member has the status of, and is entitled to all

remedies available to, a creditor of the limited liability company with respect to the distribution.

10-32-64. Limitations on distribution.

1. The board of governors may authorize and cause the limited liability company to make a distribution only if the board of governors determines, in accordance with subsection 2, that the limited liability company will be able to pay its debts in the ordinary course of business after making the distribution and the board of governors does not know before the distribution is made that the determination was or has become erroneous, and the limited liability company may make the distribution if it is able to pay its debts in the ordinary course of business after making the distribution. The effect of a distribution on the ability of the limited liability company to pay its debts in the ordinary course of business after making the distribution must be measured in accordance with subsection 3. The right of the board of governors to authorize, and the limited liability company to make, distributions may be prohibited, limited, or restricted by the articles of organization or operating agreement or an agreement.

2. A determination that the limited liability company will be able to pay its debts in the ordinary course of business after the distribution is presumed to be proper if the determination is made in compliance with the standard of conduct provided in section 10-32-86 on the basis of financial information prepared in accordance with accounting methods, or a fair valuation or other method, reasonable in the circumstances. No liability under section 10-32-66 or 10-32-86 will accrue if the requirements of this subsection have been met.

3. In the case of a distribution made by a limited liability company in connection with a redemption of its membership interests, the effect of the distribution must be measured as of the date on which money or other property is transferred, or indebtedness payable in installments or otherwise is incurred, by the limited liability company, or as of the date on which the member ceases to be a member of the limited liability company, whichever is the earliest. The effect of any other distribution must be measured as of the date of its authorization if payment occurs one hundred twenty days or less following the date of authorization, or as of the date of payment if payment occurs more than one hundred twenty days following the date of authorization. The provisions of chapter 13-02.1 do not apply to distributions made by a limited liability company governed by this chapter.

4. Indebtedness of a limited liability company incurred or issued in a distribution in accordance with this section to a member who as a result of the transaction is no longer a member is on a parity with the indebtedness of the limited liability company to its general unsecured creditors, except to the extent subordinated, agreed to, or secured by a pledge of any assets of the limited liability company or a related limited liability company, or subject to any other agreement between the limited liability company and the member.

5. A distribution may be made to the owners of a class or series of membership interests only if:

   a. All amounts payable to the owners of membership interests having a preference for the payment of that kind of distribution, other than those owners who give notice to the limited liability company of their agreement to waive their rights to that payment, are paid; and

   b. The payment of the distribution does not reduce the remaining net assets of the limited liability company below the aggregate preferential amount payable in the event of liquidation to the owners of membership interests having preferential rights, unless the distribution is made to those members in the order and to the extent of their respective priorities or the owners of membership interests who do not receive distributions in that order give notice to the limited liability company of their agreement to waive their rights to that distribution.

   A determination that the payment of the distribution does not reduce the remaining net assets of the limited liability company below the aggregate preferential amount payable in the event of termination to the owners of membership interests having preferential rights is presumed to be proper if the determination is made in compliance with the standard of conduct provided in section 10-32-86 on the basis of financial information prepared in accordance with accounting methods, or a fair valuation or other method, reasonable in the circumstances. Liability under section 10-32-66 or 10-32-86 will not arise if the requirements of this subsection are met.

6. If the money or property available for distribution is insufficient to satisfy all preferences, the distributions must be made pro rata according to the order of priority of preferences by classes and by series within those classes unless those owners who do not receive distributions in that order give notice to the limited liability company of their agreement to waive their rights to that distribution.

10-32-65. Liability of members for illegal distributions.

1. A member who receives a distribution made in violation of section 10-32-64 is liable to the limited liability company, its receiver or other person winding up its affairs, or a governor under subsection 2 of section 10-32-66, but only to the extent that the distribution received by the member exceeded the amount that properly could have been paid under section 10-32-64.

2. An action may not be commenced under this section more than two years from the date of the distribution.

10-32-66. Liability of governors for illegal distributions.

1. In addition to any other liabilities, a governor who is present at a meeting and fails to vote against, or who consents in writing to, a distribution made in violation of section 10-32-64 or a restriction contained in the articles of organization or operating agreement or an agreement, and who fails to comply with the standard of conduct provided

in section 10-32-86, is liable to the limited liability company jointly and severally with all other governors so liable and to other governors under subsection 3, but only to the extent that the distribution exceeded the amount that properly could have been paid under section 10-32-64.

2. A governor against whom an action is brought under this section with respect to a distribution may implead in that action all members who received the distribution and may compel pro rata contribution from them in that action to the extent provided in subsection 1 of section 10-32-65.

3. A governor against whom an action is brought under this section with respect to a distribution may implead in that action all other governors who voted for or consented in writing to the distribution and may compel pro rata contribution from them in that action.

4. An action may not be commenced under this section more than two years from the date of the distribution.

10-32-67. Organization.

1. If the first board of governors is not named in the articles of organization, the organizers may elect the first board of governors or may act as governors with all of the powers, rights, duties, and liabilities of governors, until governors are elected or until a contribution is accepted, whichever occurs first.

2. After the issuance of the certificate of organization, the organizers or the governors named in the articles of organization shall either hold an organizational meeting at the call of a majority of the organizers or of the governors named in the articles, or take written action, for the purposes of transacting business and taking actions necessary or appropriate to complete the organization of the limited liability company, including, without limitation, amending the articles, electing governors, adopting an operating agreement, electing managers, adopting banking resolutions, authorizing or ratifying the purchase, lease, or other acquisition of suitable space, furniture, furnishings, supplies, and materials, approving a limited liability company seal, adopting a fiscal year for the limited liability company, contracting to receive and accept contributions, and making any appropriate tax elections. If a meeting is held, the person or persons calling the meeting shall give at least three days notice of the meeting to each organizer or governor named, stating the date, time, and place of the meeting.

10-32-68. Operating agreement.

1. A limited liability company may, but need not, have an operating agreement. The operating agreement may contain any provision relating to the management of the business or the regulation of the affairs of the limited liability company not inconsistent with law or the articles of organization. An act of the board under subsection 2 and of the members under subsection 3 will be considered part of the operating agreement only if the act expressly states that it is intended to constitute or revise the operating agreement.

2. An initial operating agreement may be adopted pursuant to section 10-32-67 by the organizers or by the first board of governors. Unless reserved by the articles of organization to the members, the power to adopt, amend, or repeal the operating agreement is vested in the board of governors. The power of the board of governors is subject to the power of the members, exercisable in the manner provided in subsection 3, to adopt, amend, or repeal the operating agreement adopted, amended, or repealed by the board of governors. After the adoption of the initial operating agreement, the board of governors may not adopt, amend, or repeal an operating agreement provision fixing a quorum for meetings of members, prescribing procedures for removing governors or filling vacancies in the board of governors, or fixing the number of governors or their classifications, qualifications, or terms of office, but may adopt or amend an operating agreement provision to increase the number of governors.

3. If members owning five percent or more of the voting power of the members entitled to vote propose a resolution for action by the members to adopt, amend, or repeal operating agreement provisions adopted, amended, or repealed by the board of governors and the resolution sets forth the provision or provisions proposed for adoption, amendment, or repeal, the limitations and procedures for submitting, considering, and adopting the resolution are the same as provided in subsections 2 through 4 of section 10-32-16, for amendment of the articles of organization.

10-32-69. Board of governors.

1. The business and affairs of a limited liability company are to be managed by or under the direction of a board of governors, subject to the provisions of subsection 2 and section 10-32-50. The first board of governors may be named in the articles of organization or elected by the organizers pursuant to section 10-32-67 or by the members.

2. The owners of the membership interests entitled to vote for governors of the limited liability company may, by unanimous affirmative vote, take any action that this chapter requires or permits the board of governors to take. As to an action taken by the members in that manner:

   a. The governors have no duties, liabilities, or responsibilities as governors under this chapter with respect to or arising from the action;

   b. The members collectively and individually have all of the duties, liabilities, and responsibilities of governors under this chapter with respect to and arising from the action;

   c. If the action relates to a matter required or permitted by this chapter or by any other law to be approved or adopted by the board of governors, either with or without approval or adoption by the members, the action is considered to have been approved or adopted by the board of governors; and

   d. A requirement that an instrument filed with a governmental agency contain a statement that the action has been approved and adopted by the board of governors is satisfied by a statement that the members have taken the action under this subsection.

10-32-70. Number. The board of governors consists of one or more governors. The number of governors must be fixed by or in the manner provided in the articles of organization or the operating agreement. The number of governors may be increased or, subject to section 10-32-78, decreased at any time by amendment to or in the manner provided in the articles or operating agreement.

10-32-71. Qualifications and election. Governors must be individuals. The method of election and any additional qualifications for governors may be imposed by or in the manner provided in the articles or operating agreement.

10-32-72. Terms. Unless fixed terms are provided for in the articles or operating agreement, a governor serves for an indefinite term that expires at the next regular meeting of the members. A fixed term of a governor must not exceed five years. A governor holds office for the term for which the governor was elected and until a successor is elected and has qualified, or until the earlier death, resignation, removal, or disqualification of the governor.

10-32-73. Acts not void or voidable. The expiration of a governor's term with or without the election of a qualified successor does not make prior or subsequent acts of the governors or the board of governors void or voidable.

10-32-74. Compensation. Subject to any limitations in the articles or operating agreement, the board of governors may fix the compensation of governors.

10-32-75. Classification of governors. Governors may be divided into classes as provided in the articles or operating agreement.

10-32-76. Cumulative voting for governors.

1. Each member entitled to vote for governors has the right to cumulate voting power in the election of governors by giving written notice of intent to cumulate voting power to any manager of the limited liability company before the meeting, or to the presiding manager at the meeting at which the election is to occur at any time before the election of governors at the meeting, in which case:

   a. The presiding manager at the meeting shall announce, before the election of governors, that members shall cumulate their voting power; and

   b. Each member shall cumulate that voting power either by casting for one candidate the amount of voting power equal to the number of governors to be elected multiplied by the voting power represented by the membership interests owned by that member, or by distributing all of that voting power on the same principle among any number of candidates.

2. No amendment to the articles or operating agreement that has the effect of denying, limiting, or modifying the right to cumulative voting for members provided in this section may be adopted if the votes of a proportion of the voting power sufficient to elect a governor at an election of the entire board of governors under cumulative voting are cast against the amendment.

10-32-77. Resignation. A governor may resign at any time by giving written notice to the limited liability company. The resignation is effective without acceptance when the notice is given to the limited liability company, unless a later effective time is specified in the notice.

10-32-78. Removal of governors.

1. The provisions of this section apply unless modified by the articles of organization or the operating agreement.

2. A governor may be removed at any time, with or without cause, if:

   a. The governor was named by the board of governors to fill a vacancy;

   b. The members have not elected governors in the interval between the time of the appointment to fill a vacancy and the time of the removal; and

   c. A majority of the remaining governors present affirmatively votes to remove the governor.

3. Any one or all of the governors may be removed at any time, with or without cause, by the affirmative vote of the owners of the proportion of the voting power of the membership interests of the classes or series the governor represents sufficient to elect them. If less than the entire board of governors is to be removed, no one of the governors may be removed if the votes cast against the governor's removal which, if then cumulatively voted at the election of the entire board of governors, or if there be classes of governors at an election of the class of governors of which the governor is a part, would be sufficient to elect the governor. Whenever the members of any class are entitled to elect one or more governors by the provisions of the articles of the organization, the provisions of this section apply, in respect to the removal of a governor or governors so elected, to the vote of the members of that class and not to the vote of the members as a whole.

4. New governors may be elected at a meeting at which governors are removed.

10-32-79. Vacancies.

1. Unless different rules for filling vacancies are provided for in the articles or operating agreement:

   a. Vacancies on the board of governors resulting from the death, resignation, removal, or disqualification of a governor may be filled by the affirmative vote of a majority of the remaining governors, even though less than a quorum; and

   b. Vacancies on the board of governors resulting from newly created governorships may be filled by the affirmative vote of a majority of the governors serving at the time of the increase.

2. Each governor elected under this section to fill a vacancy holds office until a qualified successor is elected by the members at the next regular or special meeting of the members.

10-32-80. Board of governors meetings.

1. Meetings of the board of governors may be held from time to time as provided in the articles of organization or operating agreement at any place within or without the state that the board of governors may select or by any means described in subsection 2. If the board of governors fails to select a place for a meeting, the meeting must be held at the principal executive office, unless the articles or operating agreement provide otherwise.

2. A board of governors meeting may be conducted by:

   a. A conference among governors using any means of communication through which the governors may simultaneously hear each other during the conference constitutes a board of governors meeting, if the same notice is given of the conference as would be required by subsection 3 for a meeting, and if the number of governors participating in the conference would be sufficient to constitute a quorum at a meeting. Participation in a meeting by that means constitutes presence in person at the meeting; or

   b. By any means of communication through which the governor, other governors so participating, and all governors physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence in person at the meeting.

