

Fifty-sixth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2271

Introduced by

Senators W. Stenehjem, Krebsbach

1 A BILL for an Act to create and enact a new subsection to section 10-19.1-10, a new subsection
2 to section 10-19.1-65, a new subsection to section 10-19.1-87, a new subsection to section
3 10-32-13, a new subsection to section 10-33-06, a new subsection to section 10-33-17, a new
4 subsection to section 45-10.1-04, sections 45-10.1-04.1, 45-10.1-51.1, 45-10.1-54.1,
5 45-10.1-58.1, 45-13-04.1, 45-13-04.2, 45-15-03.1, 45-15-03.2, 45-22-08.1, 45-22-21.1, and
6 chapter 45-23 of the North Dakota Century Code, relating to business corporations, nonprofit
7 corporations, limited partnerships, general partnerships, limited liability partnerships, and limited
8 liability limited partnerships; to amend and reenact sections 10-06.1-12, 10-06.1-13, 10-06.1-17,
9 10-06.1-27, 10-19.1-01, subsection 2 of section 10-19.1-05, section 10-19.1-11, subsection 1 of
10 section 10-19.1-13, section 10-19.1-23, subsection 2 of section 10-19.1-30, section 10-19.1-61,
11 subsection 5 of section 10-19.1-61.1, subsection 1 of section 10-19.1-63, subsection 4 of
12 section 10-19.1-64, section 10-19.1-66, subsection 2 of section 10-19.1-68, subsection 2 of
13 section 10-19.1-70, subsection 1 of section 10-19.1-73.2, subsection 1 of section 10-19.1-76.2,
14 subsection 3 of section 10-19.1-83, subsection 1 of section 10-19.1-84, subsection 3 of section
15 10-19.1-88, sections 10-19.1-91, 10-19.1-96, 10-19.1-97, 10-19.1-98, 10-19.1-99, 10-19.1-100,
16 10-19.1-101, 10-19.1-102, 10-19.1-103, subsection 2 of section 10-19.1-106, subsection 1 of
17 section 10-19.1-108, subsection 3 of section 10-19.1-112, subsection 1 of section
18 10-19.1-113.1, sections 10-19.1-129, 10-19.1-137, 10-19.1-139, subsection 1 of section
19 10-19.1-146, sections 10-19.1-147, 10-30-05, 10-30.1-04, subsection 1 of section 10-31-02.1,
20 subsection 2 of section 10-31-11, sections 10-31-13, 10-32-02, 10-32-06, 10-32-07,
21 subsection 1 of section 10-32-10, subsection 5 of section 10-32-11, sections 10-32-17,
22 10-32-22, 10-32-23, 10-32-28, 10-32-30, 10-32-31, 10-32-32, subsection 2 of section 10-32-35,
23 sections 10-32-36, 10-32-37, 10-32-38, 10-32-39, subsection 3 of section 10-32-40, sections
24 10-32-40.1, 10-32-42, subsection 1 of section 10-32-43, section 10-32-43.1, subsection 1 of
25 section 10-32-44, section 10-32-48, subsection 2 of section 10-32-48.1, sections 10-32-49,

1 10-32-50, subdivision d of subsection 1 of section 10-32-51, sections 10-32-54, 10-32-55,
2 10-32-56, 10-32-57, subsection 7 of section 10-32-58, sections 10-32-59, 10-32-60, 10-32-61,
3 10-32-62, subdivision c of subsection 1 of section 10-32-64, subsection 1 of section 10-32-66,
4 subsection 2 of section 10-32-67, sections 10-32-68, 10-32-70, 10-32-71, 10-32-72, 10-32-74,
5 10-32-75, 10-32-76, subsection 1 of section 10-32-78, subdivision a of subsection 1 of section
6 10-32-78.1, subsection 1 of section 10-32-79, sections 10-32-80, 10-32-81, 10-32-82, 10-32-83,
7 subsection 1 of section 10-32-84, subsection 2 of section 10-32-85, section 10-32-86,
8 subdivision b of subsection 2 of section 10-32-87, sections 10-32-88, 10-32-89, 10-32-94,
9 10-32-95, 10-32-99, 10-32-100, subdivision b of subsection 1 of section 10-32-101, section
10 10-32-102, subsection 1 of section 10-32-103, sections 10-32-104, 10-32-105, subdivision a of
11 subsection 2 of section 10-32-106, sections 10-32-107, 10-32-109, paragraph 1 of subdivision b
12 of subsection 1 of section 10-32-112, subdivision b of subsection 3 of section 10-32-113,
13 sections 10-32-114, 10-32-119, subsection 2 of section 10-32-122, sections 10-32-131,
14 10-32-140, 10-32-142, subsection 2 of section 10-32-149, subsection 1 of section 10-32-150,
15 section 10-33-01, subsection 1 of section 10-33-10, subsection 4 of section 10-33-13, section
16 10-33-49, subsection 3 of section 10-33-50, subsection 3 of section 10-33-54, section 10-33-84,
17 subsection 2 of section 10-33-87, sections 10-33-95, 10-33-130, 34-09-06, 45-10.1-01,
18 subsection 1 of section 45-10.1-02, sections 45-10.1-08, 45-10.1-09, 45-10.1-10, 45-10.1-11,
19 45-10.1-14, 45-10.1-15, 45-10.1-36, 45-10.1-51, 45-10.1-52, 45-10.1-53, 45-10.1-55,
20 45-10.1-58, 45-11-08.2, 45-13-01, subsection 2 of section 45-13-03, sections 45-13-05,
21 45-13-06, 45-14-01, subsection 1 of section 45-15-03, subsection 1 of section 45-15-06,
22 sections 45-22-01, 45-22-03, 45-22-04, 45-22-05, 45-22-06, 45-22-07, 45-22-10, 45-22-11,
23 45-22-12, 45-22-13, 45-22-14, 45-22-15, 45-22-16, 45-22-17, 45-22-18, 45-22-20, subsection 1
24 of section 45-22-21, sections 45-22-22, 45-22-23, subsection 2 of section 45-22-24, sections
25 45-22-25, 45-22-26, subdivision b of subsection 1 of section 45-22-27, subsection 6 of section
26 47-22-02, sections 47-25-03, and 61-13-03.1 of the North Dakota Century Code, relating to
27 farm corporations, business corporations, development corporations, venture capital
28 corporations, professional associations, limited liability companies, nonprofit corporations, labor
29 unions, limited partnerships, fictitious partnership names, general partnerships, limited liability
30 partnerships, trademarks, trade names, and the organization of corporations for irrigation
31 purposes; and to repeal sections 45-10.1-54 and 45-22-08 of the North Dakota Century Code,

1 relating to the names of foreign limited partnership and piercing the limited liability shield of
2 limited liability partnerships.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 10-06.1-12 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **10-06.1-12. Corporation or limited liability company allowed to engage in the**
7 **business of farming or ranching - Requirements.** This chapter does not prohibit a domestic
8 corporation or a domestic limited liability company from owning real estate and engaging in the
9 business of farming or ranching, if the corporation or limited liability company meets all the
10 requirements of chapter 10-19.1, ~~10-23~~, or 10-32 which are not inconsistent with this chapter.

11 The following requirements also apply:

- 12 1. If a corporation, the corporation must not have more than fifteen shareholders. If a
13 limited liability company, the limited liability company must not have more than
14 fifteen members.
- 15 2. Each shareholder or member must be related to each of the other shareholders or
16 members within one of the following degrees of kinship or affinity: parent, son,
17 daughter, stepson, stepdaughter, grandparent, grandson, granddaughter, brother,
18 sister, uncle, aunt, nephew, niece, great-grandparent, great-grandchild, first cousin,
19 or the spouse of a person so related.
- 20 3. Each shareholder or member must be an individual or one of the following:
 - 21 a. A trust for the benefit of an individual or a class of individuals who are related
22 to every shareholder of the corporation or member of the limited liability
23 company within the degrees of kinship or affinity specified in this section.
 - 24 b. An estate of a decedent who was related to every shareholder of the
25 corporation or member of the limited liability company within the degrees of
26 kinship or affinity specified in this section.
- 27 4. A trust or an estate may not be a shareholder or member if the beneficiaries of the
28 trust or the estate together with the other shareholders or members are more than
29 fifteen in number.

5. Each individual who is a shareholder or member must be a citizen of the United States or a permanent resident alien of the United States.
6. If a corporation, the officers and directors of the corporation must be shareholders who are actively engaged in operating the farm or ranch and at least one of ~~its~~ the corporation's shareholders must be an individual residing on or operating the farm or ranch. If a limited liability company, the governors and managers of the limited liability company must be members who are actively engaged in operating the farm or ranch and at least one of its members must be an individual residing on or operating the farm or ranch.
7. An annual average of at least sixty-five percent of the gross income of the corporation or limited liability company over the previous five years, or for each year of its existence, if less than five years, must have been derived from farming or ranching operations.
8. The income of the corporation or limited liability company from nonfarm rent, nonfarm royalties, dividends, interest, and annuities cannot exceed twenty percent of the gross income of the corporation or limited liability company.

SECTION 2. AMENDMENT. Section 10-06.1-13 of the North Dakota Century Code is amended and reenacted as follows:

10-06.1-13. Applicability of North Dakota Business Corporation Act. ~~Chapters Chapter 10-19.1 and 10-23 are applicable~~ applies to farming or ranching corporations, which have the powers and privileges and are subject to the duties, restrictions, and liabilities of other business corporations except ~~when~~ if inconsistent with the intent of this chapter. This chapter takes precedence in the event of any conflict with ~~the provisions of chapters chapter 10-19.1 and 10-23.~~

SECTION 3. AMENDMENT. Section 10-06.1-17 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-06.1-17. Annual report - Contents - Filing requirements. Before April ~~fifteenth~~ sixteenth of each year, every corporation engaged in farming or ranching after June 30, 1981, and every limited liability company engaged in farming or ranching shall file with the secretary of state ~~a~~ an annual report executed by ~~its~~ the corporation's or limited liability company's president, a vice president, secretary, or treasurer ~~containing all of.~~ An annual report in a

1 sealed envelope postmarked by the United States postal service before the date provided in
2 this section or an annual report in a sealed packet with a verified shipment date by any other
3 carrier service before the date provided in this section meets the filing date requirement. An
4 annual report must include the following information with respect to the preceding calendar
5 year:

- 6 1. The name of the corporation or limited liability company.
- 7 2. The address of the registered office of the corporation or limited liability company in
8 this state and the name of ~~its~~ the corporation's or limited liability company's
9 registered agent in this state at that address.
- 10 3. With respect to each corporation:
 - 11 a. A statement of the aggregate number of shares the corporation has authority
12 to issue, itemized by classes, par value of shares, shares without par value,
13 and series, if any, within a class.
 - 14 b. A statement of the aggregate number of issued shares, itemized by classes,
15 par value of shares, shares without par value, and services, if any, within a
16 class.
- 17 4. With respect to each shareholder or member:
 - 18 a. The name and address of each, including the names and addresses and
19 relationships of beneficiaries of trusts and estates which own shares or
20 membership interests;
 - 21 b. The number of shares or membership interests or percentage of shares or
22 membership interests owned by each;
 - 23 c. The relationship of each;
 - 24 d. A statement of whether each is a citizen or permanent resident alien of the
25 United States; and
 - 26 e. A statement of whether at least one is an individual residing on or operating
27 the farm or ranch.
- 28 5. With respect to management:
 - 29 a. If a corporation, then the names and addresses of the officers and members
30 of the board of directors; or

- 1 b. If a limited liability company, then the names and addresses of the managers
2 and members of the board of governors.
- 3 6. A statement listing the acreage [hectarage] and location listed by section,
4 township, range, and county of all land in the state owned or leased by the
5 corporation or limited liability company and used for farming or ranching. The
6 statement must also designate which, if any, of the acreage [hectarage] is leased
7 from or jointly owned with any shareholder or member and list the name of the
8 shareholder or member with that acreage [hectarage].
- 9 7. A statement of the percentage of the annual average gross income of the
10 corporation or limited liability company which has been derived from farming or
11 ranching operations over the previous five years or for each year of ~~its~~ existence if
12 less than five years.
- 13 8. A statement of the percentage of gross income of the corporation or limited liability
14 company derived from nonfarm rent, nonfarm royalties, dividends, interest, and
15 annuities during the period covered by the report.
- 16 9. A corporation engaged in farming which fails to file an annual report is subject to
17 the penalties provided in section 10-19.1-147 except that the penalties must be
18 calculated from the date of the report required by this section.
- 19 10. A limited liability company engaged in farming which fails to file an annual report is
20 subject to the penalties provided in subsections 5 and 6 of section 10-32-149
21 except that the penalties must be calculated from the date of the report required by
22 this section.

23 **SECTION 4. AMENDMENT.** Section 10-06.1-27 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **10-06.1-27. Protection of minority members.** If a member owns less than fifty
26 percent of the membership interest of a farming or ranching limited liability company doing
27 business under this chapter; and if the terms and conditions for the repurchase of that
28 membership interest by the limited liability company or by the other members are not set forth in
29 the ~~operating agreement~~ bylaws, the instrument ~~which that~~ transferred the membership interest
30 to the member, or are not the subject of a business continuation agreement or an agreement
31 between that member and the limited liability company, ~~then~~ the disposition of ~~such~~ the

1 membership interest must be determined by this section upon the withdrawal of the member.
2 Any member who desires to withdraw from the limited liability company shall first offer the
3 membership interest for sale to the remaining members in proportion to the membership
4 interests owned by ~~them~~ the remaining members. If not all of the members wish to purchase
5 the membership interest, any one member can purchase all of the membership interest of the
6 withdrawing member. If no member desires to purchase the membership interest of the
7 withdrawing member, ~~then~~ the limited liability company ~~itself~~ may purchase the membership
8 interest. If the limited liability company chooses not to purchase the membership interest of the
9 withdrawing member, ~~then~~ the withdrawing member may sell the membership interest to any
10 other person eligible to be a member. If the withdrawing member is unable to sell the
11 membership interest to any other person eligible to become a member, ~~then~~ the withdrawing
12 member may bring an action in district court to terminate the limited liability company. Upon a
13 finding that the withdrawing member cannot sell the membership interest at a fair price, the
14 court shall enter an order directing that the limited liability company ~~itself~~ or any of the
15 remaining members pro rata or otherwise, ~~shall~~ have twelve months from the date of the court's
16 order to purchase the membership interest of the withdrawing member at a fair price as
17 determined by the court and that if the membership interest of the withdrawing member is not
18 completely purchased at ~~said~~ the fair price, the limited liability company ~~shall~~ must be dissolved
19 and the assets of the limited liability company ~~shall~~ must be first used to pay all liabilities of the
20 limited liability company with the remaining net assets to be distributed pro rata to the members
21 in proportion to ~~their~~ the member's membership interest ownership. For the purpose of this
22 section, a fair price for the membership interest of the withdrawing member must be determined
23 as though the membership interest was being valued for federal gift tax purposes under the
24 Internal Revenue Code.

25 **SECTION 5. AMENDMENT.** Section 10-19.1-01 of the 1997 Supplement to the North
26 Dakota Century Code is amended and reenacted as follows:

27 **10-19.1-01. Definitions.** For the purposes of this chapter, unless the context clearly
28 indicates ~~that~~ a different meaning is intended:

- 29 1. "Acquiring corporation" means the domestic or foreign corporation that acquires
30 the shares of a corporation in an exchange.

2. "Acquiring organization" means the corporation, foreign corporation, or domestic or foreign limited liability company acquiring in an exchange the shares of a corporation or foreign corporation or the membership interests of a domestic or foreign limited liability company.

3. "Address" means:

a. In the case of a registered office or principal executive office, the mailing address, including a zip code of the actual office location, which may not be only a post-office box; and

b. In any other case, the mailing address, including a zip code.

~~3.~~ 4. "Articles" means:

a. In the case of a corporation incorporated under or governed by this chapter, articles of incorporation, articles of amendment, a resolution of election to become governed by this chapter, a demand retaining the two-thirds majority for shareholder approval of certain transactions, 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 shares, a statement of cancellation of authorized shares, articles of merger, articles of abandonment, and articles of dissolution.

b. In the case of a foreign corporation, the term includes all documents serving a similar function required to be filed with the secretary of state or other officer of the corporation's state of incorporation.

~~4.~~ 5. "Board" or "board of directors" means the board of directors of a corporation.

~~5.~~ 6. "Board member" means:

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

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

~~6.~~ 7. "Bylaws" means the code adopted for the regulation or management of the internal affairs of a corporation, regardless of how that code is designated.

~~7.~~ 8. "Class", when used with reference to shares, means a category of shares that differs in designation or one or more rights or preferences from another category of shares of the corporation.

~~8.~~ 9. "Closely held corporation" means a corporation that does not have more than thirty-five shareholders.

9- 10. "Constituent corporation" means a domestic or foreign corporation that is a party to a merger or an exchange.

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

40- 12. "Corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by this chapter.

~~44.~~ 13. "Director" means a member of the board.

42- 14. "Distribution" means a direct or indirect transfer of money or other property, other than ~~to~~ a corporation's own shares, with or without consideration, or an incurrence or issuance of indebtedness, by a corporation to any of ~~its~~ the corporation's shareholders in respect of ~~its~~ the corporation's shares, and may be in the form of a dividend or a distribution in liquidation, or as consideration for the purchase, redemption, or other acquisition of ~~its~~ the corporation's shares, or otherwise.

~~43.~~ 15. "Division" or "combination" means dividing or combining shares of a class or series, whether issued or unissued, into a greater or lesser number of shares of the same class or series.

14. 16. "Filed with the secretary of state" means ~~that either, except as otherwise permitted by law or rule,~~ a signed original or a legible facsimile ~~copy~~ telecommunication of a signed original of a request for reserved name; or a signed original of all other documents meeting the applicable requirements of this chapter, together with the fees provided in section 10-19.1-147, ~~has been~~ was delivered to the secretary of state and ~~has been~~ was determined by the secretary of state to conform to law. The secretary of state shall ~~then~~ endorse on the original the word "filed" and the month, day, and year, and record the document in the office of the secretary of state.

- 1 ~~45.~~ 17. "Foreign corporation" means a corporation organized for profit which is
2 incorporated under laws other than the laws of this state for a purpose for which a
3 corporation may be incorporated under this chapter.
- 4 ~~46.~~ 18. "Foreign limited liability company" means a limited liability company organized for
5 profit ~~that~~ which is organized under laws other than the laws of this state for a
6 purpose for which a limited liability company may be organized under chapter
7 10-32.
- 8 ~~47.~~ 19. "Good faith" means honesty in fact in the conduct of an act or transaction.
- 9 ~~48.~~ 20. "Intentionally" means that the person referred to ~~either~~ has a purpose to do or fail
10 to do the act or cause the result specified or believes that the act or failure to act, if
11 successful, will cause that result. A person "intentionally" violates a statute if the
12 person intentionally does the act or causes the result prohibited by the statute, or if
13 the person intentionally fails to do the act or cause the result required by the
14 statute, even though the person may not know of the existence or constitutionality
15 of the statute or the scope or meaning of the terms used in the statute.
- 16 ~~49.~~ 21. "Knows" or has "knowledge" means the person has actual knowledge of a fact. A
17 person does not "know" or have "knowledge" of a fact merely because the person
18 has reason to know of the fact.
- 19 ~~20.~~ 22. "Legal representative" means a person empowered to act for another person,
20 including an agent, a manager, an officer, a partner, or an associate of an
21 organization; a trustee of a trust; a personal representative; a trustee in
22 bankruptcy; and a receiver, guardian, custodian, or conservator.
- 23 ~~24.~~ 23. "Limited liability company" means a limited liability company, other than a foreign
24 limited liability company, organized under chapter 10-32.
- 25 ~~22.~~ 24. "Nonprofit corporation" means a corporation, whether domestic or foreign,
26 incorporated under or governed by chapter 10-33.
- 27 ~~23.~~ 25. "Notice" is given by a shareholder of a corporation to the corporation or an officer
28 of the corporation when in writing and mailed or delivered to the corporation or the
29 officer at the registered office or principal executive office of the corporation.
- 30 a. In all other cases, "notice" is given to a person:

- 1 (1) When mailed to the person at an address designated by the person or
2 at the ~~last known~~ last-known address of the person; or
- 3 (2) When handed to the person; or
- 4 (3) When left at the office of the person with a clerk or other person in
5 charge of the office; or
- 6 (a) If there is no one in charge, when left in a conspicuous place in
7 the office; or
- 8 (b) If the office is closed or the person to be notified has no office,
9 when left at the dwelling house or usual place of abode of the
10 person with some person of suitable age and discretion then
11 residing there.
- 12 b. Notice is given by mail when deposited in the United States mail with
13 sufficient postage affixed.
- 14 c. Notice is deemed received when it is given.
- 15 ~~24.~~ 26. "Officer" means an individual who is eighteen years of age or more who is elected,
16 appointed, or otherwise designated as an officer by the board, or deemed elected
17 as an officer pursuant to section 10-19.1-56.
- 18 ~~25.~~ 27. "Organization" means, whether domestic or foreign, a corporation incorporated in
19 or authorized to do business in this state under this or another chapter of this code,
20 limited liability company, partnership, limited partnership, limited liability
21 partnership, joint venture, association, business trust, estate, trust, enterprise, and
22 any other legal or commercial entity.
- 23 ~~26.~~ 28. "Outstanding shares" means all shares duly issued and not reacquired by a
24 corporation.
- 25 ~~27.~~ 29. "Owners" means:
- 26 a. Shareholders in the case of a corporation; and
- 27 b. Members in the case of a limited liability company or a nonprofit corporation.
- 28 ~~28.~~ 30. "Ownership interests" means:
- 29 a. Shares in the case of a corporation;
- 30 b. Membership interests in the case of a nonprofit corporation or limited liability
31 company; and

c. Similar interests in other organizations.

~~29.~~ 31. "Parent" of a specified corporation means a corporation or limited liability company that directly, or indirectly through related corporations or limited liability companies, owns more than fifty percent of the voting power of the shares entitled to vote for directors of the specified corporation.

~~30.~~ 32. "Principal executive office" means an office where the elected or appointed president of a corporation has an office, or if the corporation has no elected or appointed president, then the registered office of the corporation.

~~31.~~ 33. "Registered office" means the place in this state designated in the articles as the registered office of the corporation.

~~32.~~ 34. "Related organization" means an organization that controls, is controlled by, or is under common control with another organization with control existing if an organization:

a. Owns, directly or indirectly, at least fifty percent of the shares, membership interests, or other ownership interests of another organization;

b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or more of the voting members of the governing body of another organization; or

c. Has the power, directly or indirectly, to direct or cause the direction of the management and policies of another organization, whether through the ownership of voting interests, by contract, or otherwise.

~~33.~~ 35. "Security" has the meaning given in section 10-04-02.

~~34.~~ 36. "Series" means a category of shares, within a class of shares authorized or issued by a corporation by or pursuant to ~~its~~ a corporation's articles, that have some of the same rights and preferences as other shares within the same class, but that differ in designation or one or more rights and preferences from another category of shares within that class.

~~35.~~ 37. "Share" means one of the units, however designated, into which the shareholders' proprietary interests in a corporation are divided.

~~36.~~ 38. "Shareholder" means a person registered on the books or records of a corporation or ~~its~~ the corporation's transfer agent or registrar as the owner of whole or fractional shares of the corporation.

- 1 ~~37.~~ 39. "Signed" means that the signature of a person ~~has been~~ is placed on a document,
2 as provided in subsection 39 of section 41-01-11, and:
- 3 a. With respect to a document required by this chapter to be filed with the
4 secretary of state, means that the document ~~has been~~ is signed by a person
5 authorized to do so by this chapter, the articles or bylaws, or a resolution
6 approved by ~~the affirmative vote of the required proportion or number of the~~
7 directors as required under section 10-19.1-46 or the ~~holders of the required~~
8 ~~proportion or number of the voting power of the shares present and entitled to~~
9 ~~vote~~ shareholders as required under section 10-19.1-74; and
- 10 b. With respect to a document not required by this chapter to be filed with the
11 secretary of state, the signature may be a facsimile affixed, engraved, printed,
12 placed, stamped with indelible ink, transmitted by facsimile telecommunication
13 or electronically, or in any other manner reproduced on the document.
- 14 ~~38.~~ 40. "Subscriber" means a person who subscribes for shares in a corporation, whether
15 before or after incorporation.
- 16 ~~39.~~ 41. "Subsidiary" of a specified corporation means:
- 17 a. A corporation having more than fifty percent of the voting power of ~~its~~ the
18 corporation's shares entitled to vote for directors owned directly, or indirectly
19 through related corporations or limited liability companies, by the specified
20 corporation; or
- 21 b. A limited liability company having more than fifty percent of the voting power
22 of ~~its~~ the limited liability company's membership interests entitled to vote for
23 governors owned directly, or indirectly through related limited liability
24 companies or corporations, by the specified limited liability company.
- 25 ~~40.~~ 42. "Surviving corporation" means the domestic or foreign corporation resulting from a
26 merger.
- 27 43. "Surviving organization" means the corporation or foreign corporation or domestic
28 or foreign limited liability company resulting from a merger.
- 29 ~~41.~~ 44. "Vote" includes authorization by written action.
- 30 ~~42.~~ 45. "Written action" means a written document signed by all of the persons required to
31 take the action, or the counterparts of a written document signed by any of the

persons taking the action described. Each counterpart constitutes the action of the person signing it; and all the counterparts, taken together, constitute one written action by all of the persons signing ~~them~~ the counterparts.

SECTION 6. AMENDMENT. Subsection 2 of section 10-19.1-05 of the North Dakota Century Code is amended and reenacted as follows:

2. A shareholder or shareholders holding more than one-third of the voting power of the shares entitled to vote for dissolution of a corporation described in section 10-19.1-02 or 10-19.1-03 may, by signed written demand filed in duplicate original with the secretary of state, along with the fees provided ~~in chapter 10-23~~ for under section 10-19.1-147, amend the articles of the corporation to include a provision requiring the approval of the holders of two-thirds of the voting power of all the shares for the authorization of the dissolution of the corporation, notwithstanding the provisions of section 10-19.1-107. Notice that the demand ~~has been~~ was filed must be given by the shareholder to an officer of the corporation, but failure to give the notice does not invalidate the demand.

SECTION 7. A new subsection to section 10-19.1-10 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

Subsection 5 does not limit the right of the board, by resolution, to take an action that the bylaws may authorize under this section without including the authorization in the bylaws, unless the authorization is required to be included in the bylaws by another provision of this chapter.

SECTION 8. AMENDMENT. Section 10-19.1-11 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-11. Filing of articles of incorporation. An original of the articles of incorporation must be filed with the secretary of state. If the secretary of state finds that the articles of incorporation conform to law and ~~that~~ all fees ~~have been~~ are paid under ~~chapter 40-23~~ section 10-19.1-147, the secretary of state shall issue a certificate of incorporation to the incorporators or ~~their~~ the incorporators' representative.