3. Unless the articles of organization or operating agreement provide for a different time period, a governor may call a board meeting by giving ten days' notice to all governors of the date, time, and place of the meeting. The notice need not state the purpose of the meeting unless the articles or operating agreement require it.

4. If the day or date, time, and place of a board of governors meeting have been provided in the articles or operating agreement, or announced at a previous meeting of the board of governors, no notice is required. Notice of an adjourned meeting need not be given other than by announcement at the meeting at which adjournment is taken.

5. A governor may waive notice of a meeting of the board of governors. A waiver of notice by a governor entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, or by attendance. Attendance by a governor at a meeting is a waiver of notice of that meeting, except where the governor objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting after the objection.

10-32-81. Absent governors. If the articles of organization or operating agreement so provide, a governor may give advance written consent or opposition to a proposal to be acted on at a board of governors meeting. If the governor is not present at the meeting, consent or opposition to a proposal does not constitute presence for purposes of determining the existence of a quorum, but consent or opposition must be counted as a vote in favor of or against the proposal and must be entered in the minutes or other record of action at the meeting, if the proposal

acted on at the meeting is substantially the same or has substantially the same effect as the proposal to which the governor has consented or objected.

10-32-82. Quorum. A majority, or a larger or smaller proportion or number provided in the articles of organization or operating agreement, of the governors currently holding office is a quorum for the transaction of business. In the absence of a quorum, a majority of the governors present may adjourn a meeting from time to time until a quorum is present. If a quorum is present when a duly called or held meeting is convened, the governors present may continue to transact business until adjournment, even though the withdrawal of a number of governors originally present leaves less than the proportion or number otherwise required for a quorum.

10-32-83. Act of the board of governors. The board of governors shall take action by the affirmative vote of a majority of governors present at a duly held meeting, except where this chapter or the articles require the affirmative vote of a larger proportion or number. If the articles require a larger proportion or number than is required by this chapter for a particular action, the articles control.

10-32-84. Action without a meeting.

1. An action required or permitted to be taken at a board of governors meeting may be taken by written action signed by all of the governors. If the articles so provide, any action, other than an action requiring member approval, may be taken by written action signed by the number of governors that would be required to take the same action at a meeting of the board of governors at which all governors were present.

2. The written action is effective when signed by the required number of governors, unless a different effective time is provided in the written action.

3. When written action is permitted to be taken by less than all governors, all governors must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A governor who does not sign or consent to the written action has no liability for the action or actions taken thereby.

10-32-85. Committees.

1. A resolution approved by the affirmative vote of a majority of the board of governors may establish committees having the authority of the board in the management of the business of the limited liability company only to the extent provided in the resolution. Committees may include a special litigation committee consisting of one or more independent governors or other independent persons to consider legal rights or remedies of the limited liability company and whether those rights and remedies should be pursued. Committees other than special litigation committees are subject at all times to the direction and control of the board of governors.

2. Committee members must be individuals. Unless the articles or operating agreement provide for a different membership or manner of appointment, a committee consists of one or more persons, who need not be governors, appointed by affirmative vote of a majority of the governors present.

3. Sections 10-32-80 through 10-32-84 apply to committees and members of committees to the same extent as those sections apply to the board of governors and governors.

4. Minutes, if any, of committee meetings must be made available upon request to members of the committee and to any governor.

5. The establishment of, delegation of authority to, and action by a committee does not alone constitute compliance by a governor with the standard of conduct set forth in section 10-32-86.

6. Committee members are considered to be governors for purposes of sections 10-32-86, 10-32-87, and 10-32-99.

10-32-86. Standard of conduct.

1. A governor shall discharge the duties of the position of governor in good faith, in a manner the governor reasonably believes to be in the best interests of the limited liability company, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person who so performs those duties is not liable by reason of being or having been a governor of the limited liability company.

2. A governor is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

   a. One or more managers or employees of the limited liability company whom the governor reasonably believes to be reliable and competent in the matters presented;

   b. Counsel, public accountants, or other persons as to matters that the governor reasonably believes are within the person's professional or expert competence; or

   c. A committee of the board of governors upon which the governor does not serve, duly established in accordance with section 10-32-85, as to matters within its designated authority, if the governor reasonably believes the committee to merit confidence.

3. Subsection 2 does not apply to a governor who has knowledge concerning the matter in question that makes the reliance otherwise permitted by subsection 2 unwarranted.

4. A governor who is present at a meeting of the board of governors when an action is approved by the affirmative vote of a majority of the governors present is presumed to have assented to the action approved, unless the governor:

   a. Objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting after the objection, in which case the governor is not considered to be present at the meeting for any purpose of this chapter;

b. Votes against the action at the meeting; or

c. Is prohibited by section 10-32-87 from voting on the action.

5. A governor's personal liability to the limited liability company or its members for monetary damages for breach of fiduciary duty as a governor may be eliminated or limited in the articles of organization. The articles may not eliminate or limit the liability of a governor:

a. For any breach of the governor's duty of loyalty to the limited liability company or its members;

b. For acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;

c. Under section 10-32-66;

d. For any transaction from which the governor derived an improper personal benefit; or

e. For any act or omission occurring before the date when the provision in the articles of organization eliminating or limiting liability becomes effective.

6. In discharging the duties of the position of governor, a governor may, in considering the best interests of the limited liability company, consider the interests of the limited liability company's employees, customers, suppliers, and creditors, the economy of the state and nation, community and societal considerations, and the long-term as well as short-term interests of the limited liability company and its members including the possibility that these interests may be best served by the continued independence of the limited liability company.

10-32-87. Governor conflicts of interest.

1. A contract or other transaction between a limited liability company and one or more of its governors, or between a limited liability company and an organization in or of which one or more of its governors are governors, directors, managers, officers, or legal representatives or have a material financial interest, is not void or voidable because the governor or governors or the other organizations are parties or because the governor or governors are present at the meeting of the members or the board of governors or a committee at which the contract or transaction is authorized, approved, or ratified, if:

a. The contract or transaction was, and the person asserting the validity of the contract or transaction sustains the burden of establishing that the contract or transaction was, fair and reasonable as to the limited liability company at the time it was authorized, approved, or ratified;

b. The material facts as to the contract or transaction and as to the manager's interest are fully disclosed or known to the members and the contract or transaction is approved in good faith by the holders of a majority of the membership interests, but membership interests owned

by the interested governor may not be counted in determining the presence of a quorum and may not be voted.

c. The material facts as to the contract or transaction and as to the governor's interest are fully disclosed or known to the board of governors or a committee, and the board of governors or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the board of governors or committee, but the interested governor is not counted in determining the presence of a quorum and may not vote; or

d. The contract or transaction is a distribution described in subsection 1 of section 10-32-64 or a merger or exchange described in subsection 1 or 2 of section 10-32-100.

2. For purposes of this section:

a. A governor does not have a material financial interest in a resolution fixing the compensation of the governor or fixing the compensation of another governor as a governor, manager, employee, or agent of the limited liability company, even though the first governor is also receiving compensation from the limited liability company; and

b. A governor has a material financial interest in each organization in which the governor, or the spouse, parents, children and spouses of children, brothers and sisters and spouses of brothers and sisters of the governor, or any combination of them have a material financial interest.

10-32-88. Managers. The managers of a limited liability company must consist of a president, one or more vice presidents as may be prescribed in the operating agreement, a secretary, and a treasurer, each of whom must be elected by the board at such time and in such manner as may be provided in the operating agreement.

10-32-89. Duties of managers and agents. All managers and agents of the limited liability company, as between themselves and the limited liability company, have such authority and must perform such duties in the management of the limited liability company as may be provided in the operating agreement, or as may be determined by resolution of the board not inconsistent with the operating agreement.

10-32-90. Other managers. Any other managers, assistant managers, and agents, as necessary, may be elected or appointed by the board of governors or chosen in such other manner as may be provided in the operating agreement.

10-32-91. Multiple managerial positions. Any number of managerial positions or functions of those positions may be held or exercised by the same person. If a document must be signed by persons holding different positions or functions and a person holds or exercises more than one of those positions or functions, that person may sign the document in more than one capacity, but only if the document indicates each capacity in which the person signs.

10-32-92. Managers deemed elected. In the absence of an election or appointment of managers by the board of governors, the person or persons exercising

the functions of the principal managers of the limited liability company are deemed to have been elected to those offices.

10-32-93. Contract rights. The election or appointment of a person as a manager or agent does not, of itself, create contract rights. However, a limited liability company may enter into a contract with a manager or agent. The resignation or removal of the manager or agent is without prejudice to any contractual rights or obligations.

10-32-94. Resignation, removal, and vacancy.

1. A manager may resign at any time by giving written notice to the limited liability company. The resignation is effective without acceptance when the notice is given to the limited liability company, unless a later effective date is specified in the notice.

2. A manager may be removed at any time, with or without cause, by a resolution approved by the affirmative vote of a majority of the governors present, subject to the provisions of a member-control agreement.

3. A vacancy in an office because of death, resignation, removal, or disqualification must be filled for the unexpired portion of the term in the manner provided in the articles or operating agreement, or determined by the board of governors, or pursuant to section 10-32-92.

10-32-95. Delegation. Unless prohibited by the articles or operating agreement or by a resolution approved by the affirmative vote of a majority of the governors present, a manager elected or appointed by the board of governors may, without the approval of the board, delegate some or all of the duties and powers of an office to other persons. A manager who delegates the duties or powers of an office remains subject to the standard of conduct for a manager with respect to the discharge of all duties and powers so delegated.

10-32-96. Standard of conduct. A manager shall discharge the duties of an office in good faith, in a manner the manager reasonably believes to be in the best interests of the limited liability company, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person exercising the principal functions of an office or to whom some or all of the duties and powers of an office are delegated pursuant to section 10-32-95 is considered a manager for purposes of this section and sections 10-32-53 and 10-32-99.

10-32-97. Loans, guarantees, and suretyship.

1. A limited liability company may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist a person, if the transaction, or a class of transactions to which the transaction belongs, is approved by the affirmative vote of a majority of the governors present and:

   a. Is in the usual and regular course of business of the limited liability company;

   b. Is with, or for the benefit of, a related limited liability company, an organization in which the limited liability company has a financial interest, an organization with which the limited liability company has

a business relationship, or an organization to which the limited liability company has the power to make donations;

c. Is with, or for the benefit of, a manager or other employee of the limited liability company or a subsidiary, including a manager or employee who is a governor of the limited liability company or a subsidiary, and may reasonably be expected, in the judgment of the board of governors, to benefit the limited liability company; or

d. Has been approved by the owners of two-thirds of the voting power of persons other than the interested person or persons.

2. A loan, guarantee, surety contract, or other financial assistance under subsection 1 may be with or without interest and may be unsecured or may be secured in any manner, including, without limitation, a grant of a security interest in a member's financial rights in the limited liability company.

3. This section does not grant any authority to act as a bank or to carry on the business of banking.

10-32-98. Advances. A limited liability company may, without a vote of the governors or its members, advance money to its governors, managers, or employees to cover expenses that can reasonably be anticipated to be incurred by them in the performance of their duties and for which they would be entitled to reimbursement in the absence of an advance.

10-32-99. Indemnification.

1. For purposes of this section:

a. "Limited liability company" includes a domestic or foreign limited liability company that was the predecessor of the limited liability company referred to in this section in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

b. "Official capacity" means:

(1) With respect to a governor, the position of governor in a limited liability company;

(2) With respect to a person other than a governor, the elective or appointive office or position held by a manager, member of a committee of the board of governors, the employment relationship undertaken by an employee, or agent of the limited liability company; and

(3) With respect to a governor, manager, employee, or agent of the limited liability company who, while a governor, manager, or employee of the limited liability company, is or was serving at the request of the limited liability company or whose duties in that position involve or involved service as a governor, director, manager, officer, partner, trustee, employee, or agent of another organization or employee benefit plan, the position of that person as a governor, director, manager, officer, partner,

trustee, employee, or agent, as the case may be, of the other organization or employee benefit plan.

c. "Proceeding" means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the limited liability company.

d. "Special legal counsel" means counsel who has not represented the limited liability company or a related limited liability company, or a governor, manager, member of a committee of the board of governors, employee, or agent whose indemnification is in issue.

2. Subject to the provisions of subsection 5, a limited liability company shall indemnify a person made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person against judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorney's fees and disbursements, incurred by the person in connection with the proceeding, if, with respect to the acts or omissions of the person complained of in the proceeding, the person:

a. Has not been indemnified by another organization or employee benefit plan for the same judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorney's fees and disbursements, incurred by the person in connection with the proceeding with respect to the same acts or omissions;

b. Acted in good faith;

c. Received no improper personal benefit and section 10-32-87, if applicable, has been satisfied;

d. In the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful; and

e. In the case of acts or omissions occurring in the official capacity described in paragraph 1 or 2 of subdivision b of subsection 1, reasonably believed that the conduct was in the best interests of the limited liability company, or in the case of acts or omissions occurring in the official capacity described in paragraph 3 of subdivision b of subsection 1, reasonably believed that the conduct was not opposed to the best interests of the limited liability company. If the person's acts or omissions complained of in the proceeding relate to conduct as a director, officer, trustee, employee, or agent of an employee benefit plan, the conduct is not considered to be opposed to the best interests of the limited liability company if the person reasonably believed that the conduct was in the best interests of the participants or beneficiaries of the employee benefit plan.

3. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent does not, of itself, establish that the person did not meet the criteria set forth in subsection 2.

4. Subject to the provisions of subsection 5, if a person is made or threatened to be made a party to a proceeding, the person is entitled, upon written request to the limited liability company, to payment or reimbursement by the limited liability company of reasonable expenses, including attorney's fees and disbursements, incurred by the person in advance of the final disposition of the proceeding:

   a. Upon receipt by the limited liability company of a written affirmation by the person of a good faith belief that the criteria for indemnification set forth in subsection 2 have been satisfied and a written undertaking by the person to repay all amounts so paid or reimbursed by the limited liability company, if it is ultimately determined that the criteria for indemnification have not been satisfied; and

   b. After a determination that the facts then known to those making the determination would not preclude indemnification under this section.

   The written undertaking required by subdivision a is an unlimited general obligation of the person making it, but need not be secured and must be accepted without reference to financial ability to make the repayment.

5. The articles of organization or operating agreement either may prohibit indemnification or advances of expenses otherwise required by this section or may impose conditions on indemnification or advances of expenses in addition to the conditions contained in subsections 2 through 4 including, without limitation, monetary limits on indemnification or advances of expenses, if the conditions apply equally to all persons or to all persons within a given class. A prohibition or limit on indemnification or advances may not apply to or affect the right of a person to indemnification or advances of expenses with respect to any acts or omissions of the person occurring before the effective date of a provision in the articles of organization or the date of adoption of a provision in the operating agreement establishing the prohibition or limit on indemnification or advances.

6. This section does not require, or limit the ability of, a limited liability company to reimburse expenses, including attorney's fees and disbursements, incurred by a person in connection with an appearance as a witness in a proceeding at a time when the person has not been made or threatened to be made a party to a proceeding.

7. All indemnification determinations must be made:

   a. By the board of governors by a majority of a quorum. Governors who are, at the time, parties to the proceeding are not counted for determining either a majority or the presence of a quorum;

   b. If a quorum under subdivision a cannot be obtained, by a majority of a committee of the board of governors, consisting solely of two or more

governors not at the time parties to the proceeding, duly designated to act in the matter by a majority of the full board of governors including governors who are parties;

c. If a determination is not made under subdivision a or b, by special legal counsel, selected either by a majority of the board of governors or a committee by vote pursuant to subdivision a or b or, if the requisite quorum of the full board of governors cannot be obtained and the committee cannot be established, by a majority of the full board of governors including governors who are parties;

d. If a determination is not made under subdivisions a through c, by the members, excluding the votes of membership interests held by parties to the proceeding; or

e. If an adverse determination is made under subdivisions a through d or under subsection 8, or if no determination is made under subdivisions a through d or under subsection 8 within sixty days after the termination of a proceeding or after a request for an advance of expenses, as the case may be, by a court in this state, which may be the same court in which the proceeding involving the person's liability took place, upon application of the person and any notice the court requires.

8. With respect to a person who is not, and was not at the time of the acts or omissions complained of in the proceedings, a governor, manager, or person possessing, directly or indirectly, the power to direct or cause the direction of the management or policies of the limited liability company, the determination whether indemnification of this person is required because the criteria set forth in subsections 2 and 3 have been satisfied and whether this person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subsection 4 may be made by an annually appointed committee of the board of governors, having at least one member who is a governor. The committee shall report at least annually to the board of governors concerning its actions.

9. A limited liability company may purchase and maintain insurance on behalf of a person in that person's official capacity against any liability asserted against and incurred by the person in or arising from that capacity, whether or not the limited liability company would have been required to indemnify the person against the liability under the provisions of this section.

10. A limited liability company that indemnifies or advances expenses to a person in accordance with this section in connection with a proceeding by or on behalf of the limited liability company shall report to the members in writing the amount of the indemnification or advance and to whom and on whose behalf it was paid not later than the next meeting of members as part of the annual financial statements furnished to members pursuant to section 10-32-52 covering the period when the indemnification or advance was paid or accrued under the accounting method of the limited liability company reflected in the financial statements.

11. Nothing in this section may be construed to limit the power of the limited liability company to indemnify other persons by contract or otherwise.

10-32-100. Merger - Exchange - Transfer.

1. With or without a business purpose, a limited liability company may merge:

   a. With another limited liability company or a domestic corporation pursuant to a plan of merger approved in the manner provided in sections 10-32-101 through 10-32-106; and

   b. With any foreign corporation or foreign limited liability company pursuant to a plan of merger approved in the manner provided in section 10-32-107.

2. A limited liability company may acquire all of the ownership interests of one or more classes or series of another limited liability company or domestic corporation pursuant to a plan of exchange approved in the manner provided in sections 10-32-101 through 10-32-106.

3. A domestic corporation may acquire all of the ownership interests of one or more classes or series of a limited liability company pursuant to a plan of exchange approved in the manner provided in sections 10-32-101 through 10-32-106.

4. A foreign corporation or foreign limited liability company may acquire all of the ownership interests of one or more classes or series of a limited liability company pursuant to a plan of exchange approved in the manner provided in section 10-32-107.

5. A limited liability company may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the manner provided in section 10-32-108.

6. A limited liability company may participate in a merger only as permitted by this section.

10-32-101. Plan of merger or exchange.

1. A plan of merger or exchange must contain:

   a. The name of the limited liability company and each other constituent organization proposing to merge or participate in an exchange, and:

      (1) In the case of a merger, the name of the surviving organization, which may be the limited liability company or the other constituent organization; or

      (2) In the case of an exchange, the name of the acquiring organization;

   b. The terms and conditions of the proposed merger;

   c. The manner and basis for converting or exchanging ownership interests:

      (1) In the case of a merger, the manner and basis of converting the ownership interests of the constituent organizations into

securities of the surviving organization or of any other organization or, in whole or in part, into money or other property; or

(2) In the case of an exchange, the manner and basis of exchanging the ownership interests to be acquired for securities of the acquiring organization or any other organization or, in whole or in part, for money or other property;

d. In the case of a merger, a statement of any amendments to the articles of organization or articles of incorporation, as the case may be, of the surviving organization proposed as part of the merger; and

e. Any other provisions with respect to the proposed merger that are considered necessary or desirable.

2. The procedure authorized by this section does not limit the power of a limited liability company to acquire all or part of the ownership interests of one or more classes or series of any other organization through a negotiated agreement with the owners or otherwise.

10-32-102. Plan approval.

1. A resolution containing the plan of merger must be approved by the affirmative vote of a majority of the board members present at a meeting of the governing board of each constituent organization and must then be submitted to the members of each constituent organization at a regular or a special meeting. Written notice must be given to every owner of that organization, whether or not entitled to vote at the meeting, not less than fourteen days nor more than sixty days before the meeting, in the manner provided in section 10-19.1-98 for notice of meetings of shareholders in the case of a domestic corporation and in the manner provided in section 10-32-40 for notice of meetings of members in the case of a limited liability company. The written notice must state that a purpose of the meeting is to consider the proposed plan of merger or exchange. A copy or short description of the plan of merger or exchange must be included in or enclosed with the notice.

2. At the meeting a vote of the owners must be taken on the proposed plan. The plan of merger is adopted when approved by the affirmative vote of the owners of a majority of the voting power of all ownership interests entitled to vote. Except as provided in subsection 3, a class or series of ownership interests of the organization is entitled to vote as a class or series if any provision of the plan would, if contained in a proposed amendment to the articles of organization or articles of incorporation, as the case may be, entitle the class or series of ownership interests to vote as a class or series and, in the case of an exchange, if the class or series is included in the exchange.

3. A class or series of ownership interests of the organization is not entitled to vote as a class or series solely because the plan of merger or exchange effects a cancellation of the ownership interests of the class or series if the plan of merger or exchange effects a cancellation of all ownership interests of the organization of all classes and series that are existing immediately before the merger or exchange and owners of ownership

interests of that class or series are entitled to obtain payment for the fair value of their ownership interests under section 10-19.1-87 or 10-32-55, as the case may be, in the event of the merger or exchange.

4. Notwithstanding subsections 1 and 2, submission of a plan of merger to a vote at a meeting of shareholders of a surviving corporation is not required if:

   a. The articles of the corporation will not be amended in the transaction;

   b. Each holder of shares of the corporation that were outstanding immediately before the effective date of the transaction will hold the same number of shares with identical rights immediately after that date;

   c. The number of shares of the corporation entitled to vote immediately after the merger, plus the number of shares of the corporation entitled to vote issuable on conversion of securities other than shares or on the exercise of rights to purchase securities issued by virtue of the terms of the transaction, will not exceed by more than twenty percent, the number of shares of the corporation entitled to vote immediately before the transaction; and

   d. The number of participating shares of the corporation immediately after the merger, plus the number of participating shares of the corporation issuable on conversion, or on the exercise of rights to purchase, securities issued in the transaction, will not exceed by more than twenty percent, the number of participating shares of the corporation immediately before the transaction. "Participating shares" are outstanding shares of the corporation that entitle their holders to participate without limitation in distributions by the corporation.

10-32-103. Articles of merger - Certificate.

1. Upon receiving the approval required by section 10-32-102, articles of merger must be prepared that contain:

   a. The plan of merger; and

   b. For each constituent organization either:

      (1) A statement that the plan has been approved by a vote of the shareholders pursuant to subsection 2 of section 10-19.1-98 or the members pursuant to subsection 2 or 3 of section 10-32-102; or

      (2) A statement that a vote of the shareholders is not required by virtue of subsection 3 of section 10-19.1-98 or that a vote of the members is not required by virtue of subsection 4 of section 10-32-102.

2. The articles of merger must be signed on behalf of each constituent organization and filed with the secretary of state, together with the fees provided in section 10-32-150.

3. The secretary of state shall issue a certificate of merger to the surviving organization, or its legal representative. The certificate must contain the effective date of merger.

10-32-104. Merger of subsidiary into parent.

1. A parent owning at least ninety percent of the outstanding ownership interests of each class and series of a subsidiary may merge the subsidiary into itself without a vote of the owners of either constituent organization. A resolution approved by the affirmative vote of a majority of the directors or managers of the parent present must set forth a plan of merger that contains:

   a. The name of the subsidiary and the name of the parent; and

   b. The manner and basis of converting the ownership interests of the subsidiary into ownership interests of the parent or of another organization or, in whole or in part, into money or other property.

2. A copy of the plan of merger must be mailed to each member, other than the parent, of the subsidiary.

3. Articles of merger must be prepared that contain:

   a. The plan of merger;

   b. The number of outstanding ownership interests of each class and series of the subsidiary and the number of ownership interests of each class and series owned by the parent; and

   c. The date a copy of the plan of merger was mailed to the owners, other than the parent, of the subsidiary.

4. Within thirty days after a copy of the plan of merger is mailed to the owners of the subsidiary, or upon waiver of the mailing by the holders of all outstanding ownership interests, the articles of merger must be signed on behalf of the parent and filed with the secretary of state, together with the fees provided in section 10-32-150.

5. The secretary of state shall issue a certificate of merger to the parent or its legal representative. The certificate must contain the effective date of merger.

10-32-105. Abandonment of plan of merger.

1. After a plan of merger has been approved by the owners entitled to vote on the approval of the plan as provided in section 10-32-102, and before the effective date of the plan, it may be abandoned:

   a. If the owners of ownership interests of each of the constituent organizations entitled to vote on the approval of the plan as provided in section 10-32-102 have approved the abandonment at a meeting by the affirmative vote of the owners of a majority of the voting power of the ownership interests entitled to vote and, if the owners of a constituent organization are not entitled to vote on the approval of the plan under section 10-32-102, the governing board of that

constituent organization has approved the abandonment by the affirmative vote of a majority of the board members present;

b. If the plan itself provides for abandonment and all conditions for abandonment set forth in the plan are met; or

c. Pursuant to subsection 2.

2. If articles of merger have not been filed with the secretary of state and the plan is to be abandoned, or if a plan of exchange is to be abandoned, a resolution abandoning the plan of merger or exchange may be approved by the affirmative vote of a majority of the board members present, subject to the contract rights of any other person under the plan.

3. If articles of merger have been filed with the secretary of state, but have not yet become effective, the constituent organizations, in the case of abandonment under subdivision a of subsection 1, the constituent organizations or any one of them, in the case of abandonment under subdivision b of subsection 1, or the abandoning organization in the case of abandonment under subsection 2, shall file with the secretary of state together with the fees provided in section 10-32-150, articles of abandonment that contain:

a. The names of the constituent organizations;

b. The provision of this section under which the plan is abandoned; and

c. If the plan is abandoned under subsection 2, the text of the resolution approved by the affirmative vote of a majority of the board members present abandoning the plan.

10-32-106. Effective date of merger or exchange and effect.

1. A merger is effective when the articles of merger are filed with the secretary of state or on a later date specified in the articles of merger. An exchange is effective on the date specified in the plan of exchange.

2. When a merger becomes effective:

a. The constituent organizations become a single entity, the surviving limited liability company or corporation, as the case may be;

b. The separate existence of all constituent organizations except the surviving organization ceases;

c. As to any limited liability company that was a constituent organization and is not the surviving organization, the articles of merger serve as the articles of termination and, unless previously filed, the notice of dissolution;

d. As to rights, privileges, immunities, powers, duties, and liabilities:

(1) If the surviving organization is a limited liability company, the surviving limited liability company has all the rights, privileges, immunities, and powers, and is subject to all the

duties and liabilities of a limited liability company organized under this chapter; and

(2) If the surviving organization is a domestic corporation, the surviving domestic corporation has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities of a domestic corporation;

e. The surviving organization, whether a limited liability company or a domestic or foreign corporation, possesses all the rights, privileges, immunities, and franchises, of a public as well as of a private nature, of each of the constituent organizations. All property, real, personal, and mixed, and all debts due on any account, including subscriptions to shares and contribution agreements, as the case may be, and all other choses in action, and every other interest of or belonging to or due to each of the constituent organizations vests in the surviving organization without any further act or deed. Confirmatory deeds, assignments, or similar instruments to accomplish that vesting may be signed and delivered at any time in the name of a constituent organization by its current officers or managers, as the case may be, or, if the organization no longer exists, by its last officers or managers, as the case may be. The title to any real estate or any interest in real estate vested in any of the constituent organizations does not revert nor in any way become impaired by reason of the merger;

f. The surviving organization is responsible and liable for all the liabilities and obligations of each of the constituent organizations. A claim of or against or a pending proceeding by or against a constituent organization may be prosecuted as if the merger had not taken place, or the surviving organization may be substituted in the place of the constituent organization. Neither the rights of creditors nor any liens upon the property of a constituent organization are impaired by the merger; and

g. The articles of organization or articles of incorporation, as the case may be, of the surviving organization are considered to be amended to the extent that changes in its articles, if any, are contained in the plan of merger.

3. When a merger becomes effective, the ownership interests to be converted or exchanged under the terms of the plan cease to exist in the case of a merger, or are considered to be exchanged in the case of an exchange. The owners of those ownership interests are entitled only to the securities, money, or other property into which those ownership interests have been converted or for which those ownership interests have been exchanged in accordance with the plan, subject to any dissenters' rights under section 10-19.1-87 or 10-32-54, as the case may be.

10-32-107. Merger or exchange with foreign organization.

1. A limited liability company may merge with or participate in an exchange with a foreign corporation or a foreign limited liability company by following the procedures set forth in this section, if:

a. With respect to a merger, the merger is permitted by the laws of the state under which the foreign corporation or foreign limited liability company is incorporated or organized; and

b. With respect to an exchange, the organization whose ownership interests will be acquired is either a limited liability company or a domestic corporation, whether or not the exchange is permitted by the laws of the state under which the foreign corporation or foreign limited liability company is incorporated or organized.

2. Each limited liability company shall comply with the provisions of this section and sections 10-32-100 through 10-32-106 with respect to the merger or exchange of ownership interests of organizations and each foreign corporation or foreign limited liability company shall comply with the applicable provisions of the laws under which it was incorporated or organized or by which it is governed.

3. If the surviving organization in a merger will be a domestic limited liability company, it shall comply with all the provisions of this chapter.

4. If the surviving organization in a merger will be a foreign corporation or foreign limited liability company and will transact business in this state, it shall comply, as the case may be, with the provisions of chapter 10-22 with respect to foreign corporations or with the provisions of this chapter with respect to foreign limited liability companies. In every case the surviving foreign corporation or foreign limited liability company shall file with the secretary of state:

a. An agreement that it may be served with process in this state in a proceeding for the enforcement of an obligation of a constituent organization and in a proceeding for the enforcement of the rights of a dissenting owner of an ownership interest of a constituent organization against the surviving foreign corporation or foreign limited liability company;

b. An irrevocable appointment of the secretary of state as its agent to accept service of process in any proceeding, and an address to which process may be forwarded; and

c. An agreement that it will promptly pay to the dissenting owners of an ownership interests of each constituent domestic limited liability company and constituent domestic corporation the amount, if any, to which they are entitled under section 10-19.1-88 or 10-32-55, as the case may be.

10-32-108. Transfer of assets - When permitted.

1. A limited liability company, by affirmative vote of a majority of the governors present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business and grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other

instruments for the payment of money or other property, as the board of governors considers expedient, in which case no member approval is required.

2. A limited liability company, by affirmative vote of a majority of the governors present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets, including its goodwill, not in the usual and regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board of governors considers expedient, when approved at a regular or special meeting of the members by the affirmative vote of the owners of a majority of the voting power of the interests entitled to vote. Written notice of the meeting must be given to all members whether or not they are entitled to vote at the meeting. The written notice must state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the limited liability company.

3. Confirmatory deeds, assignments, or similar instruments to evidence a sale, lease, transfer, or other disposition may be signed and delivered at any time in the name of the transferor by its current managers or, if the limited liability company no longer exists, by its last managers.

4. The transferee is liable for the debts, obligations, and liabilities of the transferor only to the extent provided in the contract or agreement between the transferee and the transferor or to the extent provided by this chapter or other statutes of this state.

10-32-109. Methods of dissolution.

1. A limited liability company dissolves upon the occurrence of any of the following events:

   a. When the period fixed in the articles of organization for the duration of the limited liability company expires;

   b. By order of a court pursuant to sections 10-32-119 and 10-32-122;

   c. By action of the organizers pursuant to section 10-32-110;

   d. By action of the members pursuant to section 10-32-111; or

   e. Upon the occurrence of an event that terminates the continued membership of a member in the limited liability company, including:

      (1) Death of any member;

      (2) Retirement of any member;

      (3) Resignation of any member;

      (4) Redemption of a member's complete membership interest;

      (5) Assignment of a member's governance rights under section 10-32-32 which leaves the assignor with no governance rights;

(6) A buyout of a member's membership interest under section 10-32-119 that leaves that member with no governance rights;

(7) Expulsion of any member;

(8) Bankruptcy of any member;

(9) Dissolution of any member;

(10) A merger in which the limited liability company is not the surviving organization;

(11) An exchange in which the limited liability company is not the acquiring organization; or

(12) The occurrence of any other event that terminates the continued membership of a member in the limited liability company.

However, the limited liability company is not dissolved and is not required to be wound up by reason of any event that terminates the continued membership of a member if either there are at least two remaining members or a new member is admitted as provided in section 10-32-06 and the existence and business of the limited liability company is continued by the consent of all remaining members under a right to do so stated in the articles of organization and the consent is obtained no later than ninety days after the termination of the continued membership.

2. A limited liability company dissolved by one of the dissolution events specified in subsection 1 must be wound up and terminated under the following dissolution provisions:

a. When a limited liability company is dissolved under subdivision a of subsection 1 by reason of the expiration of its limited period of duration, the limited liability company must be wound up and terminated under sections 10-32-112 through 10-32-115 and sections 10-32-117, 10-32-118, and 10-32-131;

b. When a limited liability company is dissolved under subdivision b of subsection 1 by reason of a court order, the limited liability company must be wound up and terminated under sections 10-32-119 through 10-32-126;

c. When a limited liability company is dissolved under subdivision c of subsection 1 by its organizers, the limited liability company must be wound up and terminated under section 10-32-110 and sections 10-32-112 through 10-32-118;

d. When a limited liability company is dissolved under subdivision d of subsection 1 by its members, the limited liability company must be wound up and terminated under sections 10-32-111 through 10-32-118 and section 10-32-131; and

e. When a limited liability company is dissolved under subdivision e of subsection 1 by reason of a termination of the continued membership of a member, the limited liability company must be wound up and

terminated under sections 10-32-112 through 10-32-115 and sections 10-32-117, 10-32-118, and 10-32-131.

10-32-110. Voluntary dissolution and termination by organizers. A limited liability company that has not accepted contributions may be dissolved and terminated by the organizers in the manner set forth in this section.

1. A majority of the organizers shall sign articles of dissolution and termination containing:

   a. The name of the limited liability company;

   b. The date of organization;

   c. A statement that contributions have not been accepted; and

   d. A statement that no debts remain unpaid.

2. The articles of dissolution and termination must be filed with the secretary of state together with the fees provided in section 10-32-150.

3. When the articles of dissolution and termination have been filed with the secretary of state, the limited liability company is terminated.

4. The secretary of state shall issue to the terminated limited liability company or its legal representative a certificate of termination that contains:

   a. The name of the limited liability company;

   b. The date the articles of dissolution and termination were filed with the secretary of state; and

   c. A statement that the limited liability company is terminated.

10-32-111. Voluntary dissolution by members. A limited liability company may be dissolved by the members when authorized in the manner set forth in this section.

1. Written notice must be given to each member, whether or not entitled to vote at a meeting of members, within the time and in the manner provided in section 10-32-40 for notice of meetings of members and, whether the meeting is a regular or a special meeting, must state that a purpose of the meeting is to consider dissolving the limited liability company and that dissolution must be followed by the winding up and termination of the limited liability company.

2. The proposed dissolution must be submitted for approval at a meeting of members. If the proposed dissolution is approved at a meeting by the affirmative vote of the owners of a majority of the voting power of all membership interests entitled to vote, the limited liability company is dissolved.

10-32-112. Filing notice of dissolution - Effect.

1. If dissolution of the limited liability company is approved pursuant to section 10-32-111, or it occurs under subdivision a or e of subsection 1

of section 10-32-109, the limited liability company shall file with the secretary of state, together with the fees provided in section 10-32-150, a notice of dissolution. The notice must contain:

a. The name of the limited liability company; and

b. If the dissolution:

(1) Is approved pursuant to subsection 2 of section 10-32-111, the date and place of the meeting at which the dissolution was approved and a statement that the requisite vote of the members was received, or that members validly took action without a meeting; and

(2) Occurs under subdivision a of subsection 1 of section 10-32-109 by the expiration of the limited liability company's duration, a statement of the expiration date; or

(3) Occurs under subdivision e of subsection 1 of section 10-32-109 by the termination of a membership interest of a member, a statement that the continued membership of a member has terminated and the date of that termination.

2. When the notice of dissolution has been filed with the secretary of state, and subject to section 10-32-116, the limited liability company shall cease to carry on its business, except to the extent necessary for the winding up of the business of the limited liability company. The members shall retain the right to revoke the dissolution in accordance with section 10-32-116 and the right to remove governors or fill vacancies on the board of governors. The limited liability company existence continues to the extent necessary to wind up the affairs of the limited liability company until the dissolution is revoked or articles of termination are filed with the secretary of state.

3. As part of winding up, the limited liability company may participate in a merger with another limited liability company or with a domestic or foreign corporation under sections 10-32-100 through 10-32-107, but the dissolved limited liability company may not be the surviving organization.

4. The filing with the secretary of state of a notice of dissolution does not affect any remedy in favor of the limited liability company or any remedy against it or its governors, managers, or members in those capacities, except as provided in section 10-32-114, 10-32-115, or 10-32-128.

10-32-113. Procedure in winding up.

1. If the business of the limited liability company is wound up and terminated by merging the dissolved limited liability company into a successor organization:

a. The procedures stated in sections 10-32-100 through 10-32-107 must be followed;

b. Sections 10-32-114 through 10-32-116 and sections 10-32-128 and 10-32-129 do not apply; and

c. Once the merger is effective, a creditor or claimant of the terminated limited liability company, and all those claiming through or under the creditor or claimant, are barred from suing the terminated limited liability company on that claim or otherwise realizing upon or enforcing it against the terminated limited liability company, but the creditor, claimant, and those claiming under the creditor and claimant, may, if not otherwise barred by law, assert their claims against the surviving organization of the merger.

2. If the business of the limited liability company is to be wound up and terminated other than by merging the dissolved limited liability company into a successor organization, the procedures stated in subsections 3 through 5 must be followed.

3. When a notice of dissolution has been filed with the secretary of state, the board of governors, or the managers acting under the direction of the board of governors, shall proceed as soon as possible:

a. To give notice to creditors and claimants under section 10-32-114 or to proceed under section 10-32-115;

b. Subject to any business continuation agreement, to collect or make provision for the collection of all known debts due or owing to the limited liability company, including unperformed contribution agreements; and

c. Except as provided in sections 10-32-114, 10-32-115, and 10-32-128, to pay or make provision for the payment of all known debts, obligations, and liabilities of the limited liability company according to their priorities under section 10-32-131.