SECTION 9. AMENDMENT. Subsection 1 of section 10-19.1-13 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The corporate name:

- 1 a. Must be in the English language or in any other language expressed in
- 2 English letters or characters.
- 3 b. Must contain the word "company", "corporation", "incorporated", "limited", or
- 4 an abbreviation of one or more of these words.
- 5 c. May not contain a word or phrase ~~that indicates~~ indicating or ~~implies that it~~
- 6 implying the corporation may not be incorporated under this chapter.
- 7 d. May not contain the words "limited liability company", "limited partnership",
- 8 "limited liability partnership", "limited liability limited partnership", or any
- 9 abbreviation of these words.
- 10 e. May not contain a word or phrase ~~that indicates~~ indicating or ~~implies that it~~
- 11 implying the corporation is incorporated for a purpose other than a legal
- 12 business purpose for which a corporation may be incorporated under this
- 13 chapter.
- 14 e. f. May not be the same as, or deceptively similar to:
- 15 (1) The name, whether foreign and authorized to do business in this state;
- 16 or domestic, unless there is filed with the articles a document ~~which~~ that
- 17 complies with subsection ~~2~~ 7 of this section, of:
- 18 (a) Another corporation;
- 19 (b) A corporation incorporated or authorized to do business in this
- 20 state under another chapter of this code;
- 21 (c) A limited liability company;
- 22 (d) A limited partnership; ~~or~~
- 23 (e) A limited liability partnership; or
- 24 (f) A limited liability limited partnership;
- 25 (2) A name the right to which is, at the time of incorporation, reserved in
- 26 the manner provided in section 10-19.1-14, 10-32-11, 10-33-11,
- 27 45-10.1-03, or 45-22-05;
- 28 (3) A fictitious name registered in the manner provided in chapter 45-11; or
- 29 (4) A trade name registered in the manner provided in chapter 47-25.

30 **SECTION 10. AMENDMENT.** Section 10-19.1-23 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **10-19.1-23. Filing articles of amendment.** An original of the articles of amendment
2 must be filed with the secretary of state. If the secretary of state finds that the articles of
3 amendment conform to law and ~~that~~ all fees have been paid as provided in ~~chapter 10-23~~
4 under section 10-19.1-147, ~~then~~ the articles of amendment must be recorded in the office of the
5 secretary of state. A corporation that amends ~~its~~ the corporate name and is the owner of a
6 trademark or trade name, is a general partner named in a fictitious name certificate, or is a
7 general partner in a limited partnership ~~which~~ that is on file with the secretary of state, must
8 change or amend ~~its~~ the corporation's name in each registration when ~~it~~ the corporation files an
9 amendment.

10 **SECTION 11. AMENDMENT.** Subsection 2 of section 10-19.1-30 of the 1997
11 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 12 2. After the issuance of the certificate of incorporation, the incorporators or the
13 directors named in the articles shall, within a reasonable time, ~~either~~ hold an
14 organizational meeting at the call of a majority of the incorporators or of the
15 directors named in the articles; or take written action, for the purposes of
16 transacting business and taking actions necessary or appropriate to complete the
17 organization of the corporation, including amending the articles; electing
18 directors; adopting bylaws; electing officers; adopting banking resolutions;
19 authorizing or ratifying the purchase, lease, or other acquisition of suitable space,
20 furniture, furnishings, supplies, and materials; approving a corporate seal;
21 approving forms of certificates ~~or transaction statements~~ for shares of the
22 corporation; adopting a fiscal year for the corporation; accepting subscriptions for
23 and issuing shares of the corporation; and making any appropriate tax elections.
24 If a meeting is held, the person or persons calling the meeting shall give at least
25 three days' notice of the meeting to each incorporator or director named, stating
26 the date, time, and place of the meeting. Incorporators and directors may waive
27 notice of an organizational meeting in the same manner ~~that~~ a director may waive
28 notice of meetings of the board ~~pursuant to~~ under subsection 5 of section
29 10-19.1-43.

30 **SECTION 12. AMENDMENT.** Section 10-19.1-61 of the North Dakota Century Code is
31 amended and reenacted as follows:

10-19.1-61. Authorized shares.

1. Subject to any restrictions in the articles, a corporation may issue securities and rights to purchase securities only when authorized by the board.
2. All the shares of a corporation:
 - a. Must be of one class and one series, unless the articles establish; or authorize the board to establish; more than one class or series;
 - b. Must be common shares entitled to vote and ~~shall~~ have equal rights and preferences in all matters not otherwise provided for by the board, unless and to the extent ~~that~~ the articles have created nonvoting shares or have fixed the relative rights and preferences of different classes and series; and
 - c. Must have, unless a different par value is specified in the articles, a par value of one cent per share.
3. Subject to any restrictions in the articles, the power granted in subsection 2 may be exercised by a resolution approved by ~~the affirmative vote of a majority of the directors present~~ as required under section 10-19.1-46 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. Any of the rights and preferences of a class or series established in the articles or by resolution of the directors:
 - a. May be made dependent upon facts ascertainable outside the articles; or outside the resolution or resolutions establishing the class or series, provided that the manner in which the facts operate upon the rights and preferences of the class or series is clearly and expressly set forth in the articles or in the resolution or resolutions establishing the class or series; and
 - b. May incorporate by reference ~~some or all~~ any of the terms of any agreements, contracts, or other arrangements entered into by the issuing corporation in connection with the establishment of the class or series if the corporation retains at ~~its~~ the principal executive office, a copy of the agreements, contracts, or other arrangements or portions incorporated by reference.
4. A statement executed by an officer setting forth the name of the corporation 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 chapter 10-23~~ under section 10-19.1-147, before the issuance of any shares for which the resolution creates rights or preferences not set forth in the articles. The resolution is effective when the statement ~~has been~~ is 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.

5. Without limiting the authority granted ~~in~~ under this section, a corporation may issue shares of a class or series which:

- a. ~~Subject~~ Are subject to the right of the corporation to redeem any of those shares at the price fixed for ~~their~~ the shares' redemption by the articles or by the board;
- b. ~~Entitling~~ Entitle the shareholders to cumulative, partially cumulative, or noncumulative distributions;
- c. ~~Having~~ Have preference over any class or series of shares for the payment of distributions of any or all kinds;
- d. ~~Convertible~~ Convert into shares of any other class or any series of the same or another class; or
- e. ~~Having~~ Have full, partial, or no voting rights, except as provided ~~in~~ under section 10-19.1-20.

SECTION 13. AMENDMENT. Subsection 5 of section 10-19.1-61.1 of the North Dakota Century Code is amended and reenacted as follows:

5. If a division or combination that includes an amendment of the articles is effected under subsection 4, ~~then~~ articles of amendment must be prepared that contain the information required by section 10-19.1-21 and a statement that the amendment will not adversely affect ~~the rights~~ any right or ~~preferences~~ preference of the ~~holders~~ any holder of outstanding shares of any class or series and will not result in the percentage of authorized shares ~~that~~ of any class or series which remains unissued after the division or combination exceeding the percentage of authorized shares ~~that~~ of that class or series which were unissued before the division or combination.

SECTION 14. AMENDMENT. Subsection 1 of section 10-19.1-63 of the North Dakota Century Code is amended and reenacted as follows:

1. Subject to any restrictions in the articles:

- a. The consideration for the issuance of shares may be paid, in whole or in part, in money; in other property, tangible or intangible; or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued ~~has been~~ is received by the corporation, the shares ~~must be~~ are considered fully paid and nonassessable. Neither promissory notes nor future services constitute payment or part payment for shares of a corporation.
- b. ~~Upon authorization in accordance with section 10-19.1-61.1, the corporation may, without~~ Without any new or additional consideration, a corporation may issue ~~its~~ the corporation's own shares in exchange for or in conversion of ~~its~~ the corporation's outstanding shares, or may, subject to authorization of share dividends, divisions, and combinations according to section 10-19.1-61.1, issue ~~its~~ the corporation's own shares pro rata to ~~its~~ the corporation's shareholders or the shareholders of one or more classes or series, to effectuate share dividends, divisions, or combinations. ~~No shares~~ Shares of a class or series, shares of which are then outstanding, may not be issued to the holders of shares of another class or series, except in exchange for or in conversion of outstanding shares of the other class or series, unless the issuance ~~either~~ is expressly provided for in the articles or is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares of the same class or series as the shares to be issued.

SECTION 15. AMENDMENT. Subsection 4 of section 10-19.1-64 of the North Dakota Century Code is amended and reenacted as follows:

4. The instrument or written agreement evidencing the right to purchase must set forth in full, summarize, or incorporate by reference all the terms, provisions, and conditions applicable to the right to purchase.

SECTION 16. A new subsection to section 10-19.1-65 of the North Dakota Century Code is created and enacted as follows:

A denial or limitation of preemptive rights otherwise provided under this section does not limit the power of the corporation to grant first refusal rights or other rights

1 to purchase from the corporation shares or other securities of the corporation to
2 shareholders, subscribers, or other persons before the shares or other securities
3 are offered to or acquired by any other person.

4 **SECTION 17. AMENDMENT.** Section 10-19.1-66 of the 1997 Supplement to the North
5 Dakota Century Code is amended and reenacted as follows:

6 **10-19.1-66. Share certificates - Issuance and contents - Uncertificated shares.**

7 1. The shares of a corporation must be certificated shares or uncertificated shares.
8 Each holder of certificated shares issued in compliance with section 10-19.1-63 is
9 entitled to a certificate of shares.

10 2. The shares of a corporation must be represented by certificates signed by the
11 president; or ~~by~~ a vice president, and by the secretary, or by an assistant secretary
12 of the corporation.

13 ~~2.~~ 3. If a person signs or has a facsimile signature placed upon a certificate while an
14 officer, transfer agent, or registrar of a corporation, the certificate may be issued by
15 the corporation; even if the person ~~has ceased to have~~ ceases having that capacity
16 before the certificate is issued, with the same effect as if the person had that
17 capacity at the date of ~~its~~ the certificate's issue.

18 ~~3.~~ 4. Every certificate representing shares issued by a corporation ~~which~~ that is
19 authorized to issue shares of more than one class must set forth upon the face or
20 back of the certificate, or must state that the corporation will furnish to any
21 shareholders upon request and without charge, a full or summary statement of the
22 designations, preferences, limitations, and relative rights of the shares of each
23 class authorized to be issued and, if the corporation is authorized to issue any
24 preferred or special class or series, the variations in the relative rights and
25 preferences between the shares of each ~~such~~ of the series so far as to the extent
26 the ~~same~~ relative rights and preferences have been fixed and determined and the
27 authority of the board to fix and determine the relative rights and preferences of
28 subsequent series. Each certificate representing shares must state upon its face:

- 29 a. The name of the corporation.
30 b. That the corporation is organized under the laws of this state.
31 c. The name of the person to whom issued.

d. The number and class of shares; and the designation of the series, if any,
~~which such~~ the certificate represents.

e. The par value of ~~such~~ any share represented by ~~such~~ the certificate; or a
statement ~~that~~ the shares are without par value.

~~4.~~ 5. A certificate signed as provided ~~in~~ under subsection 1 is prima facie evidence of
the ownership of the shares referred to in the certificate.

~~5.~~ 6. Unless uncertificated shares are prohibited by the articles or bylaws, a resolution
approved by the affirmative vote of a majority of the directors present may provide
that some or all of any or all classes and series of ~~its~~ the corporation's shares will
be uncertificated shares.

a. The resolution does not apply to shares represented by a certificate until the
certificate is surrendered to the corporation.

b. Within a reasonable time after the issuance or transfer of uncertificated
shares, the corporation shall send to the new shareholder the information
required by this section to be stated on certificates.

c. The information required under this section is not required to be sent to the
new shareholder by a publicly held corporation that adopted a system of
issuance, recordation, and transfer of the corporation's shares by electronic or
other means not involving the issuance of certificates if the system complies
with federal law.

d. Except as otherwise expressly provided by statute, the rights and obligations
of the holders of certificated and uncertificated shares of the same class and
series are identical.

SECTION 18. AMENDMENT. Subsection 2 of section 10-19.1-68 of the North Dakota
Century Code is amended and reenacted as follows:

2. A corporation may not pay money for fractional shares if that action would result in
the cancellation of more than twenty percent of the outstanding shares of a class or
series. A determination by the board of the fair value of fractions of a share is
conclusive in the absence of fraud. ~~A certificate for a certificated or uncertificated
fractional share does, but, and any scrip or warrants do not unless they provide
otherwise, entitle~~ warrants if expressly provided, entitles the shareholder to

exercise voting rights or ~~to~~ receive distributions. The board may cause scrip or warrants to be issued subject to the condition ~~that they~~ the scrip or warrants become void if not exchanged for full shares before a specified date, or that the shares for which scrip or warrants are exchangeable may be sold by the corporation and the proceeds distributed to the holder of the scrip or warrants, or to any other condition or set of conditions the board may impose.

SECTION 19. AMENDMENT. Subsection 2 of section 10-19.1-70 of the North Dakota Century Code is amended and reenacted as follows:

2. A written restriction on the transfer or registration of transfer of securities of a corporation ~~that~~ which is not manifestly unreasonable under the circumstances and is noted conspicuously on the face or back of the certificate or included in information sent to the holders of uncertificated shares in accordance with subsection 6 of section 10-19.1-66 may be enforced against the holder of the restricted securities or a successor or transferee of the holder, including a pledgee or a legal representative. Unless noted conspicuously on the face or back of the certificate or included in information sent to holders of uncertificated shares in accordance with subsection 6 of section 10-19.1-66, a restriction, even though permitted by this section, is ineffective against a person without knowledge of the restriction. A restriction under this section is deemed to be noted conspicuously and is effective if the existence of the restriction is stated on the certificate and reference is made to a separate document creating or describing the restriction.

SECTION 20. AMENDMENT. Subsection 1 of section 10-19.1-73.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The board may fix or authorize an officer to fix a date not more than fifty days, or a shorter time period provided in the articles or bylaws, before the date of a meeting of shareholders as the date for the determination of the holders of shares entitled to notice of and entitled to vote at the meeting. ~~When~~ If a date is fixed, only shareholders on that date are entitled to notice of and permitted to vote at that meeting of shareholders.

SECTION 21. AMENDMENT. Subsection 1 of section 10-19.1-76.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1 1. At or before the meeting for which the appointment is to be effective, a shareholder
2 may cast or authorize the casting of a vote by filing a written appointment of a
3 proxy which is signed by the shareholder, with an officer authorized to tabulate
4 votes.

5 a. ~~A written~~ Before the meeting, a shareholder may cast or authorize the casting
6 of a vote by a proxy by transmitting to the corporation or the corporation's duly
7 authorized agent an appointment of a proxy ~~may be signed by the~~
8 ~~shareholder or authorized by the shareholder by transmission of a telegraph,~~
9 ~~cablegram, or other means of electronic transmission, provided the~~
10 ~~corporation has no reason to believe the telegram, cablegram, or other~~
11 ~~electronic transmission was not authorized by the shareholder by means of~~
12 telegram, cablegram, or any other form of electronic transmission, including
13 telephonic transmission, whether or not accompanied by written instructions
14 of the shareholders. An electronic transmission must set forth or be submitted
15 with information indicating the appointment is authorized by the shareholder.
16 If it is determined a telegram, cablegram, or other electronic transmission is
17 valid, the inspectors of election or, if there are no inspectors, the other
18 persons making that determination of validity shall specify the information
19 upon which they relied to make that determination.

20 b. ~~Any~~ A copy, facsimile telecommunication, or other reproduction of the original
21 writing or transmission may be substituted or used in lieu of the original writing
22 or transmission for any purpose for which the original writing or transmission
23 could be used; if the copy, facsimile, telecommunication, or other reproduction
24 is a complete and legible reproduction of the entire original writing or
25 transmission.

26 c. An appointment of a proxy for shares held jointly by two or more shareholders
27 is valid if signed by any one of ~~them~~ the shareholders, unless the corporation
28 receives from any ~~one~~ of those shareholders written notice ~~either~~ denying the
29 authority of that person to appoint a proxy or appointing a different proxy.

30 **SECTION 22. AMENDMENT.** Subsection 3 of section 10-19.1-83 of the 1997

31 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The written agreement is enforceable by the persons described in subsection 1 who are parties to ~~it~~ the agreement and is binding upon and enforceable against only ~~those~~ the persons described in subsection 1 and other persons having with knowledge of the existence of the agreement. A signed original of the written agreement must be filed with the corporation. The existence and location of a copy of the written agreement must be noted conspicuously on the face or back of each certificate for shares issued by the corporation and ~~on each transaction statement~~ included in information sent to the holders of uncertificated shares according to subsection 6 of section 10-19.1-66. A shareholder, a beneficial owner of shares, or another person having with a security interest in shares ~~has the right~~ may obtain upon written demand ~~to obtain~~ a copy of the agreement from the corporation at the expense of the corporation.

SECTION 23. AMENDMENT. Subsection 1 of section 10-19.1-84 of the North Dakota Century Code is amended and reenacted as follows:

1. A corporation shall keep at ~~its~~ the corporation's principal executive office; or at another place or places within the United States determined by the board, a share register not more than one year old, containing the ~~names~~ name and ~~addresses~~ address of the shareholders each shareholder and the number and classes of shares held by each shareholder. A corporation shall also keep; at ~~its~~ the corporation's principal executive office; or at another place or places within the United States determined by the board, a record of the dates on which ~~certificates~~ certificated or uncertificated shares were issued.

SECTION 24. A new subsection to section 10-19.1-87 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

If a date is fixed according to subsection 1 of section 10-19.1-73.2 for the determination of shareholders entitled to receive notice of and to vote on an action described under subsection 1, only shareholders as of the date fixed and beneficial owners as of the date fixed who hold through shareholders, as provided in subsection 2, may exercise dissenter's rights.

SECTION 25. AMENDMENT. Subsection 3 of section 10-19.1-88 of the North Dakota Century Code is amended and reenacted as follows:

3. If the proposed action must be approved by the shareholders, a shareholder who is entitled to dissent under section 10-19.1-87 and who wishes to exercise dissenter's rights ~~must~~ shall file with the corporation before the vote on the proposed action a written notice of intent to demand the fair value of the shares owned by the shareholder and ~~must~~ may not vote the shares in favor of the proposed action.

SECTION 26. AMENDMENT. Section 10-19.1-91 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-19.1-91. Indemnification.

1. For purposes of this section:

- a. "Corporation" includes a domestic or foreign corporation that was the predecessor of the corporation 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 director, the position of director in a corporation;
 - (2) With respect to a person other than a director, the elective or appointive office or position held by an officer, member of a committee of the board, or the employment relationship undertaken by an employee of the corporation; and
 - (3) With respect to a director, officer, or employee of the corporation who, while a director, officer, or employee of the corporation, is or was serving at the request of the corporation or whose duties in that position involve or involved service as a director, officer, manager, partner, trustee, employee, or agent of another organization or employee benefit plan, the position of that person as a director, officer, manager, 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 corporation.

d. "Special legal counsel" means counsel who has not represented the corporation or a related organization, or a director, officer, member of a committee of the board, or employee whose indemnification is in issue.

2. Subject to subsection 5, a corporation 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 excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorneys' 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 excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorneys' fees and disbursements, incurred by the person in connection with the proceeding with respect to the same acts or omission;

b. Acted in good faith;

c. Received no improper personal benefit and section 10-19.1-51, 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 corporation, 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 corporation. 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 corporation if the

1 person reasonably believed that the conduct was in the best interests of the
2 participants or beneficiaries of the employee benefit plan.

- 3 3. The termination of a proceeding by judgment, order, settlement, conviction, or
4 upon a plea of ~~nolo contendere~~ contendere or ~~its~~ an equivalent plea does not, of
5 itself, establish that the person did not meet the criteria set forth in subsection 2.
- 6 4. Subject to subsection 5, if a person is made or threatened to be made a party to a
7 proceeding, the person is entitled, upon written request to the corporation, to
8 payment or reimbursement by the corporation of reasonable expenses, including
9 attorneys' fees and disbursements, incurred by the person in advance of the final
10 disposition of the proceeding:
- 11 a. Upon receipt by the corporation of a written affirmation by the person of a
12 good faith belief that the criteria for indemnification set forth in subsection 2
13 have been satisfied and a written undertaking by the person to repay all
14 amounts so paid or reimbursed by the corporation, if ~~it~~ the ultimate
15 determination is ~~ultimately determined~~ that the criteria for indemnification
16 have not been satisfied; and
- 17 b. After a determination that the facts then known to those making the
18 determination would not preclude indemnification under this section.
- 19 The written undertaking required by subdivision a is an unlimited general obligation
20 of the person making it, but need not be secured and shall be accepted without
21 reference to financial ability to make the repayment.
- 22 5. The articles or bylaws ~~either~~ may prohibit indemnification or advances of expenses
23 otherwise required ~~by~~ under this section or may impose conditions on
24 indemnification or advances of expenses in addition to the conditions contained in
25 subsections 2, 3, and 4 including monetary limits on indemnification or advances
26 for expenses, if the prohibitions or conditions apply equally to all persons or to all
27 persons within a given class. A prohibition or limit on indemnification or advances
28 may not apply to or affect the right of a person to indemnification or advances of
29 expenses with respect to any ~~acts~~ act or ~~omissions~~ omission of the person
30 occurring ~~prior to~~ before the effective date of a provision in the articles or the date

of adoption of a provision in the bylaws establishing the prohibition or limit on indemnification or advances.

6. This section does not require, or limit the ability of, a corporation to reimburse expenses, including attorneys' 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 determinations whether indemnification of a person is required because the criteria provided in subsection 2 have been satisfied and whether a person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subsection 4 must be made:
 - a. By the board by a majority of a quorum, if the directors 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, consisting solely of two or more directors not at the time parties to the proceeding, duly designated to act in the matter by a majority of the full board including directors 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 or a committee by vote pursuant to subdivision a or b or, if the requisite quorum of the full board cannot be obtained and the committee cannot be established, by a majority of the full board including directors who are parties;
 - d. If a determination is not made under subdivisions a, b, and c, by the shareholders, other than the shareholders who are a party 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:
 - (1) The later to occur of the termination of a proceeding or a written request for indemnification to the corporation; or

(2) 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.

The person seeking indemnification or payment or reimbursement of expenses pursuant to this subdivision has the burden of establishing that the person is entitled to indemnification or payment or reimbursement of expenses.

8. With respect to a person who is not, and who was not at the time of the acts or omissions complained of in the proceedings, a director, officer, or person possessing, directly or indirectly, the power to direct or cause the direction of the management or policies of the corporation, the determination whether indemnification of this person is required because the criteria set forth in subsection 2 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, having at least one member who is a director. The committee shall report at least annually to the board concerning its actions.

9. A corporation 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 corporation would have been required to indemnify the person against the liability under the provisions of this section.

10. A corporation that indemnifies or advances expenses to a person in accordance with this section in connection with a proceeding by or on behalf of the corporation shall report to the shareholders in writing the amount of the indemnification or advance and to whom and on whose behalf ~~it~~ the indemnification or advance was paid not later than the next meeting of shareholders.

11. ~~Nothing in this~~ This section may be construed to does not limit the power of the corporation to indemnify ~~other~~ persons other than a director, officer, employee, or member of a committee of the board by contract or otherwise.

SECTION 27. AMENDMENT. Section 10-19.1-96 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-96. Merger - Exchange - Transfer.

1. ~~Any two or more corporations~~ With or without a business purpose, a corporation may merge, resulting in a single corporation, with or without a business purpose, pursuant to a plan of merger approved in the manner provided in sections 10-19.1-97 through 10-19.1-103. with:
 - a. Another domestic corporation under a plan of merger approved in the manner provided in sections 10-19.1-97 through 10-19.1-103.
 - b. A limited liability company under a plan of merger approved in the manner provided in sections 10-32-101 through 10-32-106.
 - c. A foreign corporation or foreign limited liability company under a plan of merger in the manner provided in section 10-19.1-103.
2. ~~A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation pursuant~~ With respect to a plan of an exchange approved in the manner provided in sections 10-19.1-97 through 10-19.1-99 and sections 10-19.1-101 through 10-19.1-103.:
 - a. A corporation may acquire all the ownership interests of one or more classes or series of another domestic corporation under a plan of exchange approved in the manner provided in sections 10-19.1-97 through 10-19.1-103.
 - b. A corporation may acquire all the ownership interests of one or more classes or series of a limited liability company under a plan of exchange approved in the manner provided in sections 10-32-101 through 10-32-106.
 - c. A limited liability company may acquire all the ownership interests of one or more classes or series of a corporation under a plan of exchange approved in the manner provided in sections 10-19.1-97 through 10-19.1-103 and chapter 10-32.
 - d. A foreign corporation or foreign limited liability company may acquire all the ownership interests of one or more classes or series of a corporation under a plan of exchange approved in the manner provided in section 10-19.1-103.

3. A corporation may sell, lease, transfer, or otherwise dispose of all or substantially all of ~~its~~ the corporation's property and assets in the manner provided in section 10-19.1-104.

4. A corporation may participate in a merger or exchange with a ~~domestic~~ limited liability company ~~pursuant to chapter 10-32~~. The dissenter's rights for shareholders of a corporation are governed by this chapter.

SECTION 28. AMENDMENT. Section 10-19.1-97 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-97. Plan of merger or exchange.

1. A plan of merger or exchange must contain:

a. The ~~names~~ name of the ~~corporations~~ corporation and of 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 ~~corporation~~ organization; or

(2) In the case of an exchange, the name of the acquiring ~~corporation~~ organization;

b. The terms and conditions of the proposed merger or exchange;

c. ~~With respect to the~~ The manner and basis of conversion for converting or exchange exchanging ownership interests:

(1) In the case of a merger, the manner and basis of converting the ~~shares~~ ownership interests of the constituent ~~corporations~~ organizations into securities of the surviving ~~corporation~~ organization or of any other ~~corporation~~ 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 ~~shares~~ ownership interests to be acquired for securities of the acquiring ~~corporation~~ organization or any other ~~corporation~~ organization or, in whole or in part, into money or other property;

- 1 d. In the case of a merger, a statement of any amendments to the articles of
2 incorporation or articles of organization of the surviving ~~corporation~~
3 organization proposed as part of the merger; and
4 e. Any other provisions with respect to the proposed merger or exchange ~~that~~
5 which are deemed necessary or desirable.

- 6 2. ~~The procedure authorized by this~~ This section does not limit the power of a
7 corporation to acquire all or part of the ~~shares~~ ownership interests of one or more
8 classes or series of another ~~corporation~~ organization through a negotiated
9 agreement with the ~~shareholders~~ owners or otherwise.

10 **SECTION 29. AMENDMENT.** Section 10-19.1-98 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **10-19.1-98. Plan approval.**

- 13 1. A resolution containing the plan of merger or exchange must be approved by the
14 ~~affirmative vote of a majority of the directors present at a meeting of the governing~~
15 board as required by section 10-19.1-46 or 10-32-83 of each constituent
16 ~~corporation~~ organization and must then be submitted at a regular or special
17 meeting to the ~~shareholders~~ owners of:
- 18 a. ~~Each~~ each constituent ~~corporation~~ organization, in the case of a plan of
19 merger; and
20 b. ~~The corporation~~ or the constituent organization whose ~~shares~~ ownership
21 interests will be acquired by the acquiring ~~corporation~~ constituent organization
22 in the exchange, in the case of a plan of exchange. If ~~shareholders holding~~
23 owners owning any class or series of ~~stock of the corporation~~ ownership
24 interests in a constituent organization are entitled to vote on the plan of
25 merger or exchange ~~pursuant to~~ under this subsection, written notice must be
26 given to every ~~shareholder~~ owner of that constituent organization, whether or
27 not entitled to vote at the meeting, ~~no fewer~~ not less than fourteen days nor
28 more than sixty days before the meeting, in the manner provided in section
29 10-19.1-73 for notice of meetings of shareholders in the case of a domestic
30 corporation and in the manner provided in section 10-32-40 in the case of a
31 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 ~~shareholders~~ owners must be taken on the proposed plan. The plan of merger or exchange is adopted when approved by the affirmative vote of the holders of a majority of the voting power of all ~~shares~~ ownership interests entitled to vote. Except as provided in subsection 3, a class or series of shares of the corporation 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 incorporation, entitle the class or series of ~~shares~~ 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 ~~shares~~ ownership interests of the ~~corporation~~ constituent organization is not entitled to vote as a class or series solely because the plan of merger affects a cancellation of ~~shares~~ ownership interests of the class or series if the plan of merger or exchange affects a cancellation of all ~~shares~~ ownership interests of the ~~corporation~~ constituent organization of all classes and series that are outstanding immediately ~~prior to~~ before the merger or exchange and ~~shareholders~~ owners of ~~shares~~ ownership interests of that class or series are entitled to obtain payment for the fair value of their ~~shares~~ ownership interests under section 10-19.1-87 or 10-32-54 in the event of the merger.
4. Notwithstanding subsections 1 and 2, submission of a plan of merger or exchange to a vote at a meeting of ~~shareholders~~ owners of a surviving ~~corporation~~ constituent organization is not required if:
 - a. The articles ~~of the corporation~~ will not be amended in the transaction;
 - b. Each ~~holder~~ owner of ~~shares of~~ ownership interests in the ~~corporation that~~ constituent organization which were outstanding immediately before the effective date of the transaction will hold the same number of ~~shares~~ ownership interests with identical rights immediately ~~thereafter~~ after the effective date;

- 1 c. The voting power of the outstanding ~~shares~~ ownership interests of the
2 ~~corporation~~ constituent organization entitled to vote immediately after the
3 merger or exchange, plus the voting power of the ~~shares~~ ownership interests
4 of the ~~corporation~~ constituent organization entitled to vote issuable on
5 conversion of, or on the exercise of rights to purchase, securities issued in the
6 transaction, will not exceed by more than twenty percent the voting power of
7 the outstanding ~~shares~~ ownership interests of the ~~corporation~~ constituent
8 organization entitled to vote immediately before the transaction; and
- 9 d. The number of participating ~~shares~~ ownership interests of the ~~corporation~~
10 constituent organization immediately after the merger, plus the number of
11 participating ~~shares~~ ownership interests of the ~~corporation~~ constituent
12 organization issuable on conversion of, or on the exercise of rights to
13 purchase, securities issued in the merger, will not exceed by more than
14 twenty percent the number of participating ~~shares~~ ownership interests of the
15 ~~corporation~~ constituent organization immediately before the merger.
16 "Participating ~~shares~~ ownership interests" are outstanding ~~shares~~ ownership
17 interests of the ~~corporation~~ that constituent organization which entitle their
18 ~~holders~~ owners to participate without limitation in distributions by the
19 ~~corporation~~ constituent organization.

- 20 5. If the merger or exchange is with a domestic limited liability company, the plan of
21 merger or exchange must also be approved in the manner provided in chapter
22 10-32.

23 **SECTION 30. AMENDMENT.** Section 10-19.1-99 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **10-19.1-99. Articles of merger - Certificate.**

- 26 1. Upon receiving the approval required by section 10-19.1-98, articles of merger
27 must be prepared which contain:
- 28 a. The plan of merger; and
- 29 b. A statement that the plan ~~has been~~ is approved by each ~~corporation~~ pursuant
30 ~~to~~ constituent organization under chapter 10-19.1 or chapter 10-32.

2. The articles of merger must be signed on behalf of each constituent ~~corporation~~
organization and filed with the secretary of state, together with the fees provided in
~~chapter 10-23~~ section 10-19.1-147.

3. The secretary of state shall issue a certificate of merger to the surviving
~~corporation~~ constituent organization or ~~its~~ the surviving constituent organization's
legal representative. The certificate must contain the effective date of merger.

SECTION 31. AMENDMENT. Section 10-19.1-100 of the North Dakota Century Code
is amended and reenacted as follows:

10-19.1-100. Merger of subsidiary into parent.

1. A parent owning at least ninety percent of the outstanding ~~shares ownership~~
interests of each class and series of a subsidiary directly, or indirectly through
related corporations; or limited liability companies may merge the subsidiary into
~~itself the parent~~ or into any other subsidiary at least ninety percent of the
outstanding ~~shares ownership interests~~ of each class and series of which is owned
by the parent directly, or indirectly through related corporations or limited liability
companies, without a vote of the ~~shareholders~~ owners of ~~itself the parent~~ or any
subsidiary; or may merge ~~itself the parent~~, or ~~itself the parent~~ and one or more
subsidiaries into one of the subsidiaries under this section.

2. A resolution approved by ~~the affirmative vote of a majority of the present~~ directors
of the parent as required by section 10-19.1-46 or of the present governors of the
parent required by section 10-32-83 must set forth a plan of merger that contains:

- a. The name of the subsidiary or subsidiaries, the name of the parent, and the
name of the surviving ~~corporation~~ constituent organization;
- b. The manner and basis of converting the ~~shares ownership interests~~ of the
subsidiary or subsidiaries or the parent into securities of the parent,
subsidiary, or of another ~~corporation~~ organization; or, in whole or in part, into
money or other property;
- c. If the parent is a constituent ~~corporation~~ organization but is not the surviving
~~corporation~~ constituent organization in the merger, a provision for the pro rata
issuance of ~~shares ownership interests~~ of the surviving ~~corporation~~
constituent organization to the ~~holders~~ owners of ~~shares ownership interests~~

- 1 of the parent on surrender of any ~~certificates for shares~~ ownership interests of
- 2 the parent; and
- 3 d. If the surviving ~~corporation~~ constituent organization is a subsidiary, a
- 4 statement of any amendments to the articles of the surviving ~~corporation~~
- 5 constituent organization that will be part of the merger.
- 6 3. If the parent is a constituent ~~corporation~~ organization but is not the surviving
- 7 ~~corporation~~ constituent organization in a merger, the resolution is not effective
- 8 unless it the merger is also approved by the affirmative vote of the holders of a
- 9 majority of the voting power of all ~~shares~~ ownership interests of the parent entitled
- 10 to vote at a regular or special meeting held in accordance with section 10-19.1-98 if
- 11 the parent is a domestic corporation, section 10-32-102 if the parent is a limited
- 12 liability company, or in accordance with the laws of the jurisdiction under which it
- 13 the parent is incorporated or organized if the parent is a foreign corporation or
- 14 foreign limited liability company.
- 15 2- 4. A copy of the plan of merger must be mailed to each ~~shareholder~~ owner, other
- 16 than the parent and any subsidiary, of each subsidiary that is a constituent
- 17 ~~corporation~~ organization in the merger.
- 18 3- 5. Articles of merger must be prepared which contain:
- 19 a. The plan of merger;
- 20 b. The number of outstanding ~~shares~~ ownership interests of each class and
- 21 series of the subsidiary that is a constituent ~~corporation~~ organization in the
- 22 merger and the number of ~~shares~~ ownership interests of each class and
- 23 series owned by the parent directly, or indirectly through related ~~corporations~~
- 24 constituent organizations;
- 25 c. The date a copy of the plan of merger was mailed to ~~shareholders~~ owners,
- 26 other than the parent or a subsidiary, of each subsidiary that is a constituent
- 27 ~~corporation~~ organization in the merger; and
- 28 d. A statement that the plan of merger ~~has been~~ is approved by the parent under
- 29 this section.
- 30 4- 6. Within thirty days after a copy of the plan of merger is mailed to ~~shareholders~~
- 31 owners of each subsidiary that is a constituent ~~corporation~~ organization to the

merger; or upon waiver of the mailing by the ~~holders~~ owners of all outstanding
~~shares~~ ownership interests of each subsidiary that is a constituent ~~corporation~~
organization to the merger, the articles of merger must be signed on behalf of the
parent and filed with the secretary of state, ~~along~~ with the fees provided in ~~chapter~~
~~40-23~~ section 10-19.1-147.

~~5- 7.~~ 7. The secretary of state shall issue a certificate of merger to the ~~parent~~ surviving
constituent organization or ~~its~~ the surviving legal representative's legal
representative or, if the parent is a constituent corporation but is not the surviving
~~corporation in a merger, to the surviving corporation or its legal representative.~~
The certificate must contain the effective date of the merger.

~~6- 8.~~ 8. If all of the ~~shares~~ ownership interests of one or more domestic subsidiaries that is
a constituent ~~party~~ organization to a merger under this section are not owned by
the parent directly, or indirectly through related ~~corporations~~ constituent
organizations, immediately ~~prior to~~ before the merger, the ~~shareholders~~ owners of
each domestic subsidiary have dissenter's rights under section 10-19.1-87 or
10-32-54, without regard to subsection 3 of section 10-19.1-87 ~~and section~~
~~40-19.1-88~~ or subsection 2 of section 10-32-54. If the parent is a constituent
~~corporation~~ organization but is not the surviving ~~corporation~~ organization in the
merger, ~~and~~ the articles of incorporation or articles of organization of the surviving
~~corporation~~ organization immediately after the merger differ from the articles of
incorporation or articles of organization of the parent immediately ~~prior to~~ before
the merger in a manner that would entitle ~~a shareholder~~ an owner of the parent to
dissenter's rights under subdivision a of subsection 1 of section 10-19.1-87 or
under subdivision a of subsection 1 of section 10-32-54, ~~if and~~ the articles of
incorporation or articles of organization of the surviving ~~corporation~~ constituent
organization constitute an amendment to the articles of ~~the corporation~~
incorporation or articles of organization of the parent, that ~~shareholder~~ owner of the
parent has dissenter's rights as provided under sections 10-19.1-87 ~~and~~
~~40-19.1-88~~ or 10-32-54. Except as provided in this subsection, sections
10-19.1-87 and ~~40-19.1-88~~ 10-32-54 do not apply to any merger affected under
this section.

7. 9. A merger among a parent and one or more subsidiaries or among two or more subsidiaries of a parent may be accomplished under sections 10-19.1-97 through 10-19.1-99 instead of this section, in which case this section does not apply.

SECTION 32. AMENDMENT. Section 10-19.1-101 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-101. Abandonment of plan of merger or exchange.

1. After a plan of merger or exchange ~~has been~~ is approved by the ~~shareholders~~ owners entitled to vote on the approval of the plan as provided in section 10-19.1-98 and before the effective date of the plan, it ~~the plan~~ may be abandoned:

a. With respect to the approval of the abandonment:

- (1) If the ~~shareholders~~ owners of the ownership interests of each of the constituent ~~corporations~~ organizations entitled to vote on the approval of the plan as provided in section 10-19.1-98 ~~have~~ approved the abandonment at a meeting by the affirmative vote of the ~~holders~~ owners of a majority of the voting power of the ~~shares~~ ownership interests entitled to vote ~~and, if,~~
- (2) If the ~~shareholders~~ owners of a constituent ~~corporation~~ organization are not entitled to vote on the approval of the plan under section 10-19.1-98, the governing board ~~of directors~~ of the constituent ~~corporation~~ organization has approved the abandonment by the affirmative vote ~~of a majority of the directors present~~ required by section 10-19.1-46 or by section 10-32-83; and
- (3) If the merger or exchange is with a foreign corporation or limited liability company, if abandonment is approved in the manner as may be required by the laws of the jurisdiction under which the corporation is incorporated or the limited liability company is organized.

- 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.

- 1 2. If articles of merger ~~have~~ are not ~~been~~ filed with the secretary of state and the plan
2 is to be abandoned; or if a plan of exchange is to be abandoned before the
3 effective date of the plan, a resolution abandoning the plan of merger or exchange
4 may be approved by the affirmative vote of ~~a majority of the directors present~~ the
5 governing board required by section 10-19.1-46 or 10-32-83, subject to the
6 contract rights of any other person under the plan.
- 7 3. If articles of merger ~~have been~~ are filed with the secretary of state, ~~the board but~~
8 are not yet effective, the constituent organizations, in the case of abandonment
9 under paragraph 1 of subdivision a of subsection 1, the constituent organization or
10 any one of them under paragraph 2 of subdivision a of subsection 1, as the
11 abandoning constituent organization in the case of abandonment under
12 subsection 2, shall file with the secretary of state, ~~together~~ with the fees provided in
13 ~~chapter 10-23~~ section 10-19.1-147, articles of abandonment that contain:
- 14 a. The ~~name~~ names of the constituent ~~corporations~~ organizations;
- 15 b. The provision of this section under which the plan is abandoned; and
- 16 c. The text of the resolution approved by the affirmative vote of a majority of the
17 directors present abandoning the plan.
- 18 4. If the certificate of merger ~~has been~~ is issued, the board shall surrender the
19 certificate to the secretary of state upon filing the articles of abandonment.

20 **SECTION 33. AMENDMENT.** Section 10-19.1-102 of the North Dakota Century Code
21 is amended and reenacted as follows:

22 **10-19.1-102. Effective date of merger or exchange - Effect.**

- 23 1. A merger is effective when the articles of merger are filed with the secretary of
24 state or on a later date specified in the articles of merger. An exchange is effective
25 on the date specified in the plan of exchange.
- 26 2. When a merger becomes effective:
- 27 a. The constituent ~~corporations~~ organizations become a single ~~corporation~~
28 entity, the surviving corporation or the surviving limited liability company, as
29 the case may be.
- 30 b. The separate existence of all constituent ~~corporations~~ organizations except
31 the surviving ~~corporation~~ organization ceases.

1 c. As to any corporation that was a constituent organization and is not the
2 surviving constituent organization, the articles of merger serve as articles of
3 termination, and unless previously filed, the notice of dissolution.

4 d. As to rights, privileges, powers, duties, and liabilities:

5 (1) If the surviving organization is a limited liability company, the surviving
6 limited liability company has all the rights, privileges, immunities, and
7 powers and is subject to all of the duties and liabilities of a domestic
8 limited liability company.

9 (2) ~~The~~ If the surviving ~~corporation~~ organization is a corporation, the
10 surviving corporation has all the rights, privileges, immunities, and
11 powers, and is subject to all the duties and liabilities, of a corporation
12 incorporated under this chapter.

13 ~~e.~~ e. ~~The surviving corporation organization~~ possesses all the rights, privileges,
14 immunities, and franchises, of a public as well as of a private nature, of each
15 of the constituent ~~corporations~~ organizations.

16 (1) All property, ~~real, personal, and mixed~~, and all debts due on any
17 account, including subscriptions to shares; and all other choses in
18 action, and every other interest of or belonging to or due to each of the
19 constituent ~~corporations~~ organizations vests in the surviving
20 ~~corporation~~ organization without any further act or deed.

21 (2) Confirmatory deeds, assignments, or similar instruments to accomplish
22 that vesting may be signed and delivered at any time in the name of a
23 constituent ~~corporation~~ organization by ~~its~~ the organization's current
24 officers or managers, as the case may be, or, if the ~~corporation~~
25 organization no longer exists, by ~~its~~ the organization's last officers or
26 managers.

27 (3) The title to any real estate or any interest ~~therein~~ vested in any of the
28 constituent ~~corporations~~ organizations does not revert nor in any way
29 become impaired by reason of the merger.

e- f. The surviving ~~corporation~~ organization is responsible and liable for all the liabilities and obligations of each of the constituent ~~corporations~~ organizations.

(1) A claim of or against or a pending proceeding by or against a constituent ~~corporation~~ organization may be prosecuted as if the merger ~~had~~ did not ~~taken~~ take place, or the surviving ~~corporation~~ organization may be substituted in the place of the constituent ~~corporation~~ organization.

(2) Neither the rights of creditors nor any liens upon the property of a constituent ~~corporation~~ organization are impaired by the merger.

f- g. The articles of incorporation or articles of organization, as the case may be, of the surviving ~~corporation~~ organization are deemed to be amended to the extent that changes in its articles, if any, are contained in the plan of merger.

3. When a merger or exchange becomes effective, the ~~shares of the corporation or corporations~~ ownership interests to be converted or exchanged under the terms of the plan cease to exist in the case of a merger, or are deemed to be exchanged in the case of an exchange. The ~~holders~~ owners of those ~~shares~~ ownership interests are entitled only to the securities, money, or other property into which those ~~shares~~ ownership interests have been converted or for which those ~~shares~~ ownership interests have been exchanged in accordance with the plan, subject to any dissenter's rights under section 10-19.1-87 or 10-32-54.

SECTION 34. AMENDMENT. Section 10-19.1-103 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-103. Merger or exchange with foreign corporation or foreign limited liability company.

1. A domestic corporation may merge with or participate in an exchange with a foreign corporation or 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~~ jurisdiction under which the foreign corporation or foreign limited liability company is incorporated; ~~and~~ or organized.

b. With respect to an exchange, the ~~corporation whose shares~~ constituent organization with ownership interests will be acquired is a domestic corporation or limited liability company, regardless of whether or not the exchange is permitted by the laws of the state jurisdiction under which the foreign corporation or foreign limited liability company is incorporated or organized.

2. Each domestic corporation shall comply with the provisions of sections 10-19.1-96 through 10-19.1-103 with respect to the merger or exchange of ~~shares of corporations~~ ownership interests and each foreign corporation or foreign limited liability company shall comply with the applicable provisions of the laws of the jurisdiction under which it was incorporated or organized or by which it is governed.

3. If the surviving ~~corporation~~ organization in a merger will be a domestic corporation, ~~it~~ the organization shall comply with this chapter.

4. If the surviving ~~corporation~~ organization in a merger will be a foreign corporation or foreign limited liability company and will transact business in this state, ~~it~~ the organization shall comply with the provisions of this chapter 10-22 with respect to foreign corporations or chapter 10-32 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 ~~corporation~~ organization and in a proceeding for the enforcement of the rights of a dissenting ~~shareholder~~ owner of an ownership interest of a constituent ~~corporation~~ organization against the surviving foreign corporation or foreign limited liability company;

b. An irrevocable appointment of the secretary of state as ~~its~~ the organization's agent to accept service of process in any proceeding, and an address to which process may be forwarded; and

c. An agreement that ~~it~~ the organization will promptly pay to the dissenting ~~shareholders~~ owners of ownership interests of each domestic constituent corporation and domestic constituent limited liability company the amount, if

any, to which they are entitled under section ~~40-49.1-87~~ 10-19.1-88 or
10-32-55.

SECTION 35. AMENDMENT. Subsection 2 of section 10-19.1-106 of the North Dakota
Century Code is amended and reenacted as follows:

2. The articles of dissolution must be filed with the secretary of state, together with
the fees provided for in ~~chapter 10-23~~ section 10-19.1-147.

SECTION 36. AMENDMENT. Subsection 1 of section 10-19.1-108 of the North Dakota
Century Code is amended and reenacted as follows:

1. If dissolution of the corporation is approved pursuant to subsections 1 and 2 of
section 10-19.1-107, the corporation shall file with the secretary of state, together
with the fees provided in ~~chapter 10-23~~ section 10-19.1-147, a notice of intent to
dissolve. The notice must contain:
 - a. The name of the corporation;
 - b. The date and place of the meeting at which the resolution was approved
pursuant to subsections 1 and 2 of section 10-19.1-107; and
 - c. A statement that the requisite vote of the shareholders was received or that all
shareholders entitled to vote signed a written action.

SECTION 37. AMENDMENT. Subsection 3 of section 10-19.1-112 of the North Dakota
Century Code is amended and reenacted as follows:

3. Revocation of dissolution proceedings is effective when a notice of revocation is
filed with the secretary of state, together with the fees provided in ~~chapter 10-23~~
section 10-19.1-147. The corporation may ~~thereafter~~ resume business after this
revocation.

SECTION 38. AMENDMENT. Subsection 1 of section 10-19.1-113.1 of the North
Dakota Century Code is amended and reenacted as follows:

1. An original of the articles of dissolution must be filed with the secretary of state. If
the secretary of state ~~finds that~~ determines the articles of dissolution conform to
law and ~~that~~ all fees have been paid under ~~chapter 10-23~~ section 10-19.1-147, the
secretary of state shall issue a certificate of dissolution.

SECTION 39. AMENDMENT. Section 10-19.1-129 of the 1997 Supplement to the
North Dakota Century Code is amended and reenacted as follows:

10-19.1-129. Service of process on corporation and nonresident directors.

1. The registered agent must be an agent of the corporation and any nonresident director upon whom any process, notice, or demand required or permitted by law to be served on the corporation or director may be served. Acceptance of a directorship 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 corporation may be served either upon the registered agent of the corporation, or upon an officer of the corporation, or upon the secretary of state as provided in this section.
3. If neither the corporation's registered agent nor an officer of the corporation can be found at the registered office, or if a corporation fails to maintain a registered agent in this state and an officer of the corporation cannot be found at the registered office, then the secretary of state is the agent of the corporation upon whom the process, notice, or demand may be served. The return of the sheriff, or the affidavit of a person who is not a party, that no registered agent or officer 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 corporation and must be made by filing with the secretary of state an original and two copies of the process, notice, or demand, along with the fees provided in ~~chapter 10-23~~ section 10-19.1-147. The secretary of state shall immediately forward, by registered mail, addressed to the corporation at ~~its~~ the 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. Process, notice, or demand may be served on a dissolved corporation as provided in this subsection. The court shall determine if service is proper. If a corporation has voluntarily dissolved or a court has entered a decree of dissolution, service may be made according to subsection 2 so long as claims are not finally barred under section 10-19.1-124. If a corporation has been involuntarily dissolved

pursuant to section ~~10-23-02-2~~ 10-19.1-146, service may be made according to subsection 2.

5. A record 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 must be maintained in the office of the secretary of state.

6. Nothing in this section limits the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner permitted by law.

SECTION 40. AMENDMENT. Section 10-19.1-137 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-19.1-137. Foreign corporation - Amendments to the certificate of authority. If any statement in the application for a certificate of authority by a foreign corporation ~~was is~~ false when made or ~~any arrangements or other facts described have changed, making the~~ application inaccurate in any respect the foreign corporation changes name or purposes sought in this state, the foreign corporation shall promptly file with the secretary of state an application for an amended certificate of authority executed by an authorized person correcting the statement and, in the case of a change in ~~its~~ the foreign corporation's name, a certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of which the foreign corporation is incorporated.

1. In the case of a dissolution, a foreign corporation need not file an application for an amended certificate of authority but shall promptly file with the secretary of state a certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of which the foreign corporation is incorporated.

2. A foreign corporation that amends the foreign corporation's 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, is a general partner in a limited partnership or limited liability limited partnership, or is a managing partner in a limited liability partnership that is on file with the secretary of state, shall change the foreign corporation's name in each of the foregoing registrations that is applicable when the foreign corporation files an application for an amended certificate of authority.

1 **SECTION 41. AMENDMENT.** Section 10-19.1-139 of the 1997 Supplement to the
2 North Dakota Century Code is amended and reenacted as follows:

3 **10-19.1-139. Foreign corporation - Merger of foreign corporation authorized to**
4 **transact business in this state.** ~~Whenever~~ If a foreign corporation authorized to transact
5 business in this state is a party to a statutory merger permitted by the laws of the jurisdiction
6 under which ~~it the foreign corporation~~ is incorporated, and the foreign corporation is not the
7 surviving organization, the surviving organization shall, within thirty days after the merger
8 becomes effective, file with the secretary of state a certified statement of merger duly
9 authenticated by the proper officer of the state or country where the statutory merger was
10 effected. Any foreign organization ~~which that~~ is the surviving organization in a merger and
11 which will continue to transact business in this state; shall procure a ~~new~~ certificate of authority
12 if not previously authorized to transact business in the state.

13 **SECTION 42. AMENDMENT.** Subsection 1 of section 10-19.1-146 of the 1997
14 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 15 1. Each corporation and each foreign corporation authorized to transact business in
16 this state; shall file, within the time prescribed by subsection 3, an annual report
17 setting forth:
 - 18 a. The name of the corporation or foreign corporation and the state or country
19 under the laws of which ~~it the corporation or foreign corporation~~ is
20 incorporated.
 - 21 b. The address of the registered office of the corporation or foreign corporation
22 in this state, the name of ~~its the corporation's or foreign corporation's~~
23 registered agent in this state at that address, and the address of ~~its the~~
24 corporation's or foreign corporation's principal executive office.
 - 25 c. A brief statement of the character of the business in which the corporation or
26 foreign corporation is actually engaged in this state.
 - 27 d. The names and respective addresses of the officers and directors of the
28 corporation or foreign corporation.
 - 29 e. A statement of the aggregate number of shares the corporation or foreign
30 corporation has authority to issue, itemized by classes, par value of shares,
31 shares without par value, and series, if any, within a class.

- 1 f. A statement of the aggregate number of issued shares, itemized by classes,
2 par value of shares, shares without par value, and series, if any, within a
3 class.
- 4 g. ~~A statement, expressed in dollars, of the amount of shareholders' equity in the~~
5 ~~corporation or foreign corporation. Shareholders' equity is the net difference~~
6 ~~between total assets and total liabilities and may include the sum of the~~
7 ~~following:~~
- 8 ~~(1) Consideration received for issued shares;~~
 - 9 ~~(2) Additional paid in capital;~~
 - 10 ~~(3) Capital surplus;~~
 - 11 ~~(4) Undivided profits;~~
 - 12 ~~(5) Retained earnings or retained deficit;~~
 - 13 ~~(6) Unrealized holding gains or losses;~~
 - 14 ~~(7) Consideration paid for treasury shares; and~~
 - 15 ~~(8) Any other amounts the corporation has transferred to shareholders'~~
16 ~~equity.~~
- 17 h. ~~Irrespective of the manner of its designation by the laws under which a foreign~~
18 ~~corporation is incorporated, the shareholders' equity of a foreign corporation~~
19 ~~must be determined on the same basis and in the same manner as the~~
20 ~~shareholders' equity of a domestic corporation, for the purpose of computing~~
21 ~~fees and other charges imposed by this chapter.~~
- 22 i. A statement, expressed in dollars, of the value of all the property owned by
23 the corporation, wherever located, and the value of the property of the
24 corporation located within this state, and a statement, expressed in dollars, of
25 the total gross income of the corporation for the twelve months ending on
26 December thirty-first preceding the date ~~herein~~ provided under this section for
27 the filing of the annual report and the gross amount ~~thereof~~ accumulated by
28 the corporation at or from places of business in this state. If, on December
29 thirty-first preceding the time ~~herein~~ provided under this section for the filing of
30 the report, the corporation had not been in existence for a period of twelve
31 months, or, in the case of a foreign corporation, had not been authorized to

transact business in this state for a period of twelve months, ~~then~~ the statement with respect to total gross income must be furnished for the period between the date of incorporation or the date of ~~its~~ the corporation's authorization to transact business in this state and December thirty-first.