4. Notwithstanding section 10-32-108, when a notice of dissolution has been filed with the secretary of state, the governors may sell, lease, transfer, or otherwise dispose of all or substantially all of the property and assets of a dissolved limited liability company without a vote of the members.

5. All tangible or intangible property, including money, remaining after the discharge of the debts, obligations, and liabilities of the limited liability company must be distributed to the members in accordance with section 10-32-131.

10-32-114. Winding-up procedure for limited liability companies that give notice to creditors and claimants.

1. When a notice of dissolution has been filed with the secretary of state, and the business of the limited liability company is not to be wound up and terminated by merging the dissolved limited liability company into a successor organization under subsection 3 of section 10-32-112, then the limited liability company may give notice of the filing to each creditor of and claimant against the limited liability company known or unknown, present or future, and contingent or noncontingent. If notice to creditors and claimants is given, it must be given by publishing the notice once each week for four successive weeks in an official newspaper as defined in chapter 46-06 in the county or counties where the registered

office and the principal executive office of the limited liability company are located and by giving written notice to known creditors and claimants pursuant to subsection 31 of section 10-32-02.

2. The notice to creditors and claimants must contain:

   a. A statement that the limited liability company has dissolved and is in the process of winding up its affairs;

   b. A statement that the limited liability company has filed with the secretary of state a notice of dissolution;

   c. The date of filing the notice of dissolution;

   d. The address of the office to which written claims against the limited liability company must be presented; and

   e. The date by which all claims must be received, which must be the later of ninety days after published notice or, with respect to a particular known creditor or claimant, ninety days after the date on which written notice was given to that creditor or claimant. Published notice is considered given on the date of first publication for the purpose of determining this date.

3. If the business of the limited liability company is being continued under a business continuation agreement, the notice to creditors may also contain all of the following:

   a. A statement that the business of the dissolved limited liability company is being continued by a successor organization;

   b. The name and address of the successor organization;

   c. An undertaking by the successor organization to assume all the liabilities of the dissolved limited liability company; and

   d. A statement that creditors of the dissolved limited liability company do not need to file claims against the limited liability company in order to preserve their rights to enforce those claims against the successor organization.

   Neither the existence of a business continuation agreement nor the giving of the information described in this subsection affects a creditor's or claimant's right to proceed against the dissolved limited liability company.

4. With respect to a limited liability company that gives notice:

   a. A limited liability company that gives notice to creditors and claimants has thirty days from the receipt of each claim filed according to the procedures set forth by the limited liability company on or before the date set forth in the notice to accept or reject the claim by giving written notice to the person submitting it. A claim not expressly rejected in this manner is considered accepted.

b. A creditor or claimant to whom notice is given and whose claim is rejected by the limited liability company has sixty days from the date of rejection, or one hundred eighty days from the date the limited liability company filed with the secretary of state the notice of dissolution, whichever is longer, to pursue any other remedies with respect to the claim.

c. A creditor or claimant to whom notice is given who fails to file a claim according to the procedures set forth by the limited liability company on or before the date set forth in the notice is barred from suing the dissolved limited liability company on that claim or otherwise realizing upon or enforcing it against the dissolved limited liability company, except as provided in section 10-32-128. If the dissolved limited liability company gave the additional information referred to in subsection 3, nothing in this section bars the creditor or claimant from seeking to enforce its rights against the successor organization.

d. A creditor or claimant whose claim is rejected by the limited liability company under subdivision b is barred from suing on that claim or otherwise realizing upon or enforcing it whether against the dissolved limited liability company or any successor organization, if the creditor or claimant does not initiate legal, administrative, or arbitration proceedings with respect to the claim within the time provided in subdivision b.

5. Articles of termination for a limited liability company that has given notice to creditors and claimants under this section must be filed with the secretary of state along with the fees provided in section 10-32-150 after:

a. The ninety-day period in subdivision e of subsection 2 has expired and the payment of claims of all creditors and claimants filing a claim within that period has been made or provided for; or

b. The longest of the periods described in subdivision b of subsection 4 has expired and there are no pending legal, administrative, or arbitration proceedings by or against the limited liability company commenced within the time provided in subdivision b of subsection 4.

6. The articles of termination must state:

a. The last date on which the notice was given and that the payment of all creditors and claimants filing a claim within the ninety-day period in subdivision e of subsection 2 has been made or provided for, or the date on which the longest of the periods described in subdivision b of subsection 4 expired;

b. That the remaining property, assets, and claims of the limited liability company have been distributed in accordance with section 10-32-131, or that adequate provision has been made for that distribution; and

c. That there are no pending legal, administrative, or arbitration proceedings by or against the limited liability company commenced

within the time provided in subdivision b of subsection 4 or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding.

10-32-115. Winding-up procedure for limited liability companies that do not give notice to creditors and claimants.

1. Articles of termination for a limited liability company whose business is not to be wound up and terminated by merging the dissolved limited liability company into a successor organization under subsection 3 of section 10-32-112 and that has not given notice to creditors and claimants in the manner provided in section 10-32-114 must be filed with the secretary of state after:

   a. The payment of claims of all known creditors and claimants has been made or provided for; or

   b. At least two years have elapsed from the date of filing the notice of dissolution.

2. The articles of termination must state:

   a. If articles of termination are being filed pursuant to subdivision a of subsection 1 that all known debts, obligations, and liabilities of the limited liability company have been paid and discharged or that adequate provision has been made for payment or discharge;

   b. That the remaining property, assets, and claims of the limited liability company have been distributed in accordance with section 10-32-131 or that adequate provision has been made for that distribution; and

   c. That there are no pending legal, administrative, or arbitration proceedings by or against the limited liability company or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding.

3. If the limited liability company has paid or provided for all known creditors or claimants at the time articles of termination are filed, a creditor or claimant who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of dissolution is barred from suing on that claim or otherwise realizing upon or enforcing it.

4. If the limited liability company has not paid or provided for all known creditors and claimants at the time articles of termination are filed, a person who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of dissolution is barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in section 10-32-128.

10-32-116. Revocation of dissolution.

1. Except as provided in subsections 4 and 5, winding up proceedings commenced pursuant to section 10-32-111 may be revoked before the filing of articles of termination.

2. Written notice must be given to every member entitled to vote at a members' meeting within the time and in the manner provided in section 10-32-40 for notice of meetings of members and must state that a purpose of the meeting is to consider the advisability of revoking the dissolution. The proposed revocation must be submitted to the members at the meeting. If the proposed revocation is approved at a meeting by the affirmative vote of the owners of a majority of the voting power of all membership interests entitled to vote, the dissolution is revoked.

3. Revocation of dissolution is effective when a notice of revocation is filed with the secretary of state together with the fees provided in section 10-32-150. After the notice is filed the limited liability company may cease to wind up and resume business.

4. If a dissolved limited liability company is being wound up and terminated by being merged into a successor organization under subsection 3 of section 10-32-112, and the plan of merger has been approved under section 10-32-102, then the dissolution may be revoked under this section only after the plan of merger has been properly abandoned under section 10-32-105.

5. When dissolution occurs under subdivision a, b, or e of subsection 1 of section 10-32-109, revocation is prohibited.

10-32-117. Effective date of termination and certificate of termination.

1. When the articles of termination have been filed with the secretary of state, the limited liability company is terminated.

2. The secretary of state shall issue to the dissolved limited liability company or its legal representative a certificate of termination that contains:

   a. The name of the limited liability company;

   b. The date the articles of termination were filed with the secretary of state; and

   c. A statement that the limited liability company is terminated.

10-32-118. Supervised voluntary winding up and termination following a voluntary dissolution. After an event of dissolution has occurred and before a certificate of termination has been issued, the limited liability company or, for good cause shown, a member or creditor may apply to a court within the county in which the registered office of the limited liability company is situated to have the dissolution conducted or continued under the supervision of the court as provided in sections 10-32-119 through 10-32-128.

10-32-119. Judicial intervention and equitable remedies, dissolution, and termination.

1. A court may grant any equitable relief it considers just and reasonable in the circumstances or may dissolve, wind up, and terminate a limited liability company:

   a. In a supervised voluntary winding up and termination pursuant to section 10-32-118;

   b. In an action by a member when it is established that:

      (1) The governors or the persons having the authority otherwise vested in the board of governors are deadlocked in the management of the affairs of the limited liability company and the members are unable to break the deadlock;

      (2) The governors or those in control of the limited liability company have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one or more members in their capacities as members, governors, managers, or employees of a closely held limited liability company;

      (3) The members of the limited liability company are so divided in voting power that, for a period that includes the time when two consecutive regular meetings were held, they have failed to elect successors to governors whose terms have expired or would have expired upon the election and qualification of their successors;

      (4) The limited liability company assets are being misapplied or wasted; or

      (5) An event of dissolution has occurred under subdivision a, d, or e of subsection 1 of section 10-32-109 but the limited liability company is not acting to wind up its affairs;

   c. In an action by a creditor when:

      (1) The claim of the creditor has been reduced to judgment and an execution on the judgment has been returned unsatisfied; or

      (2) The limited liability company has admitted in writing that the claim of the creditor is due and owing and it is established that the limited liability company is unable to pay its debts in the ordinary course of business; or

   d. In an action by the attorney general to dissolve the limited liability company in accordance with section 10-32-122 when it is established that a decree of termination is appropriate.

2. In determining whether to order relief under this section and in determining what particular relief to order, the court shall take into consideration the financial condition of the limited liability company but may not refuse to order any particular form of relief solely on the grounds that the limited liability company has accumulated or current operating profits.

3. In determining whether to order relief under this section and in determining what particular relief to order, the court shall take into

consideration the duty that all members in a closely held limited liability company owe one another to act in an honest, fair, and reasonable manner in the operation of the limited liability company and the reasonable expectations of the members as they exist at the inception and develop during the course of the members' relationship with the limited liability company and with each other.

4. In determining what relief to order, the court shall take into account that any relief that results in the termination of a member's membership interest will cause dissolution of the limited liability company. If the court orders relief that results in dissolution of the limited liability company, the court shall make appropriate orders providing for the winding up and termination of the dissolved limited liability company.

5. In deciding whether to order winding up through liquidation, the court shall consider whether lesser relief suggested by one or more parties, or provided in a business continuation agreement, such as any form of equitable relief, or a buyout or partial liquidation coupled with the continuation of the business of the dissolved limited liability company through a successor organization, would be adequate to permanently relieve the circumstances established under subdivision b or c of subsection 1. Lesser relief may be ordered in any case where it would be appropriate under all the facts and circumstances of the case.

6. If the court finds that a party to a proceeding brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, it may in its discretion award reasonable expenses, including attorneys' fees and disbursements, to any of the other parties.

7. Proceedings under this section must be brought in a court within the county in which the registered office of the limited liability company is located. It is not necessary to make members parties to the action or proceeding unless relief is sought against them personally.

10-32-120. Judicial intervention procedures.

1. In proceedings under section 10-32-119, the court may issue injunctions, appoint receivers with all powers and duties the court directs, take other actions required to preserve the limited liability company assets wherever situated, and carry on the business of the limited liability company until a full hearing can be held.

2. After a full hearing has been held, upon whatever notice the court directs to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a receiver to collect the limited liability company assets, including all amounts owing to the limited liability company by persons who have made contribution agreements and by persons who have made contributions by means of enforceable promises of future performance. A receiver has authority, subject to the order of the court, to continue the business of the limited liability company and to sell, lease, transfer, or otherwise dispose of all or any of the property and assets of the limited liability company either at public or private sale.

3. If the court determines that the limited liability company is to be dissolved with winding up to be accomplished by liquidation, then the assets of the limited liability company or the proceeds resulting from a sale, lease, transfer, or other disposition must be applied in the following order of priority to the payment and discharge of:

   a. The costs and expenses of the proceedings, including attorneys' fees and disbursements;

   b. Debts, taxes, and assessments due the United States, the state of North Dakota and their subsections, and other states and their subsections, in that order;

   c. Claims duly proved and allowed to employees under the provisions of title 65. However, claims under this subdivision may not be allowed if the limited liability company carried workers' compensation insurance, as provided by law, at the time the injury was sustained;

   d. Claims, including the value of all compensation paid in any medium other than money, duly proved and allowed to employees for services performed within three months preceding the appointment of the receiver, if any; and

   e. Other claims duly proved and allowed.

4. After payment of the expenses of receivership and claims of creditors duly proved under subsection 3, the remaining assets, if any, must be distributed to the members in accordance with subsection 1 of section 10-32-131.

10-32-121. Qualifications of receivers and powers.

1. A receiver must be an individual or a domestic or foreign organization authorized to transact business in this state. A receiver shall give bond as directed by the court with the sureties required by the court.

2. A receiver may sue and defend in all courts as receiver of the limited liability company. The court appointing the receiver has exclusive jurisdiction of the limited liability company and its property.

10-32-122. Action by attorney general.