~~j. h.~~ Any additional information ~~as may be~~ necessary or appropriate ~~in order~~ to enable the secretary of state to determine and assess the proper amount of fees payable by the corporation.

SECTION 43. AMENDMENT. Section 10-19.1-147 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-19.1-147. Fees for filing documents - Issuing certificates - License fees. The secretary of state shall charge and collect for:

1. Filing articles of incorporation and issuing a certificate of incorporation, thirty dollars.
2. Filing articles of amendment, twenty dollars.
3. Filing restated articles of incorporation, thirty dollars.
4. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, fifty dollars.
5. Filing articles of abandonment of merger, fifty dollars.
6. Filing an application to reserve a corporate name, ten dollars.
7. Filing a notice of transfer of a reserved corporate name, ten dollars.
8. Filing a cancellation of reserved corporate name, ten dollars.
9. Filing a consent to use of name, ten dollars.
10. Filing a statement of change of address of registered office or change of registered agent, or both, ten dollars.
11. Filing a statement of change of address of registered office by registered agent, ten dollars for each corporation affected by such change.
12. Filing a registered agent's consent to serve in such capacity, ten dollars.
13. Filing a resignation as registered agent, ten dollars.
14. Filing a statement of the establishment of a series of shares, twenty dollars.
15. Filing a statement of cancellation of shares, twenty dollars.
16. Filing a statement of reduction of stated capital, twenty dollars.

- 1 17. Filing a statement of intent to dissolve, ten dollars.
- 2 18. Filing a statement of revocation of voluntary dissolution proceedings, ten dollars.
- 3 19. Filing articles of dissolution, twenty dollars.
- 4 20. Filing an application of a foreign corporation for a certificate of authority to transact
5 business in this state and issuing a certificate of authority, forty dollars.
- 6 21. Filing an application of a foreign corporation for an amended certificate of authority
7 to transact business in this state and issuing an amended certificate of authority,
8 forty dollars.
- 9 22. Filing a certificate of fact stating a merger or consolidation of a foreign corporation
10 holding a certificate of authority to transact business in this state, fifty dollars.
- 11 23. Filing an application for withdrawal of a foreign corporation and issuing a certificate
12 of withdrawal, twenty dollars.
- 13 24. Filing an annual report of a corporation or foreign corporation, twenty-five dollars.
14 The secretary of state shall charge and collect additional fees for late filing of the
15 annual report as follows:
 - 16 a. Within ninety days after the date provided in subsection 3 of section
17 10-19.1-146, twenty dollars;
 - 18 b. Thereafter, sixty dollars; and
 - 19 c. After the involuntary dissolution of a corporation, or the revocation of the
20 certificate of authority of a foreign corporation, the reinstatement fee of one
21 hundred thirty-five dollars.
- 22 25. Filing any process, notice, or demand for service, twenty-five dollars.
- 23 26. Furnishing a certified copy of any document, instrument, or paper relating to a
24 corporation, one dollar for every four pages or fraction ~~thereof~~ and fifteen dollars
25 for the certificate and affixing the seal thereto.
- 26 27. License fee of fifty dollars for the first fifty thousand dollars of a corporation's
27 authorized shares, or fraction ~~thereof~~, and the further sum of ten dollars if paid at
28 the time of authorization, or twelve dollars if paid after authorized shares are
29 issued, for every additional ten thousand dollars of its authorized shares, or fraction
30 thereof, in excess of fifty thousand dollars.
 - 31 a. A license fee is payable by a corporation at the time of:

- 1 (1) Filing articles of incorporation;
- 2 (2) Filing articles of amendment increasing the number or value of
- 3 authorized shares; or
- 4 (3) Filing articles of merger or consolidation increasing the number or value
- 5 of authorized shares a surviving or new corporation will have authority
- 6 to issue above the aggregate number or value of shares the constituent
- 7 corporations had authority to issue.
- 8 b. A license fee payable on an increase in authorized shares must be imposed
- 9 only on the additional shares, but the amount of previously authorized shares
- 10 must be taken into account in determining the rate applicable to the additional
- 11 authorized shares.
- 12 c. For the purposes of this subsection, shares without par value are considered
- 13 worth one dollar per share.
- 14 d. The minimum sum of fifty dollars must be paid for authorized shares at the
- 15 time of filing articles of incorporation.
- 16 e. A corporation increasing authorized shares by articles of amendment or
- 17 articles of merger must have previously paid for a minimum of fifty thousand
- 18 dollars of authorized shares. Thereafter, a corporation may postpone the
- 19 payment for any additional amount until the filing of an annual report after the
- 20 unpaid shares are issued. Any additional amount must be paid in increments
- 21 of ten thousand dollars of ~~its~~ authorized shares.
- 22 f. The provisions of this subsection do not apply to a building and loan or
- 23 savings and loan association.
- 24 28. License fee of eighty-five dollars from each foreign corporation at the time of filing
- 25 an application for a certificate of authority to transact business in this state.
- 26 Thereafter, the secretary of state shall fix the license fee for each foreign
- 27 corporation as follows:
- 28 a. The secretary of state shall first ascertain the license fee which a newly
- 29 organized corporation would be required to pay if it had authorized shares of
- 30 the same kind and amount as the issued or allotted shares of the reporting
- 31 foreign corporation shown by its filed annual report.

b. Said amount must be multiplied by a fraction, the numerator of which must be the sum of the value of the property of the foreign corporation located in this state and the gross receipts of the foreign corporation derived from ~~its~~ that foreign corporation's business transacted within this state, and the denominator of which must be the sum of the value of all of ~~its~~ that foreign corporation's property wherever located and the gross receipts of the foreign corporation derived from ~~its~~ that foreign corporation's business wherever transacted. The amounts used in determining the numerator and denominator must be determined from the foreign corporation's filed annual report.

c. From the product of such multiplication, there must be deducted the aggregate amount of license fee previously paid by the foreign corporation, and the remainder, if any, must be the amount of additional fee to be paid by the foreign corporation.

The secretary of state shall enter the amount of any additional license fee in the records of the foreign corporation in the secretary of state's office and shall mail a notice of the amount of additional license fee due to the foreign corporation at ~~its~~ the foreign corporation's principal office. The additional license fee must be paid by the foreign corporation before the annual report may be filed by the secretary of state. Amounts less than five dollars are not collected.

29. Any document submitted for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the document.

30. Filing any other statement of a corporation or foreign corporation, ten dollars.

SECTION 44. AMENDMENT. Section 10-30-05 of the North Dakota Century Code is amended and reenacted as follows:

10-30-05. Business Corporation Act to apply. The provisions of ~~chapters~~ chapter 10-19.1, ~~10-22, and 10-23~~ apply to state development corporations as ~~they may be~~ applicable and not inconsistent with this chapter.

SECTION 45. AMENDMENT. Section 10-30.1-04 of the North Dakota Century Code is amended and reenacted as follows:

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

- 1 1. To carry out the purposes of this chapter, ~~a venture capital corporations~~
2 organization may be formed under ~~chapters chapter~~ 10-19.1 ~~through 10-23~~ if a
3 corporation, or under chapter 10-32 if a limited liability company. The articles of
4 incorporation or articles of organization of a venture capital ~~corporation~~
5 organization must comply with subsections 2 through 9.
- 6 2. The purpose of a venture capital corporation or limited liability company must be
7 solely to raise funds to be used to make investments in, and provide financing to,
8 qualified entities in a manner that will encourage capital investment in the state,
9 encourage the establishment or expansion of business and industry, provide
10 additional jobs within the state, and encourage research and development activities
11 in the state.
- 12 3. Each director ~~or governor~~ of a venture capital corporation or each governor of a
13 venture capital limited liability company must be a North Dakota resident, and must
14 have a minimum investment in the venture capital corporation or limited liability
15 company of one thousand dollars.
- 16 4. A venture capital corporation ~~will~~ or limited liability company shall provide financing
17 to qualified entities to be used solely for the purpose of enhancing the production
18 capacity of the qualified entity or the ability of the qualified entity to do business in
19 this state. The venture capital corporation or limited liability company may
20 establish and regulate terms and conditions, consistent with this chapter, with
21 respect to the financing. The financing may include any combination of equity
22 investments, loans, guarantees, and commitments for financing, but no more than
23 twenty percent of the stated capital of a venture capital corporation or limited
24 liability company may be invested in any one qualified entity. For purposes of this
25 chapter, "one qualified entity" means a single entity or a group of affiliated entities
26 that are engaged in a unitary business.
- 27 5. ~~No business~~ Business may not be transacted or indebtedness incurred by the
28 venture capital corporation or limited liability company, except such as is incidental
29 to the venture capital corporation's or limited liability company's organization or to
30 obtaining subscriptions to or payment for ~~its~~ the venture capital corporation's or
31 limited liability company's shares or membership interests, until the venture capital

corporation or limited liability company receives consideration for such shares or membership interests equal to at least five hundred thousand dollars, which amount ~~will be~~ is the initial stated capital of the venture capital corporation or limited liability company.

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 or limited liability company's organization or to obtaining subscriptions to or payment for ~~its~~ the venture capital corporation's or limited liability corporation's 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~~ or certificate of organization of the limited liability company, the venture capital corporation's or limited liability company's 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~~, or bylaws, the funds held in escrow pursuant to subsection 6 must be released to the venture capital corporation or limited liability company for use and disposition according to ~~its~~ the venture capital corporation's or limited liability company's articles of incorporation ~~and bylaws or the~~, articles of organization ~~and operating agreement~~, or the bylaws.

8. If within one year of the issuance of the certificate of incorporation ~~or certificate of organization~~ of the venture capital corporation ~~its~~ or the certificate of organization of venture capital limited liability company, the venture capital corporation's or limited liability company's 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~~, or the bylaws, ~~its~~ the venture capital corporation's or limited liability company's certificate of incorporation or certificate of organization ~~will be terminated, the venture capital corporation~~ must be dissolved or terminated, 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~~
the investor's investments.

9. ~~Prior to~~ Before any investment in a venture capital corporation or limited liability
company, the venture capital corporation ~~must~~ or limited liability company shall
make written disclosure of the provisions contained in subsections 5 through 8 to
the potential investor.

10. If a venture capital corporation or limited liability company 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 or limited liability
company must be dissolved or terminated and all funds held by the corporation or
limited liability company must be returned to the investors in proportion to ~~their~~ the
investor's investments.

SECTION 46. AMENDMENT. Subsection 1 of section 10-31-02.1 of the 1997

Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. ~~Two~~ One or more individuals may organize a professional organization in the form
of a limited liability company for the practice of a profession by filing articles of
organization with the secretary of state. The articles of organization must meet the
requirements of chapter 10-32, and must contain the following:
 - a. The profession to be practiced through the professional limited liability
company; and
 - b. The ~~names~~ name and residence ~~addresses~~ address of ~~all of the~~ each original
~~members~~ member of the professional limited liability company who will
practice the profession in this state.

SECTION 47. AMENDMENT. Subsection 2 of section 10-31-11 of the North Dakota

Century Code is amended and reenacted as follows:

2. With respect to a professional organization in the form of a limited liability
company:
 - a. The articles of organization may provide for the purchase or redemption of the
membership interest of any member upon the death or disqualification of the
member, or the same may be provided for in the ~~operating agreement~~ bylaws,
in the member-control agreement, or by private agreement. In the absence of

1 a provision for the same in the articles of organization, ~~in the operating~~
2 ~~agreement~~ bylaws, ~~in~~ the member-control agreement, or by private
3 agreement, the limited liability company has an option to purchase the
4 membership interest of a deceased member or a member no longer qualified
5 to own a membership interest in the limited liability company within six months
6 after the death or disqualification of the member.

7 b. The option price for such membership interest must be the book value as of
8 the end of the month immediately preceding the death or disqualification of
9 the member unless otherwise specified in the articles of organization, ~~in the~~
10 ~~operating agreement~~ bylaws, ~~in~~ the member-control agreement, or by private
11 agreement. Book value must be determined from the books and records of
12 the limited liability company in accordance with the regular method of
13 accounting used by the limited liability company.

14 c. If the limited liability company fails to exercise the option, the membership
15 interest of the deceased or disqualified member may be sold to any individual
16 licensed or otherwise legally authorized to render the same professional
17 service as that for which the limited liability company was organized.

18 d. A disqualified member, or the estate of a deceased member, may continue to
19 hold a membership interest in the limited liability company during the option
20 period and for a reasonable period thereafter, pending transfer to another
21 licensed or otherwise legally authorized individual, but may not participate in
22 any decisions concerning the performance of professional service.

23 **SECTION 48. AMENDMENT.** Section 10-31-13 of the 1997 Supplement to the North
24 Dakota Century Code is amended and reenacted as follows:

25 **10-31-13. Professional organizations - Annual reports - Renewal.**

26 1. With respect to a professional organization in the form of a corporation:

27 a. Each corporation incorporated under this chapter shall file with the secretary
28 of state an annual report at the time specified for the filing of the report by
29 chapter 10-19.1 giving the name and residence ~~addresses~~ address of ~~all~~
30 ~~officers~~ each officer, ~~directors~~ director, and ~~shareholders~~ shareholder of the

corporation ~~as of at the thirtieth day of June next preceding the time of~~ filing of
the report. With respect to shares, the report ~~shall~~ must include:

- (1) A statement of the aggregate number of shares the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class; and
- (2) A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

b. The report must include a statement that all directors and shareholders of voting shares who practice in this state are licensed to render the same specific professional services as those for which the corporation was incorporated. The report must be:

- (1) Made on a form as prescribed and furnished by the secretary of state;
- (2) Signed by the president or vice president of the corporation; and
- (3) Accompanied by the filing fee prescribed in chapter 10-19.1.

c. A copy of the report must be filed at the same time with the regulatory board that licenses the shareholders described in the report. No filing fee may be charged by the regulatory board.

d. A regulatory board issuing a license under section 10-31-01 shall issue a certificate required in section 10-31-02. The certificate must be on a form prescribed and furnished by the secretary of state. The regulatory board may charge and collect a fee not to exceed twenty dollars per individual certified to be licensed by the regulating board.

2. With respect to a professional organization in the form of a limited liability company:

a. Each limited liability company organized under this chapter shall file with the secretary of state an annual report at the time specified for the filing of the report by chapter 10-32 giving the name and residence address of all managers, governors, and members of the organization as of the thirtieth day of June next preceding the filing of the report.

- b. The report must include a statement that all governors and members holding voting membership interests who practice in this state are licensed to render the same specific professional services as those for which the limited liability company was organized. This report must be:
 - (1) Made on a form as prescribed and furnished by the secretary of state;
 - (2) Signed by the president or vice president of the limited liability company; and
 - (3) Accompanied by the filing fee prescribed in section 10-32-180.
 - c. A copy of the report must be filed at the same time with the regulatory board that licenses the members described in the report. No filing fee may be charged by the regulatory board.
 - d. A regulatory board issuing a license under section 10-31-01 shall issue a certificate required in section 10-31-02. The certificate must be on a form prescribed and furnished by the secretary of state. The regulatory board may charge and collect a fee not to exceed twenty dollars per individual certified to be licensed by the regulatory board.
 3. With respect to a professional organization in the form of a limited liability partnership:
 - a. The ~~renewal registration~~ annual report filed with the secretary of state ~~pursuant to~~ at the time specified for the filing of the report by chapter 45-22 must include the name and residence address of ~~all partners~~ each partner of the organization ~~as of the thirtieth day of June next preceding the~~ at the time of filing of the ~~renewal registration~~ annual report.
 - b. The ~~renewal registration~~ annual report must include a statement that ~~all partners~~ each partner holding voting partnership interests who ~~practice~~ practices in this state ~~are~~ is licensed to render the same specific professional services as those for which the limited liability partnership was registered. The ~~renewal registration~~ annual report must be:
 - (1) Made on a form prescribed and furnished by the secretary of state;
 - (2) Signed by a managing partner of the limited liability partnership; and
 - (3) Accompanied by the filing fee prescribed in section 45-22-22.

1 c. A copy of the ~~renewal registration~~ annual report must be filed at the same
2 time with the regulatory board that licenses the partners described in the
3 ~~renewal registration~~ annual report. ~~No~~ A filing fee may not be charged by the
4 regulatory board.

5 d. A regulatory board issuing a license under section 10-31-01 shall issue a
6 certificate required in section 10-31-02. The certificate must be on a form
7 prescribed and furnished by the secretary of state. The regulatory board may
8 charge and collect a fee not ~~to exceed~~ exceeding twenty dollars per individual
9 certified to be licensed by the regulating board.

10 **SECTION 49. AMENDMENT.** Section 10-32-02 of the 1997 Supplement to the North
11 Dakota Century Code is amended and reenacted as follows:

12 **10-32-02. Definitions.** For the purposes of this chapter, unless the ~~language or~~
13 context ~~clearly indicates that a different meaning is intended~~ otherwise requires:

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

18 2. "Address" means:

19 a. In the case of a registered office or principal executive office, the mailing
20 address, including a zip code, of the actual office location which may not be
21 only a post-office box; and

22 b. In all other cases, the mailing address, including a zip code.

23 3. ~~"Agreement to give dissolution avoidance consent" means a member control~~
24 ~~agreement under section 10-32-50, or a part of a member control agreement,~~
25 ~~under which the members agree in advance that if, in the future, the continued~~
26 ~~membership of any member is terminated through an event covered in the~~
27 ~~agreement, then each remaining member shall give dissolution avoidance consent.~~

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

29 a. In the case of a limited liability company organized under this chapter, articles
30 of organization, articles of amendment, a statement of change of registered
31 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-~~ 4. "Board" or "board of governors" means the board of governors of a limited liability company.

~~6-~~ 5. "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 before or 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.~~

6. "Bylaws" means any rule, resolution, or other provision, regardless how designated, that:

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

b. Was expressly part of the bylaws by the action, taken from time to time under section 10-32-68, by the board of governors or the members.

- 1 ~~8-~~ 7. "Class", when used with reference to membership interests, means a category of
2 membership interests which differs in one or more rights or preferences from
3 another category of membership interests of the limited liability company.
- 4 ~~9-~~ 8. "Closely held limited liability company" means a limited liability company that does
5 not have more than thirty-five members.
- 6 ~~10-~~ 9. "Constituent organization" means a limited liability company or a domestic or
7 foreign corporation that is a party to a merger or an exchange.
- 8 ~~11-~~ 10. "Contribution agreement" means an agreement between a person and a limited
9 liability company under which:
- 10 a. The person agrees to make a contribution in the future; and
11 b. The limited liability company agrees that, at the time specified for the
12 contribution in the future, the limited liability company will accept the
13 contribution and reflect the contribution in the required records.
- 14 ~~12-~~ 11. "Contribution allowance agreement" means an agreement between a person and a
15 limited liability company under which:
- 16 a. The person has the right, but not the obligation, to make a contribution in the
17 future; and
18 b. The limited liability company agrees that, if the person makes the specified
19 contribution at the time specified in the future, the limited liability company will
20 accept the contribution and reflect the contribution in the required records.
- 21 ~~13-~~ 12. "Dissolution" means that the limited liability company ~~has~~ incurred an event under
22 subsection 1 of section 10-32-109, subject only to sections 10-32-116 and
23 10-32-124, that obligates the limited liability company to wind up ~~its~~ the limited
24 liability company's affairs and to terminate ~~its~~ the limited liability company's
25 existence as a legal entity.
- 26 ~~14-~~ 13. "Dissolution avoidance consent" means the consent of all remaining members:
- 27 a. Given, as provided in subdivision e of subsection 1 of section 10-32-109, after
28 the occurrence of any event that terminates the continued membership of a
29 member in the limited liability company; and
30 b. That the limited liability company must be continued as a legal entity without
31 dissolution.

1 ~~45.~~ 14. "Distribution" means a direct or indirect transfer of money or other property, other
2 than its own membership interests, with or without consideration, or an incurrence
3 or issuance of indebtedness, by a limited liability company to any of ~~its~~ the limited
4 liability company's members in respect of membership interests. A distribution
5 may be in the form of an interim distribution or a termination distribution, or as
6 consideration for the purchase, redemption, or other acquisition of its membership
7 interests, or otherwise.

8 ~~46.~~ 15. "Domestic corporation" means a corporation other than a foreign corporation
9 organized for profit and incorporated under or governed by chapter 10-19.1.

10 ~~47.~~ 16. "Filed with the secretary of state" means except as otherwise permitted by law or
11 rule:

12 a. That either of the following has been delivered to the secretary of state and
13 has been determined by the secretary of state to conform to law:

14 (1) A signed original or a legible facsimile ~~copy~~ telecommunication of a
15 signed original of a request for reserved name; or

16 (2) A signed original of all other documents, meeting the applicable
17 requirements of this chapter, together with the fees provided in section
18 ~~40-33-144~~ 10-32-150.

19 b. That the secretary of state shall then:

20 (1) Endorse on the original the word "filed" and the month, day, and year;
21 and

22 (2) Record the document in the office of the secretary of state.

23 ~~48.~~ 17. "Financial rights" means a member's rights:

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

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

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

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

29 ~~49.~~ 18. "Foreign corporation" means a corporation organized for profit that is incorporated
30 under laws other than the laws of this state for a purpose for which a corporation
31 may be incorporated under chapter 10-19.1.

- 1 ~~20.~~ 19. "Foreign limited liability company" means a limited liability company organized for
2 profit which is organized under laws other than the laws of this state for a purpose
3 for which a limited liability company may be organized under this chapter.
- 4 ~~24.~~ 20. "Good faith" means honesty in fact in the conduct of the act or transaction
5 concerned.
- 6 ~~22.~~ 21. "Governance rights" means all of a member's rights as a member in the limited
7 liability company other than financial rights and the right to assign financial rights.
- 8 ~~23.~~ 22. "Governing board" means:
9 a. The board of governors in the case of a limited liability company; and
10 b. The board of directors in the case of a corporation.
- 11 ~~24.~~ 23. "Governor" means an individual serving on the board of governors.
- 12 ~~25.~~ 24. "Intentionally" means that the person referred to either has a purpose to do or fail
13 to do the act or cause the result specified or believes that the act or failure to act, if
14 successful, will cause that result. A person "intentionally" violates a statute:
15 a. If the person intentionally does the act or causes the result prohibited by the
16 statute; or
17 b. If the person intentionally fails to do the act or cause the result required by the
18 statute, even though the person may not know of the existence or
19 constitutionality of the statute or the scope or meaning of the terms used in
20 the statute.
- 21 ~~26.~~ 25. "Knows" or has "knowledge" means the person has actual knowledge of a fact. A
22 person does not "know" or have "knowledge" of a fact merely because the person
23 has reason to know of the fact.
- 24 ~~27.~~ 26. "Legal representative" means a person empowered to act for another person,
25 including an agent, manager, officer, partner, or associate of an organization; a
26 trustee of a trust; a personal representative; a trustee in bankruptcy; and a
27 receiver, guardian, custodian, or conservator.
- 28 ~~28.~~ 27. "Limited liability company" means a limited liability company, other than a foreign
29 limited liability company, organized under this chapter.
- 30 ~~29.~~ 28. "Manager" means:

1 a. An individual who is eighteen years of age or more and who is elected,
2 appointed, or otherwise designated as a manager by the board of governors;
3 and

4 b. An individual considered elected as a manager pursuant to section 10-32-92.

5 ~~30-~~ 29. "Member" means a person reflected in the required records of a limited liability
6 company as the owner of ~~some governance rights of~~ a membership interest ~~of in~~ in
7 the limited liability company.

8 ~~31-~~ 30. "Membership interest" means a member's interest in a limited liability company
9 consisting of:

10 a. ~~A member's interest in a limited liability company consisting of a member's~~
11 ~~financial rights;~~

12 b. A member's right to assign financial rights as provided in section 10-32-31;

13 c. A member's governance rights, if any; and

14 d. A member's right to assign any governance rights owned as provided in
15 section 10-32-32.

16 ~~32-~~ 31. "Notice" is given by a member of a limited liability company to the limited liability
17 company or a manager of a limited liability company when in writing and mailed or
18 delivered to the limited liability company or the manager at the registered office or
19 principal executive office of the limited liability company.

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

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

23 (2) When handed to the person; or

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

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

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

- 1 b. Notice by mail is given when deposited in the United States mail with
2 sufficient postage affixed.
- 3 c. Notice is considered received when it is given.
- 4 ~~33.~~ ~~"Operating agreement" means rules, resolutions, or other provisions, regardless~~
5 ~~how designated, that:~~
- 6 ~~a. Relate to the management of the business or the regulation of the affairs of~~
7 ~~the limited liability company; and~~
- 8 ~~b. Have been made expressly part of the operating agreement by the action,~~
9 ~~taken from time to time under section 10-32-69, by the board of governors or~~
10 ~~the members.~~
- 11 ~~34.~~ ~~32.~~ "Organization" means, whether domestic or foreign, a limited liability company,
12 corporation, partnership, limited partnership, limited liability partnership, joint
13 venture, association, business trust, estate, trust, enterprise, and any other legal or
14 commercial entity.
- 15 ~~35.~~ ~~33.~~ "Owners" means:
- 16 a. Members in the case of a limited liability company; and
17 b. Shareholders in the case of a corporation.
- 18 ~~36.~~ ~~34.~~ "Ownership interests" means:
- 19 a. Membership interests in the case of a limited liability company; and
20 b. Shares in the case of a corporation.
- 21 ~~37.~~ ~~35.~~ "Parent" of a specified limited liability company means a limited liability company or
22 corporation that directly or indirectly owns more than fifty percent of the voting
23 power of the membership interests entitled to vote for governors of the specified
24 limited liability company.
- 25 ~~38.~~ ~~36.~~ "Pertains" means a contribution "pertains":
- 26 a. To a particular series when the contribution is made in return for a
27 membership interest in that particular series.
- 28 b. To a particular class when the class has no series and the contribution is
29 made in return for a membership interest in the class.
- 30 A contribution that pertains to a series does not pertain to the class of which the
31 series is a part.

- 1 ~~39.~~ 37. "Principal executive office" means:
- 2 a. If the limited liability company has an elected or appointed president, an office
- 3 where the elected or appointed president of the limited liability company has
- 4 an office; or
- 5 b. If the limited liability company has no elected or appointed president, the
- 6 registered office of the limited liability company.
- 7 ~~40.~~ 38. "Registered office" means the place in this state designated in the articles as the
- 8 registered office of the limited liability company.
- 9 ~~41.~~ 39. "Related organization" means an organization that controls, is controlled by, or is
- 10 under common control with another organization with control existing if an
- 11 organization:
- 12 a. Owns, directly or indirectly, at least fifty percent of the shares, membership
- 13 interests, or other ownership interests of another organization;
- 14 b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or
- 15 more of the voting members of the governing body of another organization; or
- 16 c. Has the power, directly or indirectly, to direct or cause the direction of the
- 17 management and policies of another organization, whether through the
- 18 ownership of voting interests, by contract, or otherwise.
- 19 ~~42.~~ 40. "Required records" are those records required to be maintained under section
- 20 10-32-51.
- 21 ~~43.~~ 41. "Security" has the meaning given it in subsection 13 of section 10-04-02.
- 22 ~~44.~~ 42. "Series" means a category of membership interests, within a class of membership
- 23 interests, that has some of the same rights and preferences as other membership
- 24 interests within the same class, but that differ in one or more rights and
- 25 preferences from another category of membership interests within that class.
- 26 ~~45.~~ 43. "Signed" means ~~that~~ the signature of a person has been placed on a document, as
- 27 provided in subsection 39 of section 41-01-11, and, with respect to a document:
- 28 a. Required by this chapter to be filed with the secretary of state, means ~~that~~ the
- 29 document has been signed by a person authorized to do so by this chapter,
- 30 the articles of organization, a member-control agreement, or ~~operating~~
- 31 ~~agreement~~ the bylaws or a resolution approved by the ~~affirmative vote of the~~

~~required proportion or number of~~ governors as required by section 10-32-83
or the members as required proportion of the voting power of membership
interests present and entitled to vote by section 10-32-42; and

- b. Not required by this chapter to be filed with the secretary of state, the
signature may be a facsimile affixed, engraved, printed, placed, stamped with
indelible ink, transmitted by facsimile telecommunication or electronically, or
in any other manner reproduced on the document.

~~46.~~ 44. "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 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 by the specified limited
liability company.

~~47.~~ 45. "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.

~~48.~~ 46. "Surviving organization" means the foreign or domestic limited liability company or
domestic or foreign corporation resulting from a merger.

~~49.~~ 47. "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.

~~50.~~ 48. "Vote" includes authorization by written action.

~~51.~~ 49. "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.

52. 50. "Written action" means a written document signed by ~~all of the persons~~ every
person required to take the action described. ~~The term also means and the~~
counterparts of a written document signed by any ~~of the persons~~ person 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.

SECTION 50. AMENDMENT. Section 10-32-06 of the 1997 Supplement to the North
Dakota Century Code is amended and reenacted as follows:

10-32-06. ~~Two-member requirement~~ Number of members required. ~~Unless~~
~~otherwise provided in the articles of organization, a~~ A limited liability company must have ~~two~~
one or more members ~~at the time of its formation. Unless a one member limited liability~~
~~company is authorized in the articles of organization, a limited liability company must be~~
~~dissolved under subdivision c 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.~~

SECTION 51. AMENDMENT. Section 10-32-07 of the 1997 Supplement to the North
Dakota Century Code is amended and reenacted as follows:

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;~~
- e. The address of the registered office of the limited liability company and the
name of ~~its~~ the limited liability company's registered agent at that address;
- ~~d.~~ c. The name and address of each organizer;
- ~~e.~~ d. The effective date of organization:
 - (1) If a later date than that on which the certificate of
organization is issued by the secretary of state; and
 - (2) Which may not be later than ninety days after the date on which the
certificate of organization is issued; and
- ~~f.~~ e. A If the articles of organization are filed with the secretary of state:

- 1 (1) Before July 1, 1999, a statement stating in years that the limited period
2 of existence for the limited liability company must be a period of thirty
3 years ~~or less~~ from the date the articles of organization are filed with the
4 secretary of state, unless the articles of organization expressly
5 authorize a shorter or longer period of duration; which may be
6 perpetual.
- 7 (2) After June 30, 1999, a statement stating in years the period of
8 existence of the limited liability company, if other than perpetual.
- 9 g. ~~A statement as to whether upon the occurrence of any event under~~
10 ~~subdivision c of subsection 1 of section 10-32-109 that terminates the~~
11 ~~continued membership of a member in the limited liability company, the~~
12 ~~remaining members will have the power to avoid dissolution by giving~~
13 ~~dissolution avoidance consent;~~
- 14 h. ~~A statement as to whether the members have the power to enter into a~~
15 ~~business continuation agreement; and~~
- 16 i. ~~A statement as to whether fewer than two members shall be permitted.~~
- 17 2. The following provisions govern a limited liability company unless modified in the
18 articles of organization or a member central agreement under section 10-32-50:
- 19 a. A limited liability company has general business purposes as provided in
20 section 10-32-04;
- 21 b. A limited liability company has certain powers as provided in section
22 10-32-23;
- 23 c. The power to adopt, amend, or repeal the ~~operating agreement~~ bylaws is
24 vested in the board of governors as provided in section 10-32-68;
- 25 d. A limited liability company must allow cumulative voting for governors as
26 provided in section 10-32-76;
- 27 e. The affirmative vote of the greater of a majority of governors present or a
28 majority of the minimum number of governors constituting a quorum is
29 required for an action of the board of governors as provided in section
30 10-32-83;

- 1 f. A written action by the board of governors taken without a meeting must be
2 signed by all governors as provided in section 10-32-84;
- 3 g. The board may accept contributions, make contribution agreements, and
4 make contribution allowance agreements as provided in subsection 1 of
5 section 10-32-56 and sections 10-32-58 and 10-32-59;
- 6 h. All membership interests are ordinary membership interests entitled to vote
7 and are of one class with no series as provided in subdivisions a and b of
8 subsection 5 of section 10-32-56;
- 9 i. All membership interests have equal rights and preferences in all matters not
10 otherwise provided for by the board of governors as provided in subdivision b
11 of subsection 5 of section 10-32-56;
- 12 j. The ~~restatement of~~ value of previous contributions ~~is to~~ must be determined
13 ~~according to a specified process~~ restated when a new contribution is
14 accepted as provided in subsections 3 and 4 of section 10-32-57;
- 15 k. A member has certain preemptive rights, unless otherwise provided by the
16 board of governors as provided in section 10-32-37;
- 17 l. The affirmative vote of the greater of the owners of a majority of the voting
18 power of the membership interests present and entitled to vote at a duly held
19 meeting or a majority of the voting power of the membership interests with
20 voting rights constituting the minimum voting power needed for a quorum for
21 the transaction of business is required for an action of the members, except
22 ~~where~~ if this chapter requires the affirmative vote of a majority of the voting
23 power of all membership interests entitled, to vote as provided in subsection 1
24 of section ~~10-32-43~~ 10-32-42;
- 25 m. The voting power of each membership interest is in proportion to the value
26 reflected in the required records of the contributions of the members as
27 provided in section ~~10-32-45~~ 10-32-40.1;
- 28 n. Members share in distributions in proportion to the value reflected in the
29 required records of the contributions of members as provided in section
30 10-32-60;

- 1 o. Members share profits and losses in proportion to the value reflected in the
- 2 required records of the contributions of members as provided in section
- 3 10-32-36;
- 4 p. A written action by the members taken without a meeting must be signed by
- 5 all members as provided in section 10-32-43;
- 6 q. Members have no right to receive distributions in kind and the limited liability
- 7 company has only limited rights to make distributions in kind as provided in
- 8 section 10-32-62;
- 9 r. A member is not subject to expulsion as provided in subsection 2 of section
- 10 10-32-30;
- 11 s. Unanimous consent is required for the transfer of governance rights to a
- 12 person not already a member as provided in subsection 2 of section 10-32-32;
- 13 t. Unanimous consent is required to avoid dissolution as provided in
- 14 subdivision e of subsection 1 of section 10-32-109; ~~and~~
- 15 u. ~~A limited liability company dissolves upon an occurrence of an event that~~
- 16 ~~terminates the continued membership of any member as provided in~~
- 17 ~~subsection 1 of section 10-32-109. The termination of a person's membership~~
- 18 ~~interest has specified consequences as provided in section 10-32-30; and~~
- 19 v. Restrictions apply to the assignment of governance rights as provided in
- 20 section 10-32-32.
- 21 3. The following provisions govern a limited liability company unless modified ~~either~~ in
- 22 the articles of organization, a member central agreement under section 10-32-50,
- 23 or in the ~~operating agreement~~ bylaws:
- 24 a. Governors serve for an indefinite term that expires at the next regular meeting
- 25 of members as provided in section 10-32-72;
- 26 b. The compensation of governors is fixed by the board of governors as provided
- 27 in section 10-32-74;
- 28 c. A certain method must be used for removal of governors as provided in
- 29 section 10-32-78;
- 30 d. A certain method must be used for filling board of governor vacancies as
- 31 provided in 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 as provided in subsection 1 of section 10-32-80;
- f. The notice of a board of governors meeting need not state the purpose of the meeting as provided in subsection 3 of section 10-32-80;
- g. A majority of the board of governors is a quorum for a board meeting as provided in 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 as provided in subsection 2 of section 10-32-85;
- i. The board may establish a special litigation committee as provided in section 10-32-85;
- j. The president and treasurer have specified duties, until the board of governors determines otherwise as provided in 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 as provided in section 10-32-95;
- l. Regular meetings of members need not be held, unless demanded by a member under certain conditions as provided in 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 as provided in 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 as provided in 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 as provided in subsection 1 of section ~~10-32-45~~ 10-32-40.1;
- p. Indemnification of certain persons is required as provided in 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 as provided in subsection 1 of section 10-32-64; and

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

4. The provisions in subdivisions a, g, o, p, and r may be included in the articles of organization or a member-control agreement under section 10-32-50. The ~~following provisions relating to the management of the business or the regulation of the affairs of a limited liability company in subdivisions b to f, h, i, j, k, l, m, n, and q~~ may be included ~~either in the articles of organization, in a member control~~ member-control agreement under section 10-32-50, 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 bylaws:

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

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

c. Additional qualifications for governors may be imposed as provided in section 10-32-71;

d. Governors may be classified as provided in section 10-32-75;

e. The date, time, and place of board of governors meetings may be fixed as provided in subsection 1 of section 10-32-80;

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

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

- 1 h. Authority to sign and deliver certain documents may be delegated to a
- 2 manager or agent of the limited liability company other than the president as
- 3 provided in section 10-32-89;
- 4 i. Additional managers may be designated as provided in section 10-32-88;
- 5 j. Additional powers, rights, duties, and responsibilities may be given to
- 6 managers as provided in section 10-32-89;
- 7 k. A method for filling vacant offices may be specified as provided in
- 8 subsection 3 of section 10-32-94;
- 9 l. The date, time, and place of regular member meetings may be fixed as
- 10 provided in subsection 3 of section 10-32-38;
- 11 m. Certain persons may be authorized to call special meetings of members as
- 12 provided in subsection 1 of section 10-32-39;
- 13 n. Notices of member meetings may be required to contain certain information
- 14 as provided in subsection 3 of section 10-32-40;
- 15 o. A larger than majority vote may be required for member action as provided in
- 16 section 10-32-42;
- 17 p. Voting rights may be granted in or pursuant to the articles of organization to
- 18 persons who are not members as provided in subsection 3 of section
- 19 ~~10-32-45~~ 10-32-40.1;
- 20 q. Limited liability company actions giving rise to dissenter rights may be
- 21 designated as provided in subdivision d of subsection 1 of section 10-32-55;
- 22 and
- 23 r. A governor's personal liability to the limited liability company or ~~its~~ the limited
- 24 liability company's members for monetary damages for breach of fiduciary
- 25 duty as a governor may be eliminated or limited in the articles as provided in
- 26 subsection 4 of section 10-32-86.
- 27 5. Subsection 4 does not limit the right of the board, by resolution, to take an action
- 28 the bylaws may authorize under this subsection without including the authorization
- 29 in the bylaws, unless the authorization is required to be included in the bylaws by
- 30 another provision of this chapter.

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

SECTION 52. AMENDMENT. Subsection 1 of section 10-32-10 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 the abbreviation "LLC", either of which abbreviation may be used interchangeably for all purposes authorized by this chapter including real estate matters, contracts, and filings with the secretary of state;
- c. May not contain a word or phrase that indicates or implies that it may not be organized under this chapter;
- d. May not contain the word "corporation" ~~or~~, "incorporated" ~~and may not contain the~~, "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of either or both of these words;
- e. May not contain a word or phrase that indicates or implies that it is organized for a purpose other than a legal business purpose for which a limited liability company may be organized under this chapter; and
- f. May not be the same as, or deceptively similar to:
 - (1) The name, whether foreign and authorized to do business in this state; or domestic, unless there is filed with the articles a document which complies with subsection ~~2~~ 3 of this section, of:
 - (a) Another limited liability company;
 - (b) A corporation;
 - (c) A limited partnership; ~~or~~
 - (d) A limited liability partnership; or
 - (e) A limited liability limited partnership;

(2) A name, the right of which is, at the time of organization, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;

(3) A fictitious name registered in the manner provided in chapter 45-11; or

(4) A trade name registered in the manner provided in chapter 47-25.

SECTION 53. AMENDMENT. Subsection 5 of section 10-32-11 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. The secretary of state may accept for filing a legible facsimile ~~copy~~ telecommunication of the signed original of any request for reserved name.

SECTION 54. A new subsection to section 10-32-13 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

The fee prescribed in section 10-32-150 for change of address of registered office must be refunded when the secretary of state determines a change of address of registered office results from rezoning or postal reassignment.

SECTION 55. AMENDMENT. Section 10-32-17 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 to the articles of organization, 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 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.

SECTION 56. AMENDMENT. Section 10-32-22 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 of 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 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~~ bylaws of the limited liability company.

- 1 c. Change the preferences, limitations, relative rights in respect of all or any part
- 2 of the membership interests of the limited liability company, and classify,
- 3 reclassify, or cancel all or any part thereof.
- 4 d. Authorize the issuance of bonds, debentures, or other obligations of the
- 5 limited liability company, whether convertible into membership interests of any
- 6 class or bearing warrants or other evidence of optional rights to purchase or
- 7 subscribe for membership interests of any class, and fix the terms and
- 8 conditions thereof.
- 9 e. Constitute or reconstitute and classify or reclassify the board of governors and
- 10 appoint governors and managers in place of or in addition to all or any of the
- 11 governors or managers then in office.
- 12 2. Amendments to the articles pursuant to subsection 1 must be made in the following
- 13 manner:
- 14 a. Articles of amendment approved by decree or order of the court must be
- 15 ~~executed~~ signed and verified in duplicate by the person or persons
- 16 designated or appointed by the court for that purpose and must set forth the
- 17 name of the limited liability company, the amendments of the articles
- 18 approved by the court, the date of the decree or order approving the articles
- 19 of amendment, the title of the proceedings in which the decree or order was
- 20 entered by a court having jurisdiction of the proceedings for the reorganization
- 21 of the limited liability company pursuant to the provisions of an applicable
- 22 statute of the United States.
- 23 b. An original of the articles of amendment must be filed with the secretary of
- 24 state. If the secretary of state finds that the articles of amendment conform to
- 25 law, and that all fees have been paid as provided in section 10-32-150, then
- 26 the articles of amendment must be recorded in the office of the secretary of
- 27 state.
- 28 3. The articles of amendment become effective upon their acceptance by the
- 29 secretary of state or at any other time within thirty days after their acceptance if the
- 30 articles of amendment so provide.

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

5 **SECTION 57. AMENDMENT.** Section 10-32-23 of the 1997 Supplement to the North
6 Dakota Century Code is amended and reenacted as follows:

7 **10-32-23. General powers.**

- 8 1. A limited liability company has the powers set forth in this section, subject to any
9 limitations provided in any other statute of this state or in its articles of organization.
- 10 2. A limited liability company with articles of organization filed with the secretary of
11 state:
- 12 a. Before July 1, 1999, has a ~~limited~~ duration of thirty years from the date the
13 articles of organization are filed with the secretary of state, unless the articles
14 of organization state a shorter or longer duration, which may be perpetual.
- 15 b. After June 30, 1999, has perpetual duration.
- 16 3. A limited liability company may sue and be sued, and complain, defend, and
17 participate as a party or otherwise in any legal, administrative, or arbitration
18 proceeding in its limited liability company name.
- 19 4. A limited liability company may purchase, lease, or otherwise acquire, own, hold,
20 improve, use, and otherwise deal in and with real or personal property, or any
21 interest in property, wherever situated.
- 22 5. A limited liability company may sell, convey, mortgage, create a security interest in,
23 encumber, assign, lease, exchange, transfer, or otherwise dispose of all or any
24 part of its real or personal property, or any interest in this property, wherever
25 situated.
- 26 6. A limited liability company may purchase, subscribe for, or otherwise acquire, own,
27 hold, vote, use, employ, sell, exchange, mortgage, lend, create a security interest
28 in, or otherwise dispose of, use and deal in and with, securities or other interests
29 in, or obligations of, a person or direct or indirect obligations of any domestic or
30 foreign government or instrumentality.

- 1 7. A limited liability company may make contracts and incur liabilities, borrow money,
2 and secure any of its obligations by mortgage of or creation of a security interest in
3 or other encumbrance or assignment of all or any of its property, franchises, and
4 income.
- 5 8. A limited liability company may invest and reinvest its funds.
- 6 9. A limited liability company may take and hold real and personal property, whether
7 or not of a kind sold or otherwise dealt in by the limited liability company, as
8 security for the payment of money loaned, advanced, or invested.
- 9 10. A limited liability company may conduct its business, carry on its operations, have
10 offices, and exercise the powers granted by this chapter anywhere in the universe.
- 11 11. Except as otherwise prohibited by law, a limited liability company may make
12 donations, irrespective of limited liability company benefit, for:
13 a. The public welfare;
14 b. Social, community, charitable, religious, educational, scientific, civic, literary,
15 and testing for public safety purposes and for similar or related purposes;
16 c. The purpose of fostering national or international amateur sports competition;
17 and
18 d. The prevention of cruelty to children and animals.
- 19 12. A limited liability company may pay pensions, retirement allowances, and
20 compensation for past services and establish employee or incentive benefit plans,
21 trusts, and provisions for the benefit of its and its related organizations' officers,
22 managers, directors, governors, employees, and agents and, in the case of a
23 related organization that is a limited liability company, members who provide
24 services to the limited liability company, and the families, dependents, and
25 beneficiaries of any of them. It may indemnify and purchase and maintain
26 insurance for a fiduciary of any of these employee benefit and incentive plans,
27 trusts, and provisions.
- 28 13. A limited liability company may participate in any capacity in the promotion,
29 organization, ownership, management, and operation of any organization or in any
30 transaction, undertaking, or arrangement that the participating limited liability

- 1 company would have power to conduct by itself, whether or not the participation
2 involves sharing or delegation of control.
- 3 14. A limited liability company may provide for its benefit life insurance and other
4 insurance with respect to the services of its members, managers, governors,
5 employees, and agents, or on the life of a member for the purpose of acquiring at
6 the death of the member any or all membership interests in the limited liability
7 company owned by the member.
- 8 15. A limited liability company may have, alter at its pleasure, and use a limited liability
9 company seal as provided in section 10-32-24.
- 10 16. A limited liability company may adopt, amend, and repeal ~~an operating agreement~~
11 the bylaws relating to the management of the business or the regulation of the
12 affairs of the limited liability company as provided in section 10-32-68.
- 13 17. A limited liability company may establish committees of the board of governors,
14 elect or appoint persons to the committees, and define their duties as provided in
15 section 10-32-85 and fix their compensation.
- 16 18. A limited liability company may elect or appoint managers, employees, and agents
17 of the limited liability company and define their duties and fix their compensation.
- 18 19. A limited liability company may accept contributions under section 10-32-56 and
19 may enter into contribution agreements under section 10-32-58 and contribution
20 allowance agreements under section 10-32-59.
- 21 20. A limited liability company may lend money to, guarantee an obligation of, become
22 a surety for, or otherwise financially assist persons as provided in section
23 10-32-97.
- 24 21. A limited liability company may make advances as provided in section 10-32-98.
- 25 22. A limited liability company shall indemnify those persons against certain expenses
26 and liabilities only as provided in section 10-32-99.
- 27 23. A limited liability company may conduct all or part of its business under one or
28 more trade names.
- 29 24. A limited liability company may acquire an ownership interest in another
30 organization.

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

4 **SECTION 58. AMENDMENT.** Section 10-32-28 of the 1997 Supplement to the North
5 Dakota Century Code is amended and reenacted as follows:

6 **10-32-28. Nature of a membership interest and statement of interest owned.**

- 7 1. A membership interest is personal property. A member has no interest in specific
8 limited liability company property. All property of the limited liability company is
9 property of the limited liability company itself.
- 10 2. At the request of any member, the limited liability company shall state in writing the
11 particular membership interest owned by that member as of the moment the limited
12 liability company makes the statement.
- 13 a. The statement must describe the member's right to vote, if any, to share in
14 profits and losses, and to share in distributions, restrictions on assignments of
15 financial rights under subsection 3 of section 10-32-31, or governance rights
16 under subsection 6 of section 10-32-32, then in effect, as well as any
17 assignment of the member's rights then in effect other than a security interest.
- 18 b. ~~The statement is not a certificated security, is not a negotiable instrument, and~~
19 ~~may not serve as a vehicle by which a transfer of any membership interest~~
20 ~~may be effected.~~
- 21 3. ~~Notwithstanding any other provision of law, for~~ For the purpose of any law relating
22 to security interests, a membership interest, governance rights, and financial rights
23 are each ~~a general intangible, as defined in section 41-09-06, and not a certificated~~
24 ~~security as defined in section 41-08-02, an uncertificated security as defined in~~
25 ~~section 41-08-02, chattel paper as defined in section 41-09-05, an instrument as~~
26 ~~defined in section 41-09-05, or an account as defined in section 41-09-06~~ to be
27 characterized as provided in subsection 3 of section 41-08-03.

28 **SECTION 59. AMENDMENT.** Section 10-32-30 of the North Dakota Century Code is
29 amended and reenacted as follows:

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

1. The continued membership of a member in a limited liability company is terminated by:
 - a. The member's death;
 - b. The member's retirement;
 - c. The member's resignation;
 - d. The redemption of the member's complete membership interest;
 - e. An assignment of the member's governance rights under section 10-32-32 which leaves the assignor with no governance rights;
 - f. A buyout of a member's membership interest under section 10-32-119 which leaves that member with no governance rights;
 - g. The member's expulsion;
 - h. The member's bankruptcy;
 - i. The dissolution of a member that is an organization; or
 - j. The occurrence of any other event terminating the continued membership of a member in the limited liability company.
2. A member always has the power, though not necessarily the right, to terminate ~~its~~ the member's 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 is avoided under that subdivision. 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.~~ 3. Unless otherwise provided in the articles of organization or in a member-control agreement, a member may not be expelled.
- ~~3.~~ 4. 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 under that subdivision~~ the termination does not result in the dissolution of the limited liability company, then subject to the articles of organization and any member-control agreement, 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 c of subsection 1 of section 10-32-109 is not avoided under that subdivision~~ the termination does result in the dissolution of the limited liability company, subject to the articles of organization and any member-control agreement, the member whose continued membership has terminated retains all governance rights and financial 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.~~ 5. If a member resigns or retires in contravention of the articles of organization or a member-control agreement, ~~then:~~

- a. ~~If dissolution avoidance consent is obtained~~, the member who has wrongfully resigned or retired is liable to the limited liability company to the extent damaged by the wrongful resignation or retirement; ~~and~~
- b. ~~If dissolution avoidance consent is not obtained, section 10-32-131 applies.~~

SECTION 60. AMENDMENT. Section 10-32-31 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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.
 - a. 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.
 - b. 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 a member-control agreement, ~~in the operating agreement~~ bylaws, 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. Subject to subsection 5, 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.

5. With regard to restrictions on the assignment of financial rights, a would-be assignee of financial rights is entitled to rely on a statement of membership interest issued by the limited liability company under section 10-32-28. A restriction on the assignment of financial rights, which is otherwise valid and in effect at the time of the issuance of a statement of membership interest but which is not reflected in that statement, is ineffective against an assignee who takes an assignment in reliance on the statement.

6. Notwithstanding any provision of law, articles of organization, member-control agreement, ~~operating agreement~~ bylaws, other agreement, resolution, or action to the contrary, a security interest in a member's financial rights may be foreclosed and otherwise enforced, and a secured party may assign a member's financial rights in accordance with title 41 without the consent or approval of a member whose financial rights are subject to the security interest.

SECTION 61. AMENDMENT. Section 10-32-32 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-32. Assignment of governance rights.

1. A member's governance rights are assignable, in whole or in part, only as provided in this section.

- 1 2. Subject to subsection 6, a member may, without the consent of any other member,
2 assign governance rights, in whole or in part, to another person already a member
3 at the time of the assignment.
- 4 a. Except as otherwise provided in the articles of organization or a
5 member-control agreement, any other assignment of any governance rights is
6 effective only if all the members, other than the member seeking to make the
7 assignment, approve the assignment by unanimous written consent.
- 8 b. ~~Subject to subsection 6, a member may grant a security interest in a complete~~
9 ~~membership interest or governance rights without obtaining the consent~~
10 ~~required by this subsection.~~
- 11 (1) ~~However, a secured party may not take or assign ownership of~~
12 ~~governance rights without first obtaining the consent required by this~~
13 ~~subsection.~~
- 14 (2) ~~If a secured party has a security interest in both a member's financial~~
15 ~~rights and governance rights, including a security interest in a complete~~
16 ~~membership interest, this subsection's requirement that the secured~~
17 ~~party obtain consent applies only to taking or assigning ownership of~~
18 ~~the governance rights and does not apply to taking or assigning~~
19 ~~ownership of the financial rights.~~
- 20 3. ~~When~~ If an assignment of governance rights is effective under subsection 2:
21 a. If the assignment is not a security interest, the assignee becomes a member,
22 if not already a member; and
23 b. If the assignor does not retain any governance rights, the assignor ceases to
24 be a member, ~~and the written consent required under subsection 2, also~~
25 ~~constitutes the dissolution avoidance consent necessary to avoid dissolution~~
26 ~~that would otherwise ensue under subdivision e of subsection 1 of section~~
27 ~~10-32-109 on account of the assignor ceasing to be a member if the consent~~
28 ~~required to avoid dissolution is not greater than the consent required under~~
29 ~~subsection 2.~~
- 30 4. When an assignment other than a security interest is effective under subsection 2,
31 unless the written consent under subsection 2 otherwise provides:

- 1 a. The assignee is liable in proportion to the interest assigned for the obligations
2 of the assignor under section 10-32-56, including liability for unperformed
3 promises that have been reflected as contributions in the required records,
4 and section 10-32-65 existing at the time of transfer, except to the extent that,
5 at the time the assignee became a member, the liability was unknown to the
6 assignee, and could not be ascertained from the required records; and
- 7 b. The assignor is not released from liability to the limited liability company for
8 obligations of the assignor existing at the time of transfer under sections
9 10-32-56 and 10-32-65.
- 10 5. If any purported or attempted assignment of governance rights is ineffective for
11 failure to obtain the consent required in subsection 2:
- 12 a. The purported or attempted assignment is ineffective in its entirety; and
13 b. Any assignment of financial rights that accompanied the purported or
14 attempted assignment of governance rights is void.
- 15 6. Restrictions on the transfer of governance rights may be imposed following the
16 same procedures and under the same conditions as stated in subsections 3 and 4
17 of section 10-32-31 for restricting the transfer of financial rights.
- 18 7. Subject to subsection 6, a member may grant a security interest in a complete
19 membership interest or governance rights without obtaining the consent required
20 by this subsection. However, a secured party may not take or assign ownership of
21 governance rights without first obtaining the consent required by this subsection. If
22 a secured party has a security interest in a member's financial rights and
23 governance rights, including a security interest in a complete membership interest,
24 this subsection's requirement that the secured party obtain consent applies only to
25 taking or assigning ownership of the governance rights and does not apply to
26 taking or assigning ownership of the financial rights.
- 27 8. Notwithstanding any provision of law, articles of organization, member-control
28 agreement, ~~operating agreement~~ bylaws, other agreement, resolution, or action to
29 the contrary, a security interest in a member's full membership interest or
30 governance rights may be foreclosed and otherwise enforced, and a secured party
31 may assign a member's complete membership interest or governance rights in

accordance with title 41, all without the consent or approval of the member whose full membership interest or governance rights are the subject of the security interest.