1. A limited liability company may be involuntarily dissolved, wound up, and terminated by a decree of a court in this state in an action filed by the attorney general when it is established that:

   a. The articles of organization were procured through fraud;

   b. The limited liability company was organized for a purpose not permitted by section 10-32-04;

   c. The limited liability company failed to comply with the requirements essential to organization under this chapter;

   d. The limited liability company has failed for thirty days to appoint and maintain a registered agent in this state; or

e. The limited liability company has acted, or failed to act, in a manner that constitutes surrender or abandonment of the limited liability company privileges or enterprise.

2. An action must not be commenced under this section until thirty days after notice to the limited liability company by the attorney general of the reason for the filing of the action. If the reason for filing the action is an act that the limited liability company has done, or omitted to do, and the act or omission may be corrected by an amendment of the articles of organization or the operating agreement or by performance of or abstention from the act, the attorney general shall give the limited liability company thirty additional days in which to effect the correction before filing the action.

10-32-123. Filing claims in judicial intervention proceedings.

1. In proceedings referred to in section 10-32-119, the court may require all creditors and claimants of the limited liability company to file their claims under oath with the court administrator or with the receiver in a form prescribed by the court.

2. If the court requires the filing of claims, it shall fix a date not less than one hundred twenty days from the date of the order as the last day for the filing of claims, and shall prescribe the notice of the fixed date that must be given to creditors and claimants. Before the fixed date, the court may extend the time for filing claims. Creditors and claimants failing to file claims on or before the fixed date may be barred, by order of court, from claiming an interest in or receiving payment out of the property or assets of the limited liability company.

10-32-124. Discontinuance of proceedings for winding up through liquidation. If the court has determined that the limited liability company is to be dissolved, with winding up to be accomplished by liquidation, and subsequently the court determines that the grounds for dissolution no longer exist or that the grounds for ordering winding up through liquidation no longer exist, the court shall make whatever orders are just and reasonable under the circumstances.

10-32-125. Decree of termination.

1. If the court has ordered a dissolution, or the court has intervened under subdivision a of subsection 1 of section 10-32-119, or has ordered or caused a dissolution under any other provision of that subsection, then after the affairs of the dissolved limited liability company have been appropriately wound up the court shall enter a decree terminating the dissolved limited liability company.

2. When the decree terminating the limited liability company has been entered, the limited liability company is terminated.

10-32-126. Filing decree. After the court enters a decree terminating a limited liability company, the court administrator shall cause a certified copy of the decree to be filed with the secretary of state. The secretary of state may not charge a fee for filing the decree.

10-32-127. Deposit with state treasurer of amount due certain members. Upon termination of a limited liability company, the portion of the assets distributable to a member who is unknown or cannot be found, or who is under disability, if there is no person legally competent to receive the distributive portion, must be reduced to money and deposited with the state treasurer for disposition pursuant to chapter 47-30.1. The amount deposited is appropriated to the state treasurer and must be paid over to the member or a legal representative, upon proof satisfactory to the state treasurer of a right to payment.

10-32-128. Claims barred and exceptions.

1. A person who is or becomes a creditor or claimant at any time before, during, or following the conclusion of dissolution proceedings who does not file a claim or pursue a remedy in a legal proceeding within the time provided in sections 10-32-114, 10-32-115, 10-32-119, and 10-32-120 or has not initiated a legal proceeding before the commencement of the dissolution proceedings, and all those claiming through or under the creditor or claimant, or forever barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in this section.

2. At any time within one year after articles of termination have been filed with the secretary of state pursuant to section 10-32-114 or subdivision b of subsection 1 of section 10-32-115, or a decree of termination has been entered, a creditor or claimant who shows good cause for not having previously filed the claim may apply to a court in this state to allow a claim:

   a. Against the limited liability company to the extent of undisposed assets; or

   b. If the undisposed assets are not sufficient to satisfy the claim against a member, the member's liability is limited to a portion of the claim that is equal to the portion of the distributions to members in liquidation or termination received by the member, but a member's liability may not exceed the amount that the member actually received in the termination.

3. All known contractual debts, obligations, and liabilities incurred in the course of winding up and terminating the limited liability company's affairs must be paid or provided for by the limited liability company before the distribution of assets to a member. A person to whom this kind of debt, obligation, or liability is owed but not paid may pursue any remedy before the expiration of the applicable statute of limitations against the managers and governors of the limited liability company who are responsible for, but who fail to cause, the limited liability company to pay or make provision for payment of the debts, obligations, and liabilities or against members to the extent permitted under section 10-32-66. This subsection does not apply to dissolution and termination under the supervision or order of a court.

10-32-129. Right to sue or defend after termination. After a limited liability company has been terminated, any of its former managers, governors, or

members may assert or defend, in the name of the limited liability company, any claim by or against the limited liability company.

10-32-130. Omitted assets. Title to assets remaining after payment of all debts, obligations, or liabilities and after distributions to members may be transferred by a court in this state.

10-32-131. Disposition of assets upon dissolution.

1. Except when the business of a dissolved limited liability company is being continued under subsection 2 or when the dissolved limited liability company is being wound up and terminated under subsection 3 of section 10-32-112, the assets of the dissolved limited liability company must be disposed of to satisfy liabilities according to the following priorities:

   a. To creditors, including members who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company other than liabilities for interim distributions to members under section 10-32-61 or termination distributions under section 10-32-60;

   b. Unless otherwise provided in the articles of organization, to members and former members of the limited liability company in satisfaction of liabilities for distributions under section 10-32-60 or 10-32-61; and

   c. Unless otherwise provided in the articles of organization, to members first for a return of their contributions, as restated from time to time under section 10-32-57, and secondly respecting their membership interests in the proportions in which the members share in distributions.

   A limited liability company may offset any amount due a member under this subsection by any amount owed to the limited liability company by the member and by the amount of damages, if any, suffered by the limited liability company as a result of that member's breach of a member-control agreement.

2. If a business continuation agreement exists, then after dissolution the board of governors shall resolve to implement the business continuation agreement and the assets of the dissolved limited liability company must be disposed of according to that agreement, except:

   a. Members and former members have dissenters' rights as provided in sections 10-32-54 and 10-32-55, but:

      (1) No dissenters' rights exist if the business of the dissolved limited liability company is being continued pursuant to a business continuation agreement made after the dissolution; and

      (2) Any dissenters' rights that do exist are limited by subsection 3.

   b. If the business of the dissolved limited liability company is being continued, but not through a merger under subsection 3 of section 10-32-112, the dissolved limited liability company shall comply with either section 10-32-114 or 10-32-115.

3. If a person has agreed in a business continuation agreement to waive dissenters' rights and nonetheless asserts dissenters' rights under subsection 2:

a. Those rights must be honored; but

b. Unless the business continuation agreement provides otherwise:

(1) In determining the fair value of the membership interest, the value of the goodwill of the business of the dissolved limited liability company must not be considered; and

(2) The payment due the dissenter is subject to an offset equal to:

(a) Any amount owed to the limited liability company by the member;

(b) The amount of damages, if any, suffered by the limited liability company as a result of the dissenter's breach of the business continuation agreement; and

(c) The amount of damages, if any, suffered by the limited liability company as a result of any breach by the dissenter of any other member-control agreement or part of a member-control agreement.

10-32-132. Service of process on limited liability company and nonresident governors.

1. The registered agent must be an agent of the limited liability company and any nonresident governor upon whom any process, notice, or demand required or permitted by law to be served on the limited liability company or governor may be served. Acceptance of a governorship includes the appointment of the secretary of state as an agent for personal service of legal process, notice, or demand.

2. A process, notice, or demand required or permitted by law to be served upon a limited liability company may be served either:

a. Upon the registered agent of the limited liability company;

b. Upon a manager of the limited liability company; or

c. Upon the secretary of state as provided in this section.

3. If neither the limited liability company's registered agent nor an officer of the limited liability company can be found at the registered office, or if a limited liability company fails to maintain a registered agent in this state and a manager of the limited liability company cannot be found at the registered office, then the secretary of state is the agent of the limited liability company upon whom the process, notice, or demand may be served. The return of the sheriff, or the affidavit of a person not a party, that no registered agent or manager can be found at the registered office must be provided to the secretary of state. Service on the secretary of state of any process, notice, or demand is deemed personal service upon the limited liability company and is made by filing with the

secretary of state an original and two copies of the process, notice, or demand, along with the fees provided for in section 10-32-150. The secretary of state shall immediately forward, by registered mail, addressed to the limited liability company at its registered office, a copy of the process, notice, or demand. Service on the secretary of state is returnable in not less than thirty days notwithstanding a shorter period specified in the process, notice, or demand.

4. A record must be maintained in the office of the secretary of state of all processes, notices, and demands served upon the secretary of state under this section, including the date of service and the action taken with reference to it.

5. Nothing in this section limits the right of a person to serve any process, notice, or demand required or permitted by law to be served upon a limited liability company in any other manner permitted by law.

10-32-133. When a member is not a proper party. A member of a limited liability company is not a proper party to a proceeding by or against a limited liability company except when:

1. The object of the proceeding is to determine or enforce a member's right against, or liability to, the limited liability company; or

2. The proceeding involves a claim of personal liability or responsibility of that member and that claim has some basis other than the member's status as a member.

10-32-134. State interested in proceedings. If it appears at any stage of a proceeding in a court in this state that the state is, or is likely to be, interested in the proceeding or that it is a matter of general public interest, the court shall order that a copy of the complaint or petition be served upon the attorney general in the same manner prescribed for serving a summons in a civil action. The attorney general shall intervene in a proceeding when the attorney general determines that the public interest requires it, whether or not the attorney general has been served.

10-32-135. Governing law.

1. Subject to the constitution of this state, the laws of the jurisdiction under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its members. A foreign limited liability company may not be denied a certificate of authority to transact business in this state by reason of any difference between those laws and the laws of this state.

2. A foreign limited liability company holding a valid certificate of authority in this state has no greater rights and privileges than a domestic limited liability company. The certificate of authority does not authorize the foreign limited liability company to exercise any of its powers or purposes that a domestic limited liability company is forbidden by law to exercise in this state.

10-32-136. Name. A foreign limited liability company may apply for a certificate of authority under any name that would be available to a domestic

limited liability company, whether or not the name is the name under which it is authorized in its jurisdiction of organization.

10-32-137. Admission of foreign limited liability company - Transacting business and obtaining licenses and permits. No foreign limited liability company may transact business in this state or obtain any license or permit required by this state until it has procured a certificate of authority from the secretary of state. No foreign limited liability company may transact in this state any business that is prohibited to a domestic limited liability company organized under this chapter. A foreign limited liability company may not be denied a certificate of authority because the laws of the state or country where the limited liability company is organized differ from the laws of this state. Nothing in this chapter authorizes this state to regulate the organization or internal affairs of a foreign limited liability company.

10-32-138. Application for certificate of authority.

1. An applicant for the certificate shall file with the secretary of state an application executed by an authorized person and setting forth:

   a. The name of the foreign limited liability company and, if different, the name under which it proposes to transact business in this state;

   b. The jurisdiction of its organization;

   c. The name and business address of the proposed registered agent in this state, which agent must be an individual resident of this state, a domestic corporation, or a foreign corporation having a place of business in, and authorized to do business in, this state; and

   d. The address of the principal executive office of the foreign limited liability company.

2. The application must be accompanied by payment of the fees provided in section 10-32-150 together with a certificate of good standing or a certificate of existence duly authenticated by the organizing officer of the state or country where the limited liability company is organized and the consent of the designated registered agent for service of process to serve in that capacity.

10-32-139. Issuance of certificate of authority. If the secretary of state finds that an application for a certificate of authority conforms to law and all fees have been paid, the secretary shall:

1. Endorse on the application the word "filed" and the date of the filing;

2. File the application, the certificate of good standing or certificate of existence, and the consent of the registered agent; and

3. Issue to the limited liability company or its representative, a certificate of authority to transact business in this state.

10-32-140. Amendments to the certificate of authority. If any statement in the application for a certificate of authority by a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, including but not limited

to a change in the name or address of the registered agent required to be maintained by section 10-32-141, the foreign limited liability company shall promptly file with the secretary of state an amendment to the certificate of authority, executed by an authorized person correcting the statement.

10-32-141. Registered agent and certain reports. A foreign limited liability company authorized to transact business in this state shall:

1. Appoint and continuously maintain a registered agent in the same manner as provided in section 10-32-12; or

2. File a report upon any change in the name or business address of its registered agent in the same manner as provided in subsection 3 of section 10-32-13.

10-32-142. Merger of foreign limited liability company authorized to transact business in this state. Whenever a foreign limited liability company authorized to transact business in this state is a party to a statutory merger permitted by the laws of the state or country under which it is organized, and the limited liability company is not the surviving organization, the surviving organization shall, within thirty days after the merger becomes effective, file with the secretary of state a certified statement of merger duly authenticated by the proper officer of the state or country where the statutory merger was effected. It is not necessary for any foreign organization, which is the surviving organization in a merger, to procure either a new or amended certificate of authority to transact business in this state unless the name of the organization is changed thereby or unless the organization desires to pursue in this state purposes other than those which it is authorized to transact in this state.