SECTION 62. AMENDMENT. Subsection 2 of section 10-32-35 of the North Dakota Century Code is amended and reenacted as follows:

2. If an event referred to in subsection 1 causes the termination of a member's membership interest and the termination does not result in dissolution is avoided under subdivision c of subsection 1 of section 10-32-109, then subject to the articles of organization and any member-control agreement:

- 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.

SECTION 63. AMENDMENT. Section 10-32-36 of the North Dakota Century Code is amended and reenacted as follows:

10-32-36. Sharing of profits and losses. Unless otherwise provided in the articles of organization, in a member-control agreement, 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~~ must 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.

SECTION 64. AMENDMENT. Section 10-32-37 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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, in a member-control agreement, 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

1 contributions of a certain amount before the limited liability company may accept
2 new contributions from other persons or to make contribution allowance
3 agreements with other persons.

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

- 8 4. Unless otherwise provided in the articles of organization or a member-control
9 agreement, no preemptive rights pursuant to this section arise as to contributions
10 to be accepted from others or as to contribution allowance agreements to be made
11 with others when the contribution is:

- 12 a. To be made in a form other than money;
13 b. To be made or reflected pursuant to a plan of merger;
14 c. To be made or reflected pursuant to an employee or incentive benefit plan
15 approved at a meeting by the affirmative vote of the owners of a majority of
16 the voting power of all membership interests entitled to vote;
17 d. To be made pursuant to a previously made contribution allowance agreement;
18 or
19 e. To be made or reflected pursuant to a plan of reorganization approved by a
20 court of competent jurisdiction pursuant to a statute of this state or of the
21 United States.

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

- 29 6. A member may waive a preemptive right in writing. The waiver is binding upon the
30 member whether or not consideration has been given for the waiver. Unless
31 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. If the members of a limited liability company are entitled to cumulative voting in the election of governors, no amendment to the articles of organization ~~that~~ or a member-control agreement which 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. A denial or limitation of preemptive rights otherwise provided in this section does not limit the power of a limited liability company to grant first refusal rights, contribution allowance rights, or other rights to make contributions to the limited liability company, to members, to persons who have entered into contribution agreements, or to other persons before accepting contributions or before making allowance agreements with any other person.

SECTION 65. AMENDMENT. Section 10-32-38 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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~~, a member-control agreement, the bylaws, or by subsection 2.
2. If a regular meeting of members has not been held within the earlier of six months after the fiscal yearend of the corporation or fifteen months after its last meeting:
 - a. 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.
 - b. 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.
 - c. 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.
 - d. 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 date and at the time and place fixed by, or in a manner authorized by; the articles, a member-control agreement, or ~~operating agreement~~ the bylaws, 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:

- a. 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.
- b. No other particular business is required to be transacted at a regular meeting.
- c. Any business appropriate for action by the members may be transacted at a regular meeting.

SECTION 66. AMENDMENT. Section 10-32-39 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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, a member-control agreement, or ~~operating agreement~~ the bylaws 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.
 - a. 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.
 - b. 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.

c. 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, a member-control agreement, or ~~operating agreement~~ the bylaws 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.

SECTION 67. AMENDMENT. Subsection 3 of section 10-32-40 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The notice:
- a. In all instances where a specific minimum notice period has not otherwise been fixed by law, must be given at least ten days before the date of the meeting, or a shorter time provided in the articles of organization, a member-control agreement, or ~~operating agreement~~ the bylaws, and not more than fifty days before the date of the meeting;
 - b. ~~The notice must~~ Must contain the date, time, and place of the meeting;
 - c. Must contain the information with respect to ~~dissenter's~~ dissenters' rights required by subsection 2 of section 10-32-55, if applicable;
 - d. Must inform members if proxies are permitted at the meeting and, if so, state the procedure for appointing proxies;
 - e. Must contain a statement of the purpose of the meeting, in the case of a special meeting;
 - f. Must contain any other information:
 - (1) Required by the articles of organization, ~~operating agreement~~ any member-control agreement, the bylaws, or this chapter;

(2) Considered necessary or desirable by the board of governors; and

g. May contain any other information considered necessary or desirable by the person or persons calling the meeting.

SECTION 68. AMENDMENT. Section 10-32-40.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-40.1. Voting rights.

1. The board of governors may fix or authorize a manager to fix a date not more than fifty days, or a shorter time period provided in the articles of organization, a member-control agreement, or ~~operating agreement~~ the bylaws, 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. A determination of the owners of membership interests entitled to notice and to vote at a meeting of members is effective for an adjournment of the meeting unless the board of governors fixes a new date for determining the right to notice and to vote, which it must do if the meeting is adjourned to a date more than fifty days after the record date for determining members entitled to notice of the original meeting.
3. If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting:
 - a. It must provide the original record date for notice and voting continues in effect; or
 - b. It may fix a new record date for notice and voting.
4. A resolution approved by the affirmative vote of a majority of the governors present may establish a procedure whereby a member may certify in writing to the limited liability company that all or a portion of the membership interest registered in the name of the member are held for the account of one or more beneficial owners. Upon receipt by the limited liability company of the writing, the persons specified as beneficial owners, rather than the actual member, are deemed the members for the purposes specified in the writing.

- 1 5. Unless otherwise provided in the articles, in a member-control agreement, or by
2 the board of governors under subsections 5 and 6 of section 10-32-56, members
3 have voting power in proportion to the value of the contributions of the members as
4 reflected in the required records.
- 5 6. The articles of organization or a member-control agreement may give or prescribe
6 the manner of giving a creditor, securityholder, or other person a right to vote under
7 this section, ~~but no prescription under this subsection may have the effect of~~
8 ~~transferring from an assignor of financial rights to the assignee the assignor's~~
9 ~~voting rights.~~
- 10 7. Membership interests owned by two or more members may be voted by any one of
11 them unless the limited liability company receives written notice from any one of
12 them denying the authority of that person to vote those membership interests.
- 13 8. Except as provided in subsection 7, an owner of a membership interest entitled to
14 vote may vote any portion of the membership interest in any way the member
15 chooses. If a member votes without designating the proportion voted in a
16 particular way, the member is considered to have voted all of the membership
17 interest in that way.

18 **SECTION 69. AMENDMENT.** Section 10-32-42 of the 1997 Supplement to the North
19 Dakota Century Code is amended and reenacted as follows:

20 **10-32-42. Act of members.** Unless this chapter or the articles of organization require
21 a greater vote or voting by class or series:

- 22 1. The members shall take action by the affirmative vote of the owners of the greater
23 of a majority of the voting power of the membership interests present and entitled
24 to vote on that item of business or a majority of the voting power of the
25 membership interests with voting rights that would constitute the minimum voting
26 power needed for a quorum for the transaction of business at a meeting, except if
27 this chapter, the articles of organization, or a member-control agreement require a
28 larger proportion. If the articles or a member-control agreement require a larger
29 proportion than is required by this chapter for a particular action, the articles or
30 member-control agreement control.

2. In any case where a class or series of membership interests is entitled by this chapter, the articles of organization, ~~the operating a member-control~~ 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, unless the articles of organization or a member-control agreement requires a larger proportion.
3. Unless otherwise provided in the ~~article~~ articles of organization, a member-control agreement, or operating agreement ~~the bylaws~~, members may take action at a meeting by voice or ballot, action without a meeting pursuant to section 10-32-43, written ballot pursuant to section 10-32-43.1, or by electronic communication pursuant to section 10-32-43.2.

SECTION 70. AMENDMENT. Subsection 1 of section 10-32-43 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 or a member-control agreement ~~so provide~~ provides, 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.

SECTION 71. AMENDMENT. Section 10-32-43.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-43.1. Action by written ballot.

1. Except as provided in subsection 5, and unless prohibited or limited by the articles ~~or operating agreement~~ the bylaws, an action that may be taken at a regular or special meeting of members may be taken without a meeting if the limited liability company mails or delivers a written ballot to every member entitled to vote on the matter.
2. A written ballot must set forth each proposed action and provide an opportunity to vote for or against each proposed action.
3. Approval by written ballot under this section is valid only if:

- 1 a. The number of votes cast by ballot equals or exceeds the quorum required to
- 2 be present at a meeting authorizing the action; and
- 3 b. The number of approvals equals or exceeds the number of votes that would
- 4 be required to approve the matter at a meeting at which the total number of
- 5 votes cast was the same as the number of votes cast by ballot.
- 6 4. Solicitations for votes by written ballot must:
- 7 a. Indicate the number of responses needed to meet the quorum requirements;
- 8 b. State the percentage of approvals necessary to approve each matter other
- 9 than election of governors; and
- 10 c. Specify the time by which a ballot must be received by the limited liability
- 11 company in order to be counted.
- 12 5. Except as otherwise provided in the articles or ~~operating agreement~~ the bylaws, a
- 13 written ballot may not be revoked.

14 **SECTION 72. AMENDMENT.** Subsection 1 of section 10-32-44 of the 1997
15 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 16 1. A quorum for a meeting of members is the owners of a majority of the voting power
- 17 of the membership interests entitled to vote at the meeting, unless a different
- 18 proportion is provided in the articles of organization, a member-control agreement,
- 19 or the bylaws.

20 **SECTION 73. AMENDMENT.** Section 10-32-48 of the 1997 Supplement to the North
21 Dakota Century Code is amended and reenacted as follows:

22 **10-32-48. Proxies.**

- 23 1. A member may cast or authorize the casting of a vote by filing a written
- 24 appointment of a proxy with a manager of the limited liability company at or before
- 25 the meeting at which the appointment is to be effective.
- 26 a. A written appointment of a proxy may be signed by the member or authorized
- 27 by the member by transmission of a telegram, cablegram, or other means of
- 28 electronic transmission, provided the limited liability company has no reason
- 29 to believe that the telegram, cablegram, or other electronic transmission was
- 30 not authorized by the member.

- 1 b. Any copy, facsimile telecommunication, or other reproduction of the original
2 writing or transmission may be substituted or used in lieu of the original writing
3 or transmission for any purpose for which the original transmission could be
4 used, if the copy, facsimile telecommunication, or other reproduction is a
5 complete and legible reproduction of the entire original writing or transmission.
- 6 c. An appointment of a proxy for membership interests owned jointly by two or
7 more members is valid if signed or otherwise authorized by any one of them,
8 unless the limited liability company receives from any one of those members
9 written notice either denying the authority of that person to appoint a proxy or
10 appointing a different proxy.
- 11 2. The appointment of a proxy is valid for eleven months, unless a longer period is
12 expressly provided in the appointment. ~~No An appointment is irrevocable and any~~
13 ~~agreement purporting to grant an irrevocable proxy is void~~ revocable unless the
14 appointment is coupled with an interest in the membership interests of the limited
15 liability company. A member who revokes a proxy is not liable in any way for
16 damages, restitution, or other claim.
- 17 3. An appointment may be revoked at will unless the appointment is coupled with an
18 interest, in which case the appointment may not be terminated except in
19 accordance with the terms of an agreement, if any, between the parties to the
20 appointment. Appointment of a proxy is revoked by the person appointing the
21 proxy by attending a meeting and voting in person or signing and delivering to the
22 manager or agent authorized to tabulate proxy votes either a writing stating that the
23 appointment of the proxy is revoked or a later appointment. Revocation in either
24 manner revokes all prior proxy appointments and is effective when filed with a
25 manager of the limited liability company.
- 26 4. The death or incapacity of a person appointing a proxy does not revoke or affect
27 the right of the limited liability company to accept the authority of the proxy, unless
28 written notice of the death or incapacity is received by a manager authorized to
29 tabulate votes before the proxy exercises the authority under that appointment.
- 30 5. Unless the appointment specifically provides otherwise, if two or more persons are
31 appointed as proxies for a member:

- 1 a. Any one of them may vote the membership interests on each item of business
- 2 in accordance with specific instructions contained in the appointment; and
- 3 b. If no specific instructions are contained in the appointment with respect to
- 4 voting the membership interests on a particular item of business, the
- 5 membership interests must be voted as a majority of the proxies determine. If
- 6 the proxies are equally divided, the membership interests must not be voted.
- 7 6. Subject to section 10-32-48.1 and an express restriction, limitation, or specific
- 8 reservation of authority of the proxy appearing in the appointment, the limited
- 9 liability company may accept a vote or action by the proxy as the action of the
- 10 member. The vote of a proxy is final, binding, and not subject to challenge, but the
- 11 proxy is liable to the member for damages resulting from a failure to exercise the
- 12 proxy or from an exercise of the proxy in violation of the authority granted in the
- 13 appointment.
- 14 7. If a proxy is given authority by a member to vote on less than all items of business
- 15 considered at a meeting of members, the member is considered to be present and
- 16 entitled to vote by the proxy for purposes of subsection 1 of section 10-32-42 only
- 17 with respect to those items of business for which the proxy has authority to vote. A
- 18 proxy who is given authority by a member who abstains with respect to an item of
- 19 business is considered to have authority to vote on the item of business for
- 20 purposes of this subsection.
- 21 8. ~~A member may not grant any proxy to any person who is an assignee of any~~
- 22 ~~member's financial rights and who is not also a member.~~

23 **SECTION 74. AMENDMENT.** Subsection 2 of section 10-32-48.1 of the 1997
24 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 25 2. Unless the articles, a member-control agreement, or ~~operating agreement~~ the
- 26 bylaws provide otherwise, if the name signed on a vote, consent, waiver, or proxy
- 27 appointment does not correspond to the record name of a member, the limited
- 28 liability company, if acting in good faith, may accept the vote, consent waiver, or
- 29 proxy appointment and give it effect as the act of the member if:
- 30 a. The member is an organization and the name signed purports to be that of an
- 31 officer, manager, or agent of the organization;

- 1 b. The name signed purports to be that of an administrator, guardian, or
2 conservator representing the member and, if the limited liability company
3 requests, evidence of fiduciary status acceptable to the limited liability
4 company has been presented with respect to the vote, consent, waiver, or
5 proxy appointment;
- 6 c. The name signed purports to be that of a receiver or trustee in bankruptcy of
7 the member, and, if the limited liability company requests, evidence of this
8 status acceptable to the limited liability company has been presented with
9 respect to the vote, consent, waiver, or proxy appointment;
- 10 d. The name signed purports to be that of a pledgee, beneficial owner, or
11 attorney-in-fact of the member and if the limited liability company requests,
12 evidence acceptable to the limited liability company of the signatory's
13 authority to sign for the member has been presented with respect to the vote,
14 consent, waiver, or proxy appointment; or
- 15 e. Two or more persons hold the membership interests as cotenants or
16 fiduciaries and the name signed purports to be the name of at least one of the
17 coholders and the person signing appears to be acting on behalf of all the
18 coholders.

19 **SECTION 75. AMENDMENT.** Section 10-32-49 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **10-32-49. Member voting agreements.**

- 22 ~~1. Except as provided in subsection 2, a~~ A written agreement among persons who
23 are then members or who have signed contribution agreements, relating to the
24 voting of their membership interests, is valid and specifically enforceable by and
25 against the parties to the agreement. The agreement may override the provisions
26 of ~~subsections 1 through 7 of~~ section 10-32-48 regarding proxies.
- 27 ~~2. Any assignee of any member's financial rights may not be a party to an agreement~~
28 under subsection 1, unless that assignee is also a member. A voting agreement
29 may not relate to the consents referred to in subsection 2 of section 10-32-32,
30 subsection 5 of section 10-32-58, subsection 3 of section 10-32-59, or
31 subdivision c of subsection 1 of section 10-32-109.

1 **SECTION 76. AMENDMENT.** Section 10-32-50 of the 1997 Supplement to the North
2 Dakota Century Code is amended and reenacted as follows:

3 **10-32-50. Member-control agreements.**

4 1. ~~A written agreement among persons who are then members or who have signed~~
5 ~~contribution agreements, relating to the control of any phase of the business and~~
6 ~~affairs of the limited liability company, its liquidation, dissolution, and termination, or~~
7 ~~the relations among members or persons who have signed contribution~~
8 ~~agreements is valid as provided in subsection 2~~ member-control agreement
9 relating to any phase or aspect of the business and affairs of a limited liability
10 company is valid as provided in subsection 2 and enforceable as provided in
11 subsection 3.

12 a. ~~When this chapter provides that a particular result may or must be obtained~~
13 ~~through a provision in the articles of organization, other than a provision~~
14 ~~required by subsection 1 of section 10-32-07 to be contained in the articles, or~~
15 ~~in the operating agreement, the same result can be accomplished through a~~ A
16 member-control agreement valid under this section or through a procedure
17 established by a member-control agreement valid under this section.
18 subsection 2 may relate to, without limitation, the:

- 19 (1) Management of the limited liability company's business;
20 (2) Declaration and payment of distributions;
21 (3) Sharing of profits and losses;
22 (4) Election of governors or managers;
23 (5) Employment of members and others by the limited liability company;
24 (6) Relations among members and persons who have signed contribution
25 agreements, including the termination of continued membership;
26 (7) Dissolution, termination, and liquidation of the limited liability company,
27 including the continuation of the limited liability company's business
28 through a successor organization or individual; and
29 (8) Arbitration of disputes.

30 b. ~~A member-control agreement may waive, in whole or in part, a member's~~
31 ~~dissenting rights under sections 10-32-54 and 10-32-55, but may not waive~~

1 ~~dissenters' rights under subdivision a of subsection 2 of section 10-32-131. If~~
2 ~~this chapter provides that a particular result may or must be obtained through~~
3 ~~a provision in the articles of organization, other than a provision required by~~
4 ~~subsection 1 of section 10-32-07 to be contained in the articles; in the bylaws;~~
5 ~~or by an act of the board, the same result may be accomplished through a~~
6 ~~member-control agreement valid under this section or through a procedure~~
7 ~~established by a member-control agreement valid under this section.~~

8 c. A member-control agreement may ~~not include an agreement to give transfer~~
9 ~~consent:~~

10 (1) ~~Allocate to the members authority ordinarily exercised by the board of~~
11 ~~governors;~~

12 (2) ~~Allocate to the board of governors authority ordinarily exercised by the~~
13 ~~members; or~~

14 (3) ~~Structure the governance of the limited liability company in any agreed~~
15 ~~fashion and may waive, in whole or in part, a member's dissenting~~
16 ~~rights under sections 10-32-54 and 10-32-55.~~

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

20 2. ~~A written agreement among persons described in subsection 1 that relates to the~~
21 ~~control of or the liquidation, dissolution, and termination of the limited liability~~
22 ~~company, the relations among them, or any phase of the business and affairs of~~
23 ~~the limited liability company, including, without limitation, the management of its~~
24 ~~business, the declaration and payment of distributions, the sharing of profits and~~
25 ~~losses, the election of governors or managers, the employment of members by the~~
26 ~~limited liability company, or the arbitration of disputes, is valid, if the agreement is~~
27 ~~signed by all persons who are then the members of the limited liability company,~~
28 ~~whether or not the members all have voting power, and all those who have signed~~
29 ~~contribution agreements, regardless of whether those signatories will, when~~
30 ~~members, have voting power. An agreement authorized under this section may~~
31 ~~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.~~

With respect to the validity of a member-control agreement:

a. A member-control agreement described in subsection 1 is valid if the
agreement is in writing and is signed by the persons who, on the date the
agreement first becomes effective, comprise:

(1) All members of the limited liability company, regardless of voting power;
and

(2) All persons who are parties to contribution agreements that on that date
have not yet been fully performed, regardless of whether those parties
will, when members, have voting power.

b. A member-control agreement may also include as parties persons who are
neither members nor parties to a contribution agreement.

c. A member-control agreement may provide for amendment of the
member-control agreement through nonunanimous means.

3. ~~An~~ A member-control agreement valid under subsections 1 and 2 is enforceable by
and against persons who are parties to it the member-control agreement and is
also binding upon and enforceable against only these persons and other persons
who acquire an interest in a membership interest or in a contribution agreement
having knowledge of the existence of the member-control agreement. A signed
original of the member-control agreement must be filed with the limited liability
company.

a. The limited liability company shall note in its the limited liability company's
required records that the members' interests are governed by a
member-control agreement entered into under this section.

b. 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. 6. If ~~an~~ a member-control agreement authorized under this section takes away from any person any of the authority and responsibility ~~which~~ that the person would otherwise possess under this chapter, the effect of the member-control 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. 7. This section does not apply to, limit, or restrict agreements otherwise valid, ~~nor is~~ and the procedure set forth in this section is not the exclusive method of agreement among members or between the members and the limited liability company with respect to any of the matters described.

SECTION 77. AMENDMENT. Subdivision d of subsection 1 of section 10-32-51 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

d. Copies of any currently effective written ~~operating agreement~~ bylaws;

SECTION 78. AMENDMENT. Section 10-32-54 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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~~, but not an amendment to a member-control agreement, which 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; or
- (6) Establishes or changes the conditions for or consequences of expulsion;
- ~~(7) Changes the statement required under subdivision f of subsection 1 of section 10-32-07; or~~
- ~~(8) Changes the statement required under subdivision g 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, but not including a transaction permitted without member approval under section 10-32-108, a disposition in dissolution described in subsection 4 of section 10-32-113, 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; or

e. Any other limited liability company action taken pursuant to a member vote
with respect to which the articles of organization, a member-control
agreement, the ~~operating agreement~~ bylaws, or a resolution approved by the
board of governors directs that dissenting members may obtain payment for
~~their~~ the dissenting members' 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.

3. If a date is fixed according to subsection 1 of section 10-32-40.1 for the
determination of members entitled to receive notice of and to vote on an action
described in subsection 1, only members as of the date fixed may exercise
dissenters' rights.

SECTION 79. AMENDMENT. Section 10-32-55 of the 1997 Supplement to the North
Dakota Century Code is amended and reenacted as follows:

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.

~~e.~~ b. "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.

c. "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.

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 10-32-134.~~ 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 is entitled to dissent under section 10-32-54 and who wishes to exercise dissenters' rights ~~must~~ shall 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~~ may not vote the membership interests in favor of the proposed action.

4. After the proposed action ~~has been~~ is 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;

- 1 b. A form to be used to certify the date on which the member acquired the
- 2 membership interests and to demand payment; and
- 3 c. A copy of section 10-32-54; and this section ~~and, if applicable, subsections 2~~
- 4 ~~and 3 of section 10-32-131.~~
- 5 5. In order to receive the fair value of the membership interests, a dissenting member
- 6 must demand payment within thirty days after the notice required by subsection 4
- 7 was given, but the dissenter retains all other rights of a member until the proposed
- 8 action takes effect.
- 9 6. After the limited liability company action takes effect, or after the limited liability
- 10 company receives a valid demand for payment, whichever is later, the limited
- 11 liability company shall remit to each dissenting member who has complied with
- 12 subsections 3, 4, and 5, the amount the limited liability company estimates to be
- 13 the fair value of the membership interests, plus interest, accompanied by:
- 14 a. The limited liability company's closing balance sheet and statement of income
- 15 for a fiscal year ending not more than sixteen months before the effective date
- 16 of the limited liability company action, together with the latest available interim
- 17 financial statements;
- 18 b. An estimate by the limited liability company of the fair value of the
- 19 membership interests and a brief description of the method used to reach the
- 20 estimate; and
- 21 c. A copy of section 10-32-54; and this section ~~and, if applicable, subsections 2~~
- 22 ~~and 3 of section 10-32-131.~~
- 23 7. The limited liability company may withhold the remittance described in subsection 6
- 24 from a person who was not a member on the date the action dissented from was
- 25 first announced to the public. If the dissenter has complied with subsections 3, 4,
- 26 and 5, the limited liability company shall forward to the dissenter the materials
- 27 described in subsection 6, a statement of the reason for withholding the remittance,
- 28 and an offer to pay to the dissenter the amount listed in the materials if the
- 29 dissenter agrees to accept that amount in full satisfaction. The dissenter may
- 30 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 limited liability company shall, after filing the petition, serve all parties with a summons and copy of the petition under the rules of civil procedure. Nonresidents of this state may be served by registered or certified mail or by publication as provided by law. Except as otherwise provided, the rules of civil procedure apply to this proceeding. 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.

- 1 b. Instead of remitting a payment under subsection 6, the limited liability
2 company shall forward to the dissenter member:
- 3 (1) An offer to pay the fair value of the membership interests with that
4 amount to be allocated among and paid to the member and the
5 assignees of financial rights according to the terms of the assignments
6 reflected in the required records; and
- 7 (2) A statement of that allocation.
- 8 c. If the dissenter member accepts the amount of the offer made under
9 subdivision b but disputes the allocation, the dissenter shall promptly so notify
10 the limited liability company and promptly after the notification bring an action
11 to determine the proper allocation. The suit must be filed in the county in
12 which the registered office of the limited liability company is located, or in the
13 case of a surviving foreign corporation that is complying with this section
14 following a merger or an exchange with a constituent limited liability company
15 the suit must be filed in the county in this state in which the last registered
16 office of the constituent limited liability company was located. The suit must
17 name as parties the member, the limited liability company, and all assignees
18 of the member's financial rights. Upon being served with the action, the
19 limited liability company shall promptly pay into the court the amount offered
20 under subdivision b and shall then be dismissed from the action.
- 21 d. If the dissenter considers the amount offered under subdivision b inadequate,
22 the dissenter may decline the offer and demand payment under subsection 8.
23 If the dissenter makes demand, subsections 9 and 10 apply, with the court
24 having jurisdiction also to determine the correctness of the allocation.
- 25 e. If the member fails to take action under either subdivision c or d, then:
- 26 (1) As to the limited liability company, both the member and the assignees
27 of the member's financial rights are limited to the amount and allocation
28 offered under subdivision b; and
- 29 (2) The limited liability company discharges its obligation of payment by
30 making payment according to the amount and allocation offered under
31 subdivision b.