10-32-143. Certificate of withdrawal. A foreign limited liability company authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure the certificate, the foreign limited liability company shall file with the secretary of state an application for withdrawal, together with the fees provided in section 10-32-150, which must set forth:

1. The name of the limited liability company and the state or country under the laws of which it is organized;

2. That the limited liability company is not transacting business in this state;

3. That the limited liability company surrenders its authority to transact business in this state;

4. That the limited liability company revokes the authority of its registered agent in this state to accept service of process and consents to that service of process on the limited liability company by service upon the secretary of state in any action, suit, or proceeding based upon any cause of action arising in this state during the time the limited liability company was authorized to transact business in this state; and

5. A post-office address to which a person may mail a copy of any process against the limited liability company.

10-32-144. Revocation of certificate of authority.

1. The certificate of authority of a foreign limited liability company to transact business in this state may be revoked by the secretary of state upon the occurrence of either of these events:

   a. The foreign limited liability company has failed to appoint and maintain a registered agent as required by this chapter, file a report upon any change in the name or business address of the registered agent, or file in the office of the secretary of state any amendment to its application for a certificate of authority as specified in section 10-32-140; or

   b. A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by the foreign limited liability company pursuant to this chapter.

2. No certificate of authority of a foreign limited liability company may be revoked by the secretary of state unless:

   a. The secretary has given the foreign limited liability company not less than sixty days' notice by mail addressed to its registered office in this state or, if the foreign limited liability company fails to appoint and maintain a registered agent in this state, addressed to the office required to be maintained pursuant to section 10-32-12; and

   b. During the sixty-day period, the foreign limited liability company has failed to file the report of change regarding the registered agent, to file any amendment, or to correct the misrepresentation.

3. Upon the expiration of sixty days after the mailing of the notice, the authority of the foreign limited liability company to transact business in this state ceases. The secretary of state shall issue a certificate of revocation and shall mail the certificate to the principal executive office of the foreign limited liability company.

10-32-145. Transaction of business without certificate of authority.

1. A foreign limited liability company transacting business in this state may not maintain any action, suit, or proceeding in any court of this state until it possesses a certificate of authority.

2. The failure of a foreign limited liability company to obtain a certificate of authority does not impair the validity of any contract or act of the foreign limited liability company or prevent the foreign limited liability company from defending any action, suit, or proceeding in any court of this state.

3. A foreign limited liability company, by transacting business in this state without a certificate of authority, appoints the secretary of state as its agent upon whom any notice, process, or demand may be served.

4. A foreign limited liability company that transacts business in this state without a valid certificate of authority is liable to the state for the years or parts of years during which it transacted business in this state without the certificate in an amount equal to all fees that would have

been imposed by this chapter upon that limited liability company had it duly obtained the certificate, filed all reports required by this chapter, and paid all penalties imposed by this chapter. The attorney general shall bring proceedings to recover all amounts due this state under the provisions of this section.

5. A foreign limited liability company that transacts business in this state without a valid certificate of authority is subject to a civil penalty, payable to the state, not to exceed five thousand dollars. Each governor or, in the absence of governors, each member or agent who authorizes, directs, or participates in the transaction of business in this state on behalf of a foreign limited liability company that does not have a certificate is subject to a civil penalty, payable to the state, not to exceed one thousand dollars.

6. The civil penalties set forth in subsection 5 may be recovered in an action brought within the district court of Burleigh County by the attorney general. Upon a finding by the court that a foreign limited liability company or any of its members, governors, or agents have transacted business in this state in violation of this chapter, the court shall issue, in addition to the imposition of a civil penalty, an injunction restraining the further transaction of the business of the foreign limited liability company and the further exercise of any limited liability company's rights and privileges in this state. The foreign limited liability company must be enjoined from transacting business in this state until all civil penalties plus any interest and court costs that the court may assess have been paid and until the foreign limited liability company has otherwise complied with the provisions of this chapter.

7. A member of a foreign limited liability company is not liable for the debts and obligations of the limited liability company solely by reason of the company's having transacted business in this state without a valid certificate of authority.

10-32-146. Transactions not constituting transacting business.

1. The following activities of a foreign limited liability company, among others, do not constitute transacting business within the meaning of this chapter:

   a. Maintaining, defending, or settling any proceeding;

   b. Holding meetings of its members or carrying on any other activities concerning its internal affairs;

   c. Maintaining bank accounts;

   d. Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited liability company's own securities or maintaining trustees or depositories with respect to those securities;

   e. Selling through independent contractors;

f. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

g. Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

h. Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

i. Holding, protecting, renting, maintaining, and operating real or personal property in this state so acquired;

j. Selling or transferring title to property in this state to any person; or

k. Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like manner.

2. The term "transacting business" as used in this section has no effect on personal jurisdiction under the North Dakota Rules of Civil Procedure.

3. For purposes of this section, any foreign limited liability company that owns income-producing real or tangible personal property in this state, other than property exempted under subsection 1, will be considered transacting business in this state.

4. The list of activities in subsection 1 is not exhaustive. This section does not apply in determining the contracts or activities that may subject a foreign limited liability company to service of process or taxation in this state or to regulation under any other law of this state.

10-32-147. Action by attorney general. The attorney general may bring an action to restrain a foreign limited liability company from transacting business in this state in violation of this chapter.

10-32-148. Service of process. Service of process on a foreign limited liability company must be as provided in section 10-32-132.

10-32-149. Annual report of limited liability company and foreign limited liability company.

1. Each limited liability company, and each foreign limited liability company authorized to transact business in this state, shall file, within the time prescribed by subsection 3, an annual report setting forth:

a. The name of the limited liability company and the state or country under the laws of which it is organized.

b. The address of the registered office of the limited liability company in this state, the name of its registered agent in this state at that address, and the address of its principal executive office.

c. A brief statement of the character of the business in which the limited liability company is actually engaged in this state.

d. The names and respective addresses of the managers and governors of the limited liability company.

2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as prescribed in subsection 45 of section 10-32-02, or if the limited liability company is in the hands of a receiver or trustee, it must be signed on behalf of the limited liability company by the receiver or trustee. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years.

3. The annual report of a limited liability company or foreign limited liability company must be received by the secretary of state on or before November fifteenth of each year, except that the first annual report of a limited liability company or foreign limited liability company must be received on or before November fifteenth of the year following the calendar year in which the certificate of organization or certificate of authority was issued by the secretary of state. The secretary of state must file the report if the report conforms to the requirements of subsection 2. If the report does not conform, it must be returned to the limited liability company for any necessary corrections. If the report is filed before the deadlines prescribed in this subsection, penalties for the failure to file a report within the time provided do not apply, if a report is corrected to conform to the requirements of subsection 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for correction. The secretary of state may extend the annual filing date of any limited liability company or foreign limited liability company, if a written application for an extension is received on or before November fifteenth.

4. Each limited liability company or foreign limited liability company that fails or refuses to file its annual report for any year within the time prescribed by subsection 3 must pay an additional fee of fifty dollars. A limited liability company that fails to file its annual report, along with the statutory filing and penalty fees, within six months after November fifteenth, ceases to exist and is considered involuntarily terminated by operation of law. The secretary of state shall revoke the certificate of authority to transact business of any foreign limited liability company which fails to file its annual report, along with the statutory filing and penalty fees within six months after November fifteenth. The secretary of state's determination that a certificate of authority must be revoked under this section is final.

5. After the date established under subsection 3, the secretary of state shall notify any limited liability company or foreign limited liability company failing to file its annual report that its certificate of organization or certificate of authority is not in good standing and that it may be terminated or revoked pursuant to subsection 4. The secretary of state must mail notice of termination or revocation to the last registered agent at the last registered office of record. If the limited liability company or foreign limited liability company files its annual report after the notice is mailed, together with the annual report filing fee as prescribed by section 10-32-150 and the late filing penalty fee as

prescribed by subsection 4, the secretary of state will restore its certificate of organization or certificate of authority to good standing.

6. A limited liability company that does not file its annual report, along with the statutory filing and penalty fees, within six months after the date established in subsection 3, ceases to exist and is considered involuntarily terminated by operation of law. The secretary of state shall note the termination of the limited liability company's certificate of organization on the records of the secretary of state and shall give notice of the action to the terminated limited liability company. Notice by the secretary of state must be mailed to the last registered agent at the last registered office of record.

7. A foreign limited liability company that does not file its annual report, along with the statutory filing and penalty fees, within six months after the date established by subsection 3, forfeits its authority to transact business in North Dakota. The secretary of state shall note the revocation of the foreign limited liability company's certificate of authority on the records of the secretary of state and shall give notice of the action to the foreign limited liability company. Notice by the secretary of state must be mailed to the foreign limited liability company's last registered agent at the last registered office of record.

8. A limited liability company that was terminated for failure to file an annual report, or a foreign limited liability company whose authority was forfeited by failure to file an annual report, may be reinstated by filing a past-due report, together with the statutory filing and penalty fees for an annual report and a one hundred twenty-five dollar fee. The fees must be paid and the report filed within one year following November fifteenth for the past-due report. Reinstatement under this section does not affect the rights or liability for the time from the termination or revocation to the reinstatement.

10-32-150. Fees and charges.

1. The secretary of state shall charge and collect for:

   a. Filing articles of organization and issuing a certificate of organization, one hundred twenty-five dollars.

   b. Filing articles of amendment, fifty dollars.

   c. Filing restated articles of organization, one hundred twenty-five dollars.

   d. Filing articles of merger and issuing a certificate of merger, fifty dollars.

   e. Filing abandonment of merger or exchange, fifty dollars.

   f. Filing an application to reserve a name, ten dollars.

   g. Filing a notice of transfer of a reserved name, ten dollars.

   h. Filing a cancellation of reserved name, ten dollars.

i. Filing a consent to use of name, ten dollars.

j. Filing a statement of change of address of registered office or change of registered agent or both, ten dollars.

k. Filing a statement of change of address of registered office by registered agent, ten dollars for each limited liability company affected by such change.

l. Filing a registered agent's consent to serve in such capacity, ten dollars.

m. Filing a resignation as registered agent, ten dollars.

n. Filing a resolution for the establishment of a class or series of membership interest, fifty dollars.

o. Filing a notice of dissolution, ten dollars.

p. Filing a statement of revocation of voluntary dissolution proceedings, ten dollars.

q. Filing articles of dissolution and termination, twenty dollars.

r. Filing an application of a foreign limited liability company for a certificate of authority to transact business in this state and issuing a certificate of authority, one hundred twenty-five dollars.

s. Filing an amendment to the certificate of authority by a foreign limited liability company, fifty dollars.

t. Filing a certificate of fact stating a merger of a foreign limited liability company holding a certificate of authority to transact business in this state, twenty dollars.

u. Filing an application for withdrawal of a foreign limited liability company and issuing a certificate of withdrawal, twenty dollars.

v. Filing an annual report of a limited liability company or foreign limited liability company, fifty dollars; any other statement or report of either, ten dollars.

w. Filing any process, notice, or demand for service, twenty dollars.

2. The secretary of state shall charge and collect for:

a. Furnishing a copy of any document, instrument, or paper relating to a limited liability company or a foreign limited liability company, one dollar for every four pages, or fraction thereof.

b. A certificate certifying a copy or reciting facts related to a limited liability company or a foreign limited liability company, twenty dollars.

c. Each page of any document or form sent by electronic transmission, one dollar.

10-32-151. Audit reports and audit of limited liability companies receiving state subsidies for production of alcohol or methanol for combination with gasoline. Any limited liability company that produces agricultural ethyl alcohol or methanol within this state and which receives a production subsidy from the state, whether in the form of reduced taxes or otherwise, shall submit an annual audit report, prepared by a certified public accountant based on an audit of all records and accounts of the limited liability company, to the legislative audit and fiscal review committee. The audit must be submitted within ninety days of the close of the limited liability company's taxable year. Upon request of the legislative audit and fiscal review committee, the state auditor shall conduct an audit of the records and accounts of any limited liability company required to submit an annual report under this section.

10-32-152. Powers - Enforcement - Appeal.

1. The secretary of state has the power and authority reasonably necessary to efficiently administer this chapter and to perform the duties imposed thereby.