1 **SECTION 80. AMENDMENT.** Section 10-32-56 of the 1997 Supplement to the North
2 Dakota Century Code is amended and reenacted as follows:

3 **10-32-56. Authorization, form, and acceptance of contributions.**

- 4 1. Subject to any restrictions in the articles of organization or a member-control
5 agreement and only when authorized by the board of governors or pursuant to a
6 member-control agreement, a limited liability company may accept contributions
7 under subsections 2 and 3, make contribution agreements under section 10-32-58,
8 and make contribution allowance agreements under section 10-32-59.
- 9 2. A person may make a contribution to a limited liability company by paying money
10 or transferring the ownership of an interest in property to the limited liability
11 company for rendering services to or for the benefit of the limited liability company.
- 12 3. No purported contribution is to be treated or considered as a contribution, unless:
13 a. The board of governors accepts the contribution on behalf of the limited
14 liability company and in that acceptance describes the contribution and states
15 the value being accorded to the contribution; and
16 b. The fact of contribution and the contribution's accorded value are both
17 reflected in the required records of the limited liability company.
- 18 4. The determinations of the board of governors as to the amount or fair value or the
19 fairness to the limited liability company of the contribution accepted or to be
20 accepted by the limited liability company or the terms of payment or performance,
21 including under a contribution agreement in section 10-32-58, and a contribution
22 allowance agreement in section 10-32-59, are presumed to be proper if they are
23 made in good faith and on the basis of accounting methods, or a fair valuation or
24 other method, reasonable in the circumstances. Governors who are present and
25 entitled to vote, and who, intentionally or without reasonable investigation, fail to
26 vote against approving a consideration that is unfair to the limited liability company,
27 or overvalue property or services received or to be received by the limited liability
28 company as a contribution, are jointly and severally liable to the limited liability
29 company for the benefit of the then members who did not consent to and are
30 damaged by the action, to the extent of the damages of those members. A
31 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 a member-control agreement or 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~~ 10-32-40.1, 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~~ or a member-control agreement fixes 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 or a member-control agreement, 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 established in the articles of organization, in a member-control agreement, or by resolution of the board of governors.

7. A statement ~~executed~~ signed 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 or a member-control agreement. 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.

SECTION 81. AMENDMENT. Section 10-32-57 of the North Dakota Century Code is amended and reenacted as follows:

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 or a member-control agreement, 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 or a member-control agreement, 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.

SECTION 82. AMENDMENT. Subsection 7 of section 10-32-58 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7. A Unless otherwise provided in the articles of organization or a member-control agreement, 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.

SECTION 83. AMENDMENT. Section 10-32-59 of the North Dakota Century Code is amended and reenacted as follows:

10-32-59. Contribution allowance agreements.

1. Subject to any restrictions in the articles of organization or a member-control agreement, 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 Unless otherwise provided in the articles of organization or a member-control agreement, 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.

SECTION 84. AMENDMENT. Section 10-32-60 of the North Dakota Century Code is amended and reenacted as follows:

10-32-60. Sharing of distributions. Unless otherwise provided in the articles of organization, in a member-control agreement, 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.

1 **SECTION 85. AMENDMENT.** Section 10-32-61 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **10-32-61. Interim distributions.** Except as provided in the articles of organization or a
4 member-control agreement, a member is entitled to receive distributions before the limited
5 liability company's termination only as specified in the ~~operating agreement~~ bylaws or by the act
6 of the board of governors.

7 **SECTION 86. AMENDMENT.** Section 10-32-62 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **10-32-62. Distribution in kind.** Except as provided in the articles of organization or a
10 member-control agreement, a member, regardless of the nature of the member's contribution,
11 has no right to demand and receive any distribution from a limited liability company in any form
12 other than cash. Except as provided in the articles of organization, a member may not be
13 compelled to accept a distribution of any asset in kind from a limited liability company to the
14 extent ~~that~~ the percentage of the asset distributed to the member exceeds a percentage of that
15 asset that is equal to the percentage in which the member shares in distributions from the
16 limited liability company.

17 **SECTION 87. AMENDMENT.** Subdivision c of subsection 1 of section 10-32-64 of the
18 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 19 c. The right of the board of governors to authorize, and the limited liability
20 company to make, distributions may be prohibited, limited, or restricted by the
21 articles of organization ~~or operating agreement~~, a member-control agreement,
22 the bylaws, or an agreement.

23 **SECTION 88. AMENDMENT.** Subsection 1 of section 10-32-66 of the 1997
24 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 25 1. In addition to any other liabilities, a governor who is present at a meeting and fails
26 to vote against, or who consents in writing to, a distribution made in violation of
27 ~~subsections~~ subsection 1 or 4 of section 10-32-64 or a restriction contained in the
28 articles of organization ~~or operating agreement~~, a member-control agreement, the
29 bylaws, or an agreement, and fails to comply with the standard of conduct provided
30 in section 10-32-86, is liable to the limited liability company, ~~its~~ the limited liability
31 company's receiver, or any other person winding up ~~its~~ the limited liability

1 company's affairs, jointly and severally with all other governors so liable and to
2 other governors under subsection 3, but only to the extent that the distribution
3 exceeded the amount that properly could have been paid under section 10-32-64.

4 **SECTION 89. AMENDMENT.** Subsection 2 of section 10-32-67 of the 1997

5 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6 2. After the issuance of the certificate of organization, the organizers or the governors
7 named in the articles of organization shall ~~either~~ hold an organizational meeting at
8 the call of a majority of the organizers or of the governors named in the articles, or
9 take written action, for the purposes of transacting business and taking actions
10 necessary or appropriate to complete the organization of the limited liability
11 company, including, without limitation, amending the articles, electing governors,
12 adopting ~~an operating agreement~~ the bylaws, electing managers, adopting banking
13 resolutions, authorizing or ratifying the purchase, lease, or other acquisition of
14 suitable space, furniture, furnishings, supplies, and materials, approving a limited
15 liability company seal, adopting a fiscal year for the limited liability company,
16 contracting to receive and accept contributions, and making any appropriate tax
17 elections.

18 a. If a meeting is held, the person or persons calling the meeting shall give at
19 least three ~~days~~ days' notice of the meeting to each organizer or governor
20 named, stating the date, time, and place of the meeting.

21 b. Organizers and governors may waive notice of an organizational meeting in
22 the same manner ~~that~~ a governor may waive notice of meetings of the board
23 of governors under subsection 5 of section 10-32-80.

24 **SECTION 90. AMENDMENT.** Section 10-32-68 of the 1997 Supplement to the North

25 Dakota Century Code is amended and reenacted as follows:

26 **10-32-68. ~~Operating agreement~~ Bylaws.**

27 1. A limited liability company may, ~~but need not,~~ have bylaws, which may be known
28 as an operating agreement. The ~~operating agreement~~ bylaws may contain any
29 provision relating to the management of the business or the regulation of the affairs
30 of the limited liability company not inconsistent with law or the articles of
31 organization. An act of the board under subsection 2 and of the members under

subsection 3 will be considered part of the ~~operating agreement~~ bylaws only if the act expressly states that it is intended to constitute or revise the ~~operating agreement~~ bylaws.

2. ~~An initial operating agreement~~ Initial bylaws 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 or a member-control agreement to the members, the power to adopt, amend, or repeal the ~~operating agreement~~ bylaws 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~~ bylaws adopted, amended, or repealed by the board of governors. After the adoption of the initial ~~operating agreement~~ bylaws, the board of governors may not adopt, amend, or repeal ~~an operating agreement~~ a bylaw 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~~ the governors' classifications, qualifications, or terms of office, but may adopt or amend ~~an operating agreement~~ a bylaw provision to increase the number of governors.
3. Unless the articles or ~~operating agreement~~ provides bylaws provide otherwise, members owning five percent or more of the voting power of the members entitled to vote may propose a resolution for action by the members to adopt, amend, or repeal ~~operating agreement provisions~~ the bylaws adopted, amended, or repealed by the board of governors and the resolution must set 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. The articles or ~~operating agreement~~ bylaws may impose different or additional requirements for the members to adopt, amend, or repeal the ~~operating agreement~~ bylaws.

SECTION 91. AMENDMENT. Section 10-32-70 of the North Dakota Century Code is amended and reenacted as follows:

1 **10-32-70. Number.** The board of governors consists of one or more governors. The
2 number of governors must be fixed by or in the manner provided in the articles of organization,
3 a member-control agreement, or the ~~operating agreement~~ bylaws. The number of governors
4 may be increased or, subject to section 10-32-78, decreased at any time by amendment to or in
5 the manner provided in the articles or ~~operating agreement~~ bylaws.

6 **SECTION 92. AMENDMENT.** Section 10-32-71 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **10-32-71. Qualifications and election.** Governors must be individuals. The method
9 of election and any additional qualifications for governors may be imposed by or in the manner
10 provided in the articles, a member-control agreement, or ~~operating agreement~~ the bylaws.

11 **SECTION 93. AMENDMENT.** Section 10-32-72 of the 1997 Supplement to the North
12 Dakota Century Code is amended and reenacted as follows:

13 **10-32-72. Terms.**

14 1. With respect to length of terms:

- 15 a. Unless fixed terms are provided for in the articles, a member-control
16 agreement, or ~~operating agreement~~ the bylaws, a governor serves for an
17 indefinite term that expires at the next regular meeting of the members.
- 18 (1) A fixed term of a governor, other than an ex officio governor, must not
19 exceed five years.
- 20 (2) An ex officio governor serves as long as the governor holds the office or
21 position designated in the articles or ~~operating agreement~~ bylaws.
- 22 b. Unless the articles, the bylaws, or ~~operating agreement~~ a member-control
23 agreement provides otherwise, a governor holds office until expiration of the
24 term for which the governor was elected or appointed and until a successor is
25 elected and has qualified or until the earlier death, resignation, removal, or
26 disqualification of the governor.
- 27 c. A decrease in the number of governors or term of office does not shorten an
28 incumbent director's term.
- 29 d. Except as provided in the articles, a member-control agreement, or ~~operating~~
30 ~~agreement~~ the bylaws, the term of a governor filling a vacancy expires at the
31 end of the unexpired term that the director is filling.

2. The articles, a member-control agreement, or ~~operating agreement~~ the bylaws may provide for staggering the terms of governors by dividing the total number of governors into groups.

SECTION 94. AMENDMENT. Section 10-32-74 of the North Dakota Century Code is amended and reenacted as follows:

10-32-74. Compensation. Subject to any limitations in the articles, a member-control agreement, or ~~operating agreement~~ the bylaws, the board of governors may fix the compensation of governors.

SECTION 95. AMENDMENT. Section 10-32-75 of the North Dakota Century Code is amended and reenacted as follows:

10-32-75. Classification of governors. Governors may be divided into classes as provided in the articles, a member-control agreement, or ~~operating agreement~~ the bylaws.

SECTION 96. AMENDMENT. Section 10-32-76 of the North Dakota Century Code is amended and reenacted as follows:

10-32-76. Cumulative voting for governors.

1. ~~Each~~ Unless the articles of organization or a member-control agreement provides that there is no cumulative voting, 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~~ An amendment to the articles, a member-control agreement, or ~~operating agreement that~~ the bylaws which has the effect of denying, limiting, or modifying

the right to cumulative voting for members provided in this section may not 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.

SECTION 97. AMENDMENT. Subsection 1 of section 10-32-78 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The provisions of this section apply unless modified by the articles of organization, a member-control agreement, or the ~~operating agreement~~ bylaws.

SECTION 98. AMENDMENT. Subdivision a of subsection 1 of section 10-32-78.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. The governor engaged in fraudulent, dishonest conduct, ~~or~~ gross abuse of authority; or discretion with respect to the limited liability company or a final judgment has been entered finding ~~that~~ the governor ~~has~~ violated section ~~10-33-86~~ 10-32-86; and

SECTION 99. AMENDMENT. Subsection 1 of section 10-32-79 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Unless different rules for filling vacancies are provided for in the articles, a member-control agreement, or ~~operating agreement~~ the bylaws:
 - 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.

SECTION 100. AMENDMENT. Section 10-32-80 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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, a member-control agreement, or ~~operating agreement~~ the bylaws 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 articles, ~~operating agreement~~ bylaws, or board of governors fails to select a place for a meeting, the meeting must be held at the principal executive office, unless the articles, a member-control agreement, or ~~operating agreement~~ the bylaws 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 is a quorum. Participation in a meeting by this means constitutes personal presence 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 this means constitutes personal presence at the meeting.

3. Unless the articles of organization, a member-control agreement, or ~~operating agreement~~ the bylaws provide for a different time period, a governor may call a board meeting by giving at least ten days' notice or, in the case of organizational meetings under subsection 2 of section 10-32-67, at least three 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, a member-control agreement, or ~~operating agreement~~ the bylaws otherwise require it.

4. If the date, time, and place of a board of governors meeting ~~have been~~ are provided in the articles or ~~operating agreement~~ bylaws, or announced at a previous meeting of the board of governors, ~~no~~ notice is not 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.

SECTION 101. AMENDMENT. Section 10-32-81 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-81. Absent governors. If the articles of organization, a member-control agreement, or ~~operating agreement~~ the bylaws 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 the vote of a governor present at the meeting 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.

SECTION 102. AMENDMENT. Section 10-32-82 of the North Dakota Century Code is amended and reenacted as follows:

10-32-82. Quorum. A majority, or a larger or smaller proportion or number provided in the articles of organization, a member-control agreement, or ~~operating agreement~~ the bylaws, 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.

SECTION 103. AMENDMENT. Section 10-32-83 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-83. Act of the board of governors. The board of governors shall take action by the affirmative vote of the greater of a majority of governors present at a duly held meeting at the time the action is taken or a majority of the minimum proportion or number of governors that would constitute a quorum for the transaction of business at a meeting, except ~~where~~ if this

chapter, a member-control agreement, or the articles require the affirmative vote of a larger proportion or number. If a member-control agreement or the articles require a larger proportion or number than is required by this chapter for a particular action, the member-control agreement or the articles control.

SECTION 104. AMENDMENT. Subsection 1 of section 10-32-84 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 or a member-control agreement so provide, any action, other than an action requiring member approval, may be taken by written action signed by the number of governors ~~that~~ which would be required to take the same action at a meeting of the board of governors at which all governors were present.

SECTION 105. AMENDMENT. Subsection 2 of section 10-32-85 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Committee members must be individuals. Unless the articles, a member-control agreement, or ~~operating agreement~~ the bylaws provide for a different membership or manner of appointment, a committee consists of one or more ~~persons~~ individuals, who need not be governors, appointed by the board.

SECTION 106. AMENDMENT. Section 10-32-86 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-86. Standard of conduct for governors.

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 from voting on the action by the articles; by the ~~operating agreement~~ bylaws; as the result of the decision to approve, ratify, or authorize a transaction pursuant to section 10-32-87; or by a conflict of interest policy adopted by the board.
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 or a member-control agreement. ~~The Neither the articles nor a member-control agreement 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.

SECTION 107. AMENDMENT. Subdivision b of subsection 2 of section 10-32-87 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- b. The material facts as to the contract or transaction and as to the ~~manager's~~ governor's interest are fully disclosed or known to the members and the contract or transaction is approved in good faith by:

- (1) The owners of two-thirds of the voting power of membership interests entitled to vote ~~that~~ which are owned by persons other than the interested governor; or

- (2) The unanimous affirmative vote of all members, whether or not entitled to vote;

SECTION 108. AMENDMENT. Section 10-32-88 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-88. Managers. A limited liability company must consist of one or more individuals eighteen years of age or more, ~~and~~ exercising the functions of the offices, however designated, of president and treasurer and may have one or more vice presidents and a

1 secretary, as may be provided in the ~~operating agreement~~ bylaws. Any other managers,
2 assistant managers, and agents, as necessary, may be elected or appointed by the board of
3 governors or chosen in such other manner as may be provided in the ~~operating agreement~~
4 bylaws.

5 **SECTION 109. AMENDMENT.** Section 10-32-89 of the 1997 Supplement to the North
6 Dakota Century Code is amended and reenacted as follows:

7 **10-32-89. Duties of managers and agents.** Unless otherwise provided by the articles
8 of organization, a member-control agreement, ~~operating agreement~~ the bylaws, or a resolution
9 adopted by the board of governors ~~and which is~~ not inconsistent with the articles, a
10 member-control agreement, or ~~operating agreement, provides otherwise~~ the bylaws, the
11 managers ~~shall~~ have the following duties:

12 1. The president shall:

- 13 a. Have general active management for the business of the limited liability
14 company;
15 b. When present, preside at all meetings of the board of governors and of the
16 members;
17 c. See that all orders and resolutions of the board of governors are carried into
18 effect;
19 d. Sign and deliver in the name of the limited liability company any deeds,
20 mortgages, bonds, contracts, or other instruments pertaining to the business
21 of the limited liability company, ~~except in cases in which~~ if the authority to sign
22 and deliver is required by law to be exercised by another person or is
23 expressly delegated by the articles ~~or operating agreement, the bylaws~~, or the
24 board of governors to some other manager or agent of the limited liability
25 company;
26 e. Maintain records of and, whenever necessary, certify all proceedings of the
27 board of governors and members; and
28 f. Perform other duties prescribed by the board of governors.

29 2. The vice president, if any, or if there is more than one, the vice presidents in the
30 order determined by the board of governors shall:

- 1 a. In the absence or disability of the president, perform the duties and exercise
- 2 the powers of the president; and
- 3 b. Perform other duties and have other powers as the board of governors may
- 4 from time to time prescribe.
- 5 3. The treasurer shall:
- 6 a. Keep accurate financial records for the limited liability company;
- 7 b. Deposit all money, drafts, and checks in the name of and to the credit of the
- 8 limited liability company in the banks and depositories designated by the
- 9 board of governors;
- 10 c. Endorse for deposit all notes, checks, and drafts received by the limited
- 11 liability company as ordered by the board of governors, making proper
- 12 vouchers for them;
- 13 d. Disburse limited liability company funds and issue checks and drafts in the
- 14 name of the limited liability company, as ordered by the board of governors;
- 15 e. Give to the president and the board of governors, whenever requested, an
- 16 account of all transactions by the treasurer and of the financial condition of the
- 17 limited liability company; and
- 18 f. Perform other duties prescribed by the board of governors or by the president.
- 19 4. The secretary, if any, shall:
- 20 a. Attend all meetings of the board of governors, all meetings of the members,
- 21 and, when required, all meetings of standing committees;
- 22 b. Record all proceedings of the meetings;
- 23 c. Give, or cause to be given, notice of all meetings of the members and
- 24 meetings of the board of governors; and
- 25 d. Perform other duties prescribed by the board of governors.
- 26 5. Any other managers and agents of the limited liability company, as between
- 27 ~~themselves~~ the managers and agents and the limited liability company, ~~have the~~
- 28 ~~authority and~~ shall perform the duties in the management of the limited liability
- 29 company as may be provided in the articles, a member-control agreement, or the
- 30 ~~operating agreement~~ bylaws, or as may be determined by resolution of the board

not inconsistent with the articles, a member control agreement, or the ~~operating agreement~~ bylaws.

SECTION 110. AMENDMENT. Section 10-32-94 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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. Except as otherwise provided in the articles or ~~operating agreement~~ bylaws, 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. The removal is without prejudice to any contractual rights of the officer.
3. A vacancy in an office because of death, resignation, removal, disqualification, or other cause, may, or in the case of the president or treasurer, must be filled for the unexpired portion of the term in the manner provided in the articles, a member-control agreement, or ~~operating agreement~~, or the bylaws; in the manner determined by the board of governors; or pursuant to section 10-32-92.

SECTION 111. AMENDMENT. Section 10-32-95 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-95. Delegation. Unless prohibited by the articles ~~or operating agreement~~, a member-control agreement, the bylaws, or by a resolution adopted by the board of governors, 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 individuals. 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.

SECTION 112. AMENDMENT. Section 10-32-99 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-99. Indemnification.

1. For purposes of this section:

- 1 a. "Limited liability company" includes a domestic or foreign limited liability
2 company that was the predecessor of the limited liability company referred to
3 in this section in a merger or other transaction in which the predecessor's
4 existence ceased upon consummation of the transaction.
- 5 b. "Official capacity" means:
- 6 (1) With respect to a governor, the position of governor in a limited liability
7 company;
- 8 (2) With respect to a person other than a governor, the elective or
9 appointive office or position held by a manager, member of a committee
10 of the board of governors, the employment relationship undertaken by
11 an employee, agent of the limited liability company, or the scope of the
12 services provided by members of the limited liability company who
13 provide services to the limited liability company; and
- 14 (3) With respect to a governor, manager, member, employee, or agent of
15 the limited liability company who, while a governor, manager, member,
16 or employee of the limited liability company, is or was serving at the
17 request of the limited liability company or whose duties in that position
18 involve or involved service as a governor, director, manager, officer,
19 member, partner, trustee, employee, or agent of another organization or
20 employee benefit plan, the position of that person as a governor,
21 director, manager, officer, member, partner, trustee, employee, or
22 agent, as the case may be, of the other organization or employee
23 benefit plan.
- 24 c. "Proceeding" means a threatened, pending, or completed civil, criminal,
25 administrative, arbitration, or investigative proceeding, including a proceeding
26 by or in the right of the limited liability company.
- 27 d. "Special legal counsel" means counsel who has not represented the limited
28 liability company or a related organization, or a governor, manager, member
29 of a committee of the board of governors, employee, or agent whose
30 indemnification is in issue.

- 1 2. Subject to the provisions of subsection 5, a limited liability company shall indemnify
2 a person made or threatened to be made a party to a proceeding by reason of the
3 former or present official capacity of the person against judgments, penalties, fines,
4 including, without limitation, excise taxes assessed against the person with respect
5 to an employee benefit plan, settlements, and reasonable expenses, including
6 attorney's fees and disbursements, incurred by the person in connection with the
7 proceeding, if, with respect to the acts or omissions of the person complained of in
8 the proceeding, the person:
- 9 a. Has not been indemnified by another organization or employee benefit plan
10 for the same judgments, penalties, fines, including, without limitation, excise
11 taxes assessed against the person with respect to an employee benefit plan,
12 settlements, and reasonable expenses, including attorney's fees and
13 disbursements, incurred by the person in connection with the proceeding with
14 respect to the same acts or omissions;
- 15 b. Acted in good faith;
- 16 c. Received no improper personal benefit and section 10-32-87, if applicable,
17 has been satisfied;
- 18 d. In the case of a criminal proceeding, had no reasonable cause to believe the
19 conduct was unlawful; and
- 20 e. In the case of acts or omissions occurring in the official capacity described in
21 paragraph 1 or 2 of subdivision b of subsection 1, reasonably believed that
22 the conduct was in the best interests of the limited liability company, or in the
23 case of acts or omissions occurring in the official capacity described in
24 paragraph 3 of subdivision b of subsection 1, reasonably believed that the
25 conduct was not opposed to the best interests of the limited liability company.
26 If the person's acts or omissions complained of in the proceeding relate to
27 conduct as a director, officer, trustee, employee, or agent of an employee
28 benefit plan, the conduct is not considered to be opposed to the best interests
29 of the limited liability company if the person reasonably believed that the
30 conduct was in the best interests of the participants or beneficiaries of the
31 employee benefit plan.

- 1 3. The termination of a proceeding by judgment, order, settlement, conviction, or
2 upon a plea of nolo contendere or its equivalent does not, of itself, establish that
3 the person did not meet the criteria set forth in subsection 2.
- 4 4. Subject to the provisions of subsection 5, if a person is made or threatened to be
5 made a party to a proceeding, the person is entitled, upon written request to the
6 limited liability company, to payment or reimbursement by the limited liability
7 company of reasonable expenses, including attorney's fees and disbursements,
8 incurred by the person in advance of the final disposition of the proceeding:
- 9 a. Upon receipt by the limited liability company of a written affirmation by the
10 person of a good faith belief that the criteria for indemnification set forth in
11 subsection 2 have been satisfied and a written undertaking by the person to
12 repay all amounts so paid or reimbursed by the limited liability company, if it is
13 ultimately determined that the criteria for indemnification have not been
14 satisfied; and
- 15 b. After a determination that the facts then known to those making the
16 determination would not preclude indemnification under this section.
- 17 The written undertaking required by subdivision a is an unlimited general obligation
18 of the person making it, but need not be secured and must be accepted without
19 reference to financial ability to make the repayment.
- 20 5. The articles of organization, a member-control agreement, or ~~operating agreement~~
21 ~~either the~~ bylaws may prohibit indemnification or advances of expenses otherwise
22 required by this section or may impose conditions on indemnification or advances
23 of expenses in addition to the conditions contained in subsections 2 through 4
24 including, without limitation, monetary limits on indemnification or advances of
25 expenses, if the conditions apply equally to all persons or to all persons within a
26 given class. A prohibition or limit on indemnification or advances may not apply to
27 or affect the right of a person to indemnification or advances of expenses with
28 respect to any acts or omissions of the person occurring before the effective date
29 of a provision in the articles of organization, or a member-control agreement, or the
30 date of adoption of a provision in the ~~operating agreement~~ bylaws establishing the
31 prohibition or limit on indemnification or advances.

- 1 6. This section does not require, or limit the ability of, a limited liability company to
2 reimburse expenses, including attorney's fees and disbursements, incurred by a
3 person in connection with an appearance as a witness in a proceeding at a time
4 when the person has not been made or threatened to be made a party to a
5 proceeding.
- 6 7. All indemnification determinations must be made:
- 7 a. By the board of governors by a majority of a quorum. Governors who are, at
8 the time, parties to the proceeding are not counted for determining either a
9 majority or the presence of a quorum;
- 10 b. If a quorum under subdivision a cannot be obtained, by a majority of a
11 committee of the board of governors, consisting solely of two or more
12 governors not at the time parties to the proceeding, duly designated to act in
13 the matter by a majority of the full board of governors including governors who
14 are parties;
- 15 c. If a determination is not made under subdivision a or b, by special legal
16 counsel, selected either by a majority of the board of governors or a
17 committee by vote pursuant to subdivision a or b or, if the requisite quorum of
18 the full board of governors cannot be obtained and the committee cannot be
19 established, by a majority of the full board of governors including governors
20 who are parties;
- 21 d. If a determination is not made under subdivisions a through c, by the
22 members, other than the members who are a party to the proceeding; or
- 23 e. If an adverse determination is made under subdivisions a through d or under
24 subsection 8, or if no determination is made under subdivisions a through d or
25 under subsection 8 within sixty days after the later to occur of the termination
26 of a proceeding; or a written request for indemnification to the limited liability
27 company; or a written request for an advance of expenses, as the case may
28 be, by a court in this state, which may be the same court in which the
29 proceeding involving the person's liability took place, upon application of the
30 person and any notice the court requires. The person seeking indemnification
31 or payment or reimbursement of expenses pursuant to this clause has the

burden of establishing that the person is entitled to indemnification or payment or reimbursement of expenses.

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~~ This section may be construed to does not limit the power of the limited liability company to indemnify ~~other persons~~ other than a governor, a manager, a member, an employee, or a member of a committee of the board, by contract or otherwise.