2. The secretary of state may propound to any limited liability company, domestic or foreign, subject to the provisions of this chapter and to any manager or governor thereof, such interrogatories as may be reasonably necessary and proper to ascertain whether such limited liability company has complied with all provisions of this chapter applicable to such limited liability company.

   a. Such interrogatories must be answered within thirty days after mailing, or within such additional time as must be fixed by the secretary of state. The answers to such interrogatories must be full and complete and must be made in writing and under oath.

   b. If such interrogatories be directed:

      (1) To an individual, they must be answered by that individual; or

      (2) To a limited liability company, they must be answered by the president, vice president, secretary, or assistant secretary of the limited liability company.

   c. The secretary of state need not file any document to which such interrogatories relate until such interrogatories have been answered, and not then if the answers disclose that such document is not in conformity with the provisions of this chapter.

   d. The secretary of state shall certify to the attorney general, for such action as the attorney general may deem appropriate, all interrogatories and answers thereto, which disclose a violation of any of the provisions of this chapter.

   e. Each manager or governor of a limited liability company, domestic or foreign, who fails or refuses within the time provided by subdivision a of subsection 2 to answer truthfully and fully all interrogatories propounded to that person by the secretary of state is guilty of an infraction.

f. Interrogatories propounded by the secretary of state and the answers thereto are not open to public inspection. The secretary of state may not disclose any facts or information obtained from such interrogatories or answers except insofar as may be permitted by law or insofar as is required for evidence in any criminal proceedings or other action by this state.

3. If the secretary of state rejects any document required by this chapter to be approved by the secretary of state before the same may be filed, then the secretary of state shall, within ten days after receipt of the document, give written notice of the rejection to the person who delivered the document, specifying the reasons for rejection.

a. From such rejection such person may appeal to the district court of the county in which the registered office of such limited liability company is, or is proposed to be, situated by filing with the clerk of such court a petition setting forth a copy of the document sought to be filed and a copy of the written rejection of the document by the secretary of state.

b. The matter must be tried de novo by the court. The court shall either sustain the action of the secretary of state or direct the secretary of state to take such action as the court may deem proper.

4. If the secretary of state revokes the certificate of authority to transact business in this state of any foreign limited liability company, pursuant to the provisions of section 10-32-144, such foreign limited liability company may appeal to district court of the county where the registered office of such limited liability company in this state is situated by filing with the clerk of such court a petition setting forth a copy of its certificate of authority to transact business in this state and a copy of the notice of revocation given by the secretary of state. The matter must be tried de novo by the court. The court shall either sustain the action of the secretary of state or direct the secretary of state to take such action as the court may deem proper.

5. Appeals from all final orders and judgments entered by the district court under this section in review of any ruling or decision of the secretary of state may be taken as in other civil actions.

10-32-153. Certificates and certified copies to be received in evidence.

1. All certificates issued by the secretary of state and all copies of documents filed in accordance with this chapter, when certified by the secretary of state, must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated.

2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to limited liability companies which would not appear from a certified copy of any of the foregoing documents or certificates, must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts stated therein.

10-32-154. Forms to be furnished by the secretary of state. All reports required by this chapter to be filed in the office of the secretary of state must be made on forms which must be prescribed and furnished by the secretary of state. Forms for all other documents to be filed in the office of the secretary of state must be furnished by the secretary of state upon request. However, the use of such documents, unless otherwise specifically required by law, is not mandatory.

10-32-155. Foreign trade zones.

1. As used in this section, unless the context otherwise requires:

   a. "Act of Congress" means the Act of Congress approved June 18, 1934, entitled an act to provide for the establishment, operation and maintenance of foreign trade zones and ports of entry of the United States, to expedite and encourage foreign commerce and for other purposes, as amended, and commonly known as the Foreign Trade Zone Act of 1934.

   b. "Private organization" means a limited liability company authorized under this chapter or corporation authorized under chapter 10-19.1, one of the purposes of which is to establish, operate, and maintain a foreign trade zone by itself or in conjunction with a public corporation.

   c. "Public corporation" means:

      (1) This state;

      (2) Any political subdivision of this state;

      (3) Any municipality of this state;

      (4) Any public agency:

         (a) Of this state;

         (b) Of any political subdivision of this state; or

         (c) Any municipality of this state; or

      (5) Any other corporate instrumentality of this state.

2. Any private organization or public organization has the power to apply to the proper authorities of the United States for a grant of the privilege of establishing, operating, and maintaining foreign trade zones and foreign trade subzones and to do all things necessary and proper to carry into effect the establishment, operation, and maintenance of such zones, all in accordance with the Act of Congress and other applicable laws and rules.

SECTION 9. AMENDMENT. Section 40-57.1-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

[3] **40-57.1-02. Definitions.** As used in this chapter, unless a different meaning clearly appears from the context:

1. "Local development ~~corporation~~ organization", as used in section 40-57.1-04.3, means a profit or nonprofit corporation incorporated under the laws of this state or a limited liability company organized under the laws of this state, formed for the purpose of furthering the economic development of its community and environs, with authority to promote and assist the growth and development of business concerns in the areas covered by its operations. The operations of the corporation or limited liability company must be limited to a specified area in this state. The controlling interest in the corporation or limited liability company must be held by at least twenty-five persons residing or doing business in the community or its environs. These persons must control not less than seventy-five percent of the voting control of the corporation or limited liability company. No shareholder or member of the corporation or limited liability company may own in excess of twenty-five percent of the voting control in the corporation or limited liability company if that shareholder or member has a direct pecuniary interest in any project or business concern which will occupy the property of the corporation or limited liability company. The primary objective of the corporation or limited liability company must be to benefit the community through increased employment, payroll, business volume, and corresponding factors rather than monetary profits to its shareholders or members. Any monetary profits or other benefits going to the shareholders or members must be merely incidental to the primary objective of the corporation or limited liability company.

2. "Municipality" means counties as well as municipalities of the types listed in subsection 4 of section 40-01-01.

3. "Primary sector business" means an individual, corporation, limited liability company, partnership, or association which through the employment of knowledge or labor adds value to a product, process, or service that results in the creation of new wealth.

4. "Project" means any revenue-producing enterprise, or any combination of two or more of these enterprises. For the purpose of the income tax exemption, "project" means both "primary sector business" and "tourism" as defined by this section.

5. "Tourism" means all tourism-related businesses and activities including recreation, historical and cultural events, guide services, and unique lodging and food services which serve as destination attractions.

SECTION 10. AMENDMENT. Section 40-57.1-04.3 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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[3] NOTE: Section 40-57.1-02 was also amended by section 1 of House Bill No. 1510, chapter 407.

[4] **40-57.1-04.3. Property tax exemption on speculative industrial buildings and properties owned by a local development ~~corporation~~ organization.** A municipality may, in its discretion, grant partial or complete exemption from ad valorem taxation on buildings, structures, and improvements constructed and owned by a local development ~~corporation~~ organization for the express purpose of attracting new industry to this state. This exemption from ad valorem taxation is only available on new buildings, structures, and improvements while they remain unoccupied. Once the building, structure, or improvement is occupied, the exemption continues until the next annual assessment date following the first occupancy. This section does not affect the eligibility for property tax exemption of a business available under other provisions of this chapter, provided application for the tax exemption is made prior to occupancy. A written request for the exemption is to be filed by the local development ~~corporation~~ organization with the municipality. The request will be reviewed at an official meeting of the governing body and will be placed on the agenda for final action at the next official meeting. The governing body of the municipality shall notify the county director of tax equalization with respect to any exemption granted under this section.

SECTION 11. AMENDMENT. Section 40-57.2-01 of the North Dakota Century Code is amended and reenacted as follows:

40-57.2-01. Cities and counties may enter into agreements for surveys for industrial development and vocational and on-the-job training. The governing body of any city or county of this state is authorized in accordance with the provisions of this chapter to enter into contracts with any person, firm, association, ~~or~~ corporation, or limited liability company for the purpose of obtaining site surveys and site development plans, structural and mechanical plans and surveys, market surveys, and similar plans and surveys relating to industrial development and plant location, design, construction, equipment, and operation. Similar contracts may be entered into by such political subdivisions in accordance with the provisions of this chapter for the providing of vocational and on-the-job training for residents of this state in industries located within this state. Such agreements shall be entered into only with a financially and educationally reliable person, firm, association, ~~or~~ corporation, or limited liability company that has been approved for such agreement by a local development ~~corporation~~ organization located in such city or county and organized to encourage industrial and commercial development and growth.

SECTION 12. AMENDMENT. Section 40-57.3-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-57.3-03. Budget - Contracts - Bonds - Capital construction. The governing body of the city shall annually set the budget, if any, under which the committee shall operate. The governing body of the city may contract with any person, firm, association, ~~or~~ corporation, or limited liability company to carry out the purposes of the city visitors' promotion fund or the city visitors' promotion capital construction fund created under section 40-57.3-02. The governing body of the city may irrevocably dedicate any portion of revenues from the tax authorized under section 40-57.3-01.1 and may authorize and issue bonds or other evidences of

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[4] NOTE: Section 40-57.1-04.3 was also amended by section 1 of Senate Bill No. 2191, chapter 408.

indebtedness in the manner prescribed by section 40-35-08 to be paid by those revenues for any purpose that moneys in the city visitors' promotion capital construction fund may be used; and such tax upon being pledged to payment of bonds or evidences of indebtedness issued pursuant to this section may not be reduced or repealed by the governing body or by the electors of the municipality by any initiated amendment to or referendum of the ordinance referred to in section 40-57.3-01.1, so long as any of such bonds or evidences of indebtedness remain outstanding. The proceeds from the tax imposed under section 40-57.3-01 may not be used for any type of capital construction or purchase of real property. The proceeds from the tax imposed under section 40-57.3-01.1 may be used only for payment of bonds issued, and the costs of issuance related thereto, under this section or capital construction, maintenance, and repair or acquisition of property consistent with the purposes of this chapter.

SECTION 13. AMENDMENT. Subsection 5 of section 57-38-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. "Person" includes individuals, fiduciaries, partnerships, ~~and~~ corporations, and limited liability companies.

SECTION 14. AMENDMENT. Subdivision q of subsection 1 of section 57-38-01.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

q. Reduced by the amount, up to a maximum of five thousand dollars for any person or ten thousand dollars if a joint return is filed, of investment made after January 1, 1989, in either a venture capital corporation organized pursuant to chapter 10-30.1 or in the Myron G. Nelson Fund, Incorporated, or a separate legal entity such as a limited partnership or limited liability company created by the Myron G. Nelson Fund, Incorporated, as an affiliate, which entities are organized pursuant to chapter 10-30.2. This deduction may only be taken in the tax year in which the taxpayer qualifies for a credit pursuant to chapter 10-30.1 or 10-30.2. However, a taxpayer that makes an investment in a venture capital corporation on or after July 1, 1989, is only entitled to a deduction if the venture capital corporation uses the funds it receives from the taxpayer to invest or provide financing to qualified entities, which entities do not include a business or an affiliate of a business that owns tax-exempt securities.

SECTION 15. A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Taxation of limited liability companies. For purposes of this chapter, a limited liability company that is formed under either the laws of this state or under similar laws of another state, and that is considered to be a partnership for federal income tax purposes, is considered to be a partnership and the members must be considered to be partners. A limited liability company that is not treated as a partnership for federal income tax purposes must be treated as a corporation for state tax purposes.

SECTION 16. AMENDMENT. Subsection 3 of section 57-38-30.5 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. In the case of a corporation which is a partner in a partnership or a member in a limited liability company, the credit allowed for the taxable year may not exceed an amount separately computed with respect to the corporation's interest in the trade, business, or entity equal to the amount of tax attributable to that portion of the corporation's taxable income which is allocable or apportionable to the corporation's interest in the trade, business, or entity.

SECTION 17. AMENDMENT. Subsection 3 of section 57-38-45 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Any person including any officer or employee of any corporation or any member or employee of any partnership or any member, employee, governor, or manager of a limited liability company who, with intent to evade any requirement of this chapter, shall fail to pay any tax, or to make, sign, or verify any return, or to supply any information required by law, or under the provisions of this chapter, or who with like intent shall make, render, sign, or verify any false or fraudulent information, shall be liable to a penalty of not more than one thousand dollars to be recovered by the attorney general, in the name of the state, by action in any court of competent jurisdiction. Such person shall also be guilty of a class A misdemeanor.

SECTION 18. Section 57-38-60.2 of the North Dakota Century Code is created and enacted as follows:

57-38-60.2. Governor and manager liability. If a limited liability company is an employer and fails for any reason to file the required returns or to pay the tax due, the governor or manager, jointly or severally, charged with the responsibility of the preparation of such returns and payments, is personally liable for such failure. The dissolution of a limited liability company does not discharge a manager's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter.

SECTION 19. AMENDMENT. Subsection 3 of section 57-38-67 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. "Landowner" means any individual, partnership, limited liability company, trust, or estate owning land in North Dakota, except that any individual, partnership, limited liability company, trust, or estate that acquires such land for the purpose of obtaining the income tax deduction provided for in sections 57-38-67 through 57-38-70 are not deemed to be a landowner.

SECTION 20. A new section to chapter 57-38.1 of the North Dakota Century Code is created and enacted as follows:

Taxation of limited liability companies. For purposes of this chapter, a limited liability company that is formed under either the laws of this state or under similar laws of another state, and that is considered to be a partership for federal income tax purposes, is considered to be a partnership and the members must be considered to be partners. A limited liability company that is not treated as a partnership for federal income tax purposes must be treated as a corporation for state tax purposes.

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