1 **SECTION 113. AMENDMENT.** Section 10-32-100 of the 1997 Supplement to the
2 North Dakota Century Code is amended and reenacted as follows:

3 **10-32-100. Merger - Exchange - Transfer.**

- 4 1. With or without a business purpose, a limited liability company may merge:
- 5 a. With another limited liability company ~~or a domestic corporation~~ pursuant to a
6 plan of merger approved in the manner provided in sections 10-32-101
7 through 10-32-106; ~~and~~
- 8 b. With a domestic corporation under a plan of merger approved in the manner
9 provided in sections 10-32-101 through 10-32-107 and in chapter 10-19.1.
- 10 c. With any foreign corporation or foreign limited liability company pursuant to a
11 plan of merger approved in the manner provided in section 10-32-107.
- 12 2. With respect to an exchange:
- 13 a. A limited liability company may acquire all of the ownership interests of one or
14 more classes or series of another limited liability company ~~or domestic~~
15 ~~corporation~~ pursuant to a plan of exchange approved in the manner provided
16 in sections 10-32-101 through 10-32-106.
- 17 b. A limited liability company may acquire all of the ownership interests of one or
18 more classes or series of a domestic corporation pursuant to a plan of
19 exchange approved in the manner provided in sections 10-32-101 through
20 10-32-107 and in chapter 10-19.1.
- 21 c. A domestic corporation may acquire all of the ownership interests of one or
22 more classes or series of a limited liability company pursuant to a plan of
23 exchange approved in the manner provided in sections 10-32-101 through
24 10-32-106 and in chapter 10-19.1.
- 25 e. d. A foreign corporation or foreign limited liability company may acquire all of
26 the ownership interests of one or more classes or series of a limited liability
27 company pursuant to a plan of exchange approved in the manner provided in
28 section 10-32-107.
- 29 3. A limited liability company may sell, lease, transfer, or otherwise dispose of all or
30 substantially all of ~~its~~ the limited liability company's property and assets in the
31 manner provided in section 10-32-108.

- 1 4. A limited liability company may participate in a merger only as permitted by this
2 section.

3 **SECTION 114. AMENDMENT.** Subdivision b of subsection 1 of section 10-32-101 of
4 the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 5 b. The terms and conditions of the proposed merger or exchange;

6 **SECTION 115. AMENDMENT.** Section 10-32-102 of the 1997 Supplement to the
7 North Dakota Century Code is amended and reenacted as follows:

8 **10-32-102. Plan approval.**

- 9 1. A resolution containing the plan of merger or exchange must be approved by the
10 ~~affirmative vote of a majority of the governing board members present at a meeting~~
11 ~~of the governing board~~ as required by section 10-19.1-46 or 10-32-83 of each
12 constituent organization and must then be submitted at a regular or special
13 meeting to the owners of each constituent organization in the case of a plan of
14 merger; and the constituent organization whose ownership interests will be
15 acquired by the acquiring constituent organization in the exchange, in the case of
16 an exchange. ~~Written~~ If owners owning any class or series of ownership interests
17 in a constituent organization are entitled to vote on the plan of merger or exchange
18 pursuant to this subsection, written notice must be given to every owner of that
19 constituent organization, whether or not entitled to vote at the meeting, not less
20 than fourteen days nor more than sixty days before the meeting, in the manner
21 provided in section ~~10-19.1-98~~ 10-19.1-73 for notice of meetings of shareholders in
22 the case of a domestic corporation and in the manner provided in section 10-32-40
23 for notice of meetings of members in the case of a limited liability company. The
24 written notice must state that a purpose of the meeting is to consider the proposed
25 plan of merger or exchange. A copy or short description of the plan of merger or
26 exchange must be included in or enclosed with the notice.
- 27 2. At the meeting a vote of the owners must be taken on the proposed plan. The plan
28 of merger is adopted when approved by the affirmative vote of the owners ~~of a~~
29 ~~majority of the voting power of all ownership interests entitled to vote~~ as required
30 by section 10-19.1-74 or 10-32-42. Except as provided in subsection 3, a class or
31 series of ownership interests of the constituent organization is entitled to vote as a

1 class or series if any provision of the plan would, if contained in a proposed
2 amendment to the articles of organization or ~~articles of incorporation~~, as the case
3 ~~may be~~ a member-control agreement, entitle the class or series of ownership
4 interests to vote as a class or series and, in the case of an exchange, if the class or
5 series is included in the exchange.

6 3. A class or series of ownership interests of the constituent organization is not
7 entitled to vote as a class or series solely because the plan of merger effects a
8 cancellation of the ownership interests of the class or series if the plan of merger
9 effects a cancellation of all ownership interests of the constituent organization of all
10 classes and series that are existing immediately before the merger and owners of
11 ownership interests of that class or series are entitled to obtain payment for the fair
12 value of their ownership interests under section 10-19.1-87 or 10-32-55, as the
13 case may be, in the event of the merger.

14 4. Notwithstanding subsections 1 and 2, submission of a plan of merger to a vote at a
15 meeting of ~~shareholders~~ owners of a surviving ~~corporation~~ constituent organization
16 is not required if:

- 17 a. The articles ~~of the corporation~~ will not be amended in the transaction;
- 18 b. Each ~~holder~~ owner of ~~shares of the corporation that~~ ownership interests in the
19 constituent organization which were outstanding immediately before the
20 effective time of the transaction will hold the same number of ~~shares~~
21 ownership interests with identical rights immediately after that time;
- 22 c. The voting power of the outstanding ~~shares~~ ownership interests of the
23 ~~corporation~~ constituent organization entitled to vote immediately after the
24 merger, plus the voting power of the outstanding ~~shares~~ ownership interests
25 of the ~~corporation~~ constituent organization entitled to vote issuable on
26 conversion of or on the exercise of rights to purchase securities issued in the
27 transaction, will not exceed by more than twenty percent, the voting power of
28 the outstanding ~~shares~~ ownership interests of the ~~corporation~~ constituent
29 organization entitled to vote immediately before the transaction; and
- 30 d. The number of participating ~~shares~~ ownership interests of the ~~corporation~~
31 constituent organization immediately after the merger, plus the number of

1 participating ~~shares ownership interests~~ of the ~~corporation~~ constituent
2 organization issuable on conversion, or on the exercise of rights to purchase,
3 securities issued in the transaction, will not exceed by more than twenty
4 percent, the number of participating ~~shares ownership interests~~ of the
5 ~~corporation~~ constituent organization immediately before the transaction.
6 "Participating ~~shares ownership interests~~" are outstanding ~~shares ownership~~
7 interests of the corporation that constituent organization which entitle their
8 holders the ownership interests owners to participate without limitation in
9 distributions by the ~~corporation~~ constituent organization.

10 5. If the merger or exchange is with a domestic corporation, the plan of merger or
11 exchange must also be approved in the manner provided in chapter 10-19.1.

12 **SECTION 116. AMENDMENT.** Subsection 1 of section 10-32-103 of the 1997
13 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14 1. Upon receiving the approval required by section 10-32-102, articles of merger must
15 be prepared ~~that~~ which contain:

16 a. The plan of merger; and

17 b. ~~For each constituent organization either:~~

18 (1) A statement that the plan has been approved by ~~a vote of the~~
19 ~~shareholders pursuant to subsection 2 of section 10-19.1-98 or the~~
20 ~~members~~ each constituent organization pursuant to subsection 2 or 3
21 of section 10-32-102; chapter 10-19.1 or this chapter.

22 (2) ~~A statement that a vote of the shareholders is not required by virtue of~~
23 ~~subsection 3 of section 10-19.1-98 or that a vote of the members is not~~
24 ~~required by virtue of subsection 4 of section 10-32-102.~~

25 **SECTION 117. AMENDMENT.** Section 10-32-104 of the 1997 Supplement to the
26 North Dakota Century Code is amended and reenacted as follows:

27 **10-32-104. Merger of subsidiary into parent.**

28 1. A parent owning at least ninety percent of the outstanding ownership interests of
29 each class and series of a subsidiary directly, or indirectly through related
30 corporations or limited liability companies:

- 1 a. May merge the subsidiary into ~~itself the parent~~; or may merge the subsidiary
2 into any other subsidiary at least ninety percent of the outstanding ownership
3 interest of each class and series of which is owned by the parent directly, or
4 indirectly through related corporations or limited liability companies, without a
5 vote of the owners of ~~itself the parent~~ or any subsidiary; or
6 b. May merge ~~itself the parent~~, or ~~itself the parent~~ and one or more subsidiaries,
7 into one of the subsidiaries under this section.
- 8 2. A resolution approved by the ~~affirmative vote of a majority of the directors of the~~
9 parent as required by section 10-19.1-46 or by the governors of the parent present
10 as required by section 10-32-83 must set forth a plan of merger ~~that~~ which
11 contains:
12 a. The name of the subsidiary or subsidiaries, the name of the parent, and the
13 name of the surviving constituent organization;
14 b. The manner and basis of converting the ownership interests of the subsidiary
15 into ownership interests of the parent or of another organization or, in whole
16 or in part, into money or other property;
17 c. If the parent is a constituent organization but is not the surviving constituent
18 organization in the merger, a provision for the pro rata issuance of ownership
19 interests of the surviving constituent organization to the owners of ownership
20 interests of the parent ~~for~~ on surrender of any ownership interests of the
21 parent; and
22 d. If the surviving constituent organization is a subsidiary, a statement of any
23 amendments to the articles of the surviving constituent organization that will
24 be part of the merger.
- 25 3. If the parent is a constituent organization but is not the surviving constituent
26 organization in a merger, the resolution is not effective unless it the resolution is
27 also approved by the affirmative vote of the holders of a majority of the voting
28 power of all ownership interests of the parent entitled to vote at a regular or special
29 meeting held in accordance with section 10-19.1-98 if the parent is a corporation,
30 section 10-32-102 if the parent is a limited liability company, or in accordance with

the laws of the jurisdiction under which ~~it~~ the parent is incorporated or organized if the parent is a foreign corporation or foreign limited liability company.

4. A copy of the plan of merger must be mailed to each owner, other than the parent, of each subsidiary that is a constituent organization to the merger.

5. Articles of merger must be prepared ~~that~~ which contain:

a. The plan of merger;

b. The number of outstanding ownership interests of each class and series of

~~each~~ the subsidiary that is a constituent organization and the number of

ownership interests of each class and series owned by the parent directly or indirectly, through related constituent organizations;

c. The date a copy of the plan of merger was mailed to the owners, other than the parent, of each subsidiary that is a constituent organization in the merger; and

d. A statement that the plan of merger has been approved by the parent under this section.

6. Within thirty days after a copy of the plan of merger is mailed to the owners of each subsidiary that is a constituent organization to the merger, or upon waiver of the mailing by the owners of all outstanding ownership interests of each subsidiary that is a constituent organization to the merger, 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.

7. The secretary of state shall issue a certificate of merger to the ~~parent~~ surviving constituent organization in the merger or ~~its~~ the surviving constituent organization's legal representative. The certificate must contain the effective date of merger.

8. If all of the ownership interests of one or more domestic subsidiaries that are a constituent organization to a merger under this section are not owned by the parent directly, or indirectly through related constituent organizations, immediately before the merger, the owners of each domestic subsidiary have dissenter's rights under section 10-19.1-87 or under section 10-32-54, without regard to subsection 3 of section ~~10-19.1-87 and section~~ 10-19.1-88 or to subsection 2 of section 10-32-54 ~~or section 10-22-55~~. If the parent is a constituent organization but is not the

surviving constituent organization in the merger, and the articles of incorporation or articles of organization of the surviving constituent organization immediately after the merger differ from the articles of incorporation or articles of organization of the parent immediately before the merger in a manner that would entitle an owner of the parent to dissenter's rights under subsection 1 of section 10-19.1-87 or under subdivision a of subsection 1 of section 10-32-54 if the articles of incorporation or articles of organization of the surviving constituent organization constitute an amendment to the articles of incorporation or articles of organization of the parent, that owner of the parent has dissenter's rights as provided under ~~sections~~ section 10-19.1-87 ~~and 10-19.1-88~~ or under ~~sections~~ section 10-32-54 ~~and 10-32-55~~.

Except as provided in this subsection, sections 10-19.1-87 and ~~10-19.1-88~~ and ~~sections~~ 10-32-54 ~~and 10-32-55~~ do not apply to any merger affected under this section.

9. A merger among a parent and one or more subsidiaries or among two or more subsidiaries of a parent may be accomplished under sections 10-32-101 through 10-32-103 instead of this section, in which case this section does not apply.

SECTION 118. AMENDMENT. Section 10-32-105 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-105. Abandonment of plan of merger.

1. After a plan of merger ~~has been~~ is 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~~ the plan of merger may be abandoned:

a. With respect to approval of the abandonment:

- (1) 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,~~ owners as required by section 10-19.1-74 or 10-32-42;

- (2) ~~if~~ 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

- 1 of that constituent organization has approved the abandonment by ~~the~~
2 ~~affirmative vote of a majority of the board members present as required~~
3 ~~by section 10-19.1-46 or 10-32-83; and~~
- 4 (3) If the merger or exchange is with a foreign corporation or foreign limited
5 liability company, if abandonment is approved in the manner required
6 by the laws of the jurisdiction under which the corporation is
7 incorporated or the limited liability company is organized;
- 8 b. If the plan itself provides for abandonment and all conditions for abandonment
9 set forth in the plan are met; or
- 10 c. Pursuant to subsection 2.
- 11 2. If articles of merger have not been filed with the secretary of state and the plan is
12 to be abandoned, or if a plan of exchange is to be abandoned before the effective
13 date of the plan, a resolution by the governing board of any constituent
14 organization abandoning the plan of merger or exchange may be approved by the
15 ~~affirmative vote of a majority of the board members present; as required by section~~
16 10-19.1-46 or 10-32-83 subject to the contract rights of any other person under the
17 plan.
- 18 3. If articles of merger have been filed with the secretary of state, but have not yet
19 become effective, the constituent organizations, in the case of abandonment under
20 subdivision a of subsection 1, the constituent organizations or any one ~~of them~~
21 constituent organization, in the case of abandonment under subdivision b of
22 subsection 1, or the abandoning constituent organization in the case of
23 abandonment under subsection 2, shall file with the secretary of state together with
24 the fees provided in section 10-32-150, articles of abandonment that contain:
- 25 a. The names of the constituent organizations;
- 26 b. The provision of this section under which the plan is abandoned; and
- 27 c. ~~If the plan is abandoned under subsection 2, the~~ The text of the resolution
28 ~~approved by the affirmative vote of a majority of the board members present~~
29 abandoning the plan.
- 30 4. If the certificate of merger has been issued, the governing board shall surrender
31 the certificate to the secretary of state upon filing the articles of abandonment.

1 **SECTION 119. AMENDMENT.** Subdivision a of subsection 2 of section 10-32-106 of
2 the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 3 a. The constituent organizations become a single ~~constituent organization entity,~~
4 the surviving ~~constituent organization~~ corporation, or surviving limited liability
5 company;

6 **SECTION 120. AMENDMENT.** Section 10-32-107 of the 1997 Supplement to the
7 North Dakota Century Code is amended and reenacted as follows:

8 **10-32-107. Merger or exchange with foreign limited liability company or foreign**
9 **corporation.**

- 10 1. A limited liability company may merge with or participate in an exchange with a
11 foreign corporation or a foreign limited liability company by following the
12 procedures set forth in this section, if:
- 13 a. With respect to a merger, the merger is permitted by the laws of the ~~state~~
14 jurisdiction under which the foreign corporation or foreign limited liability
15 company is incorporated or organized; and
- 16 b. With respect to an exchange, the constituent organization ~~whose~~ of which the
17 ownership interests will be acquired is ~~either~~ a limited liability company or a
18 domestic corporation, regardless of whether ~~or not~~ the exchange is permitted
19 by the laws of the ~~state~~ jurisdiction under which the foreign corporation or
20 foreign limited liability company is incorporated or organized.
- 21 2. Each limited liability company shall comply with the provisions of this section and
22 sections 10-32-100 through 10-32-106 with respect to the merger or exchange of
23 ownership interests of organizations and each foreign corporation or foreign limited
24 liability company shall comply with the applicable provisions of the laws of the
25 jurisdiction under which ~~it was~~ the foreign corporation or foreign limited liability
26 company is incorporated or organized or by under which ~~it~~ the foreign corporation
27 or foreign liability company is governed.
- 28 3. If the surviving organization in a merger will be a domestic limited liability company,
29 ~~it~~ the surviving organization shall comply with all the provisions of this chapter.
- 30 4. If the surviving organization in a merger will be a foreign corporation or foreign
31 limited liability company and will transact business in this state, ~~it~~ the surviving

organization shall comply, as the case may be, with the provisions of chapter ~~40-22~~ 10-19.1 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~~ the surviving organization 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~~ the surviving organization's agent to accept service of process in any proceeding, and an address to which process may be forwarded; and
- c. An agreement that ~~it~~ the surviving organization promptly will ~~promptly~~ pay to the dissenting owners of ownership interests of each constituent domestic limited liability company and constituent domestic corporation the amount, if any, to which ~~they~~ the dissenting owners are entitled under section 10-19.1-88 or 10-32-55, ~~as the case may be.~~

SECTION 121. AMENDMENT. Section 10-32-109 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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;
 - e. For a limited liability company with articles of organization filed with the secretary of state:

- (1) ~~Except~~ Before July 1, 1999, except as provided in subsection 2 and
except as otherwise provided in the articles of organization or a
member-control agreement, upon the occurrence of an event that
terminates the continued membership of a member in the limited liability
company, including:
- (1) ~~(a)~~ (a) Death of any member;
 - (2) ~~(b)~~ (b) Retirement of any member;
 - (3) ~~(c)~~ (c) Resignation of any member;
 - (4) ~~(d)~~ (d) Redemption of a member's complete membership interest;
 - (5) ~~(e)~~ (e) Assignment of a member's governance rights under section
10-32-32 which leaves the assignor with no governance rights;
 - (6) ~~(f)~~ (f) A buyout of a member's membership interest under section
10-32-119 ~~that~~ which leaves that member with no governance
rights;
 - (7) ~~(g)~~ (g) Expulsion of any member;
 - (8) ~~(h)~~ (h) Bankruptcy of any member;
 - (9) ~~(i)~~ (i) Dissolution of any member; or
 - (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) ~~(j)~~ (j) The occurrence of any other event that terminates the continued
membership of a member in the limited liability company, ~~but 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:~~
 - ~~(a)~~ (a) ~~Either there are at least two remaining members or a new
member is admitted as provided in section 10-32-06; and~~
 - ~~(b)~~ (b) ~~The existence and business of the limited liability company is
continued either by the consent of all remaining members under
a right to consent stated in the articles of organization and the~~

~~consent is obtained no later than ninety days after the termination
of the continued membership, or under a separate right to
continue stated in the articles of organization; or~~

(2) After June 30, 1999, upon the occurrence of an event terminating the
continued membership of a member in the limited liability company:

(a) If the articles of organization or a member-control agreement
specifically provide that the termination causes dissolution; or

(b) If the membership of the last or sole member terminates and the
legal representative of that last or sole member does not cause
the limited liability company to admit at least one member within
one hundred eighty days after the termination;

f. A merger in which the limited liability company is not the surviving
organization; or

g. When terminated by the secretary of state pursuant to section 10-32-149.

2. For a limited liability company with articles of organization filed with the secretary
of state before July 1, 1999, the limited liability company is not dissolved and is not
required to be wound up by reason of any event terminating the continued
membership of a member:

a. If there is at least one remaining member and the existence and business of
the limited liability company is continued by the consent of every remaining
member obtained no later than ninety days after the termination of the
continued membership, or under a separate right to continue stated in the
articles of organization or a member-control agreement; or

b. If the membership of the last or sole member terminates and the legal
representative of that last or sole member causes the limited liability company
to admit at least one member within one hundred eighty days after the
termination.

3. 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:

- 1 a. When a limited liability company is dissolved under subdivision a of
2 subsection 1 by reason of the expiration of ~~its~~ the limited liability company's
3 limited period of duration, the limited liability company must be wound up and
4 terminated under sections 10-32-112 through 10-32-115 and sections
5 10-32-117, 10-32-118, and 10-32-131;
- 6 b. When a limited liability company is dissolved under subdivision b of
7 subsection 1 by reason of a court order, the limited liability company must be
8 wound up and terminated under sections 10-32-119 through 10-32-126;
- 9 c. When a limited liability company is dissolved under subdivision c of
10 subsection 1 by its organizers, the limited liability company must be wound up
11 and terminated under section 10-32-110 and sections 10-32-112 through
12 10-32-118;
- 13 d. When a limited liability company is dissolved under subdivision d of
14 subsection 1 by its members, the limited liability company must be wound up
15 and terminated under sections 10-32-111 through 10-32-118 and section
16 10-32-131; and
- 17 e. When a limited liability company is dissolved under subdivision e of
18 subsection 1 by reason of a termination of the continued membership of a
19 member, the limited liability company must be wound up and terminated
20 under sections 10-32-112 through 10-32-115 and sections 10-32-117,
21 10-32-118, and 10-32-131.

22 ~~3.~~ 4. Notwithstanding any provision of law, articles of organization, member-control
23 agreement, ~~operating agreement~~ bylaws, other agreement, resolution, or action to
24 the contrary, a limited liability company is not dissolved and is not required to be
25 wound up upon the granting of a security interest in a member's membership
26 interest, governance rights, or financial rights, or upon the foreclosure or other
27 enforcement of a security interest in a member's financial rights; or upon the
28 secured party's assignment, acceptance, or retention of a member's financial rights
29 in accordance with title 41.

30 **SECTION 122. AMENDMENT.** Paragraph 1 of subdivision b of subsection 1 of section
31 10-32-112 of the North Dakota Century Code is amended and reenacted as follows:

- (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~~

SECTION 123. AMENDMENT. Subdivision b of subsection 3 of section 10-32-113 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- b. ~~Subject to any business continuation agreement, to~~ 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

SECTION 124. AMENDMENT. Section 10-32-114 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-114. Winding-up procedure for limited liability companies that give notice to creditors and claimants. ~~When~~ If a notice of dissolution ~~has been~~ is 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.

1. If notice to creditors and claimants is given, ~~it~~ the notice 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 ~~32~~ 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;

- 1 d. The address of the office to which written claims against the limited liability
2 company must be presented; and
- 3 e. The date by which all claims must be received; which must be the later of
4 ninety days after published notice or, with respect to a particular known
5 creditor or claimant, ninety days after the date on which written notice was
6 given to that creditor or claimant. Published notice is considered given on the
7 date of first publication for the purpose of determining this date.

8 3. ~~If the business of the limited liability company is being continued under a business~~
9 ~~continuation agreement, the notice to creditors may also contain all of the~~
10 ~~following:~~

- 11 a. ~~A statement that the business of the dissolved limited liability company is~~
12 ~~being continued by a successor organization;~~
- 13 b. ~~The name and address of the successor organization;~~
- 14 c. ~~An undertaking by the successor organization to assume all the liabilities of~~
15 ~~the dissolved limited liability company; and~~
- 16 d. ~~A statement that creditors of the dissolved limited liability company do not~~
17 ~~need to file claims against the limited liability company in order to preserve~~
18 ~~their rights to enforce those claims against the successor organization.~~

19 ~~Neither the existence of a business continuation agreement nor the giving of the~~
20 ~~information described in this subsection affects a creditor's or claimant's right to~~
21 ~~proceed against the dissolved limited liability company.~~

22 4. With respect to a limited liability company that gives notice to creditors and
23 claimants:

- 24 a. The limited liability company has thirty days from the receipt of each claim
25 filed according to the procedures set forth by the limited liability company on
26 or before the date set forth in the notice to accept or reject the claim by giving
27 written notice to the person submitting it the notice to accept or reject. A
28 claim not expressly rejected in this manner is considered accepted.
- 29 b. A creditor or claimant to whom notice is given and whose claim is rejected by
30 the limited liability company has sixty days from the date of rejection; or one
31 hundred eighty days from the date the limited liability company filed with the

1 secretary of state the notice of dissolution, whichever is longer, to pursue any
2 other remedies with respect to the claim.

3 c. A creditor or claimant to whom notice is given who fails to file a claim
4 according to the procedures set forth by the limited liability company on or
5 before the date set forth in the notice is barred from suing the dissolved
6 limited liability company on that claim or otherwise realizing upon or enforcing
7 ~~it that claim~~ against the dissolved limited liability company, except as provided
8 in section 10-32-128. ~~If the dissolved limited liability company gave the~~
9 ~~additional information referred to in subsection 3, nothing in this section bars~~
10 ~~the creditor or claimant from seeking to enforce its rights against the~~
11 ~~successor organization.~~

12 d. A creditor or claimant whose claim is rejected by the limited liability company
13 under subdivision b is barred from suing on that claim or otherwise realizing
14 upon or enforcing ~~it that claim~~ whether against the dissolved limited liability
15 company or any successor organization, if the creditor or claimant does not
16 initiate legal, administrative, or arbitration proceedings with respect to the
17 claim within the time provided in subdivision b.

18 ~~5.~~ 4. Articles of termination for a limited liability company dissolving under this section
19 ~~that has given~~ which gave notice to creditors and claimants under this section must
20 be filed with the secretary of state along with the fees provided in section
21 10-32-150 after:

22 a. The ninety-day period in subdivision e of subsection 2 ~~has expired~~ expires
23 and the payment of claims of all creditors and claimants filing a claim within
24 that period ~~has been~~ are made or provided for; or
25 b. The longest of the periods described in subdivision b of subsection 4 ~~has~~
26 ~~expired~~ 3 expires and there are no pending legal, administrative, or arbitration
27 proceedings by or against the limited liability company commenced within the
28 time provided in subdivision b of subsection 4 ~~3~~.

29 ~~6.~~ 5. The articles of termination for a limited liability company that ~~has given~~ gave notice
30 to creditors and claimants under this section 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~~ was made or provided for, or the date on which the longest of the periods described in subdivision b of subsection 4 ~~expired~~ 3 expires;
- b. That the remaining property, assets, and claims of the limited liability company ~~have been~~ were distributed in accordance with section 10-32-131, or that adequate provision ~~has been~~ was 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 3 or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against ~~it~~ the limited liability company in a pending proceeding.

SECTION 125. AMENDMENT. Section 10-32-119 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 or governors of any limited liability company or as managers or employees of a closely held limited liability company;

- 1 (3) The members of the limited liability company are so divided in voting
2 power that, for a period that includes the time when two consecutive
3 regular meetings were held, they have failed to elect successors to
4 governors whose terms have expired or would have expired upon the
5 election and qualification of their successors;
- 6 (4) The limited liability company assets are being misapplied or wasted; or
7 (5) An event of dissolution has occurred under subdivision a, d, or e of
8 subsection 1 of section 10-32-109 but the limited liability company is not
9 acting to wind up its affairs;
- 10 c. In an action by a creditor when:
- 11 (1) The claim of the creditor has been reduced to judgment and an
12 execution on the judgment has been returned unsatisfied; or
13 (2) The limited liability company has admitted in writing that the claim of the
14 creditor is due and owing and it is established that the limited liability
15 company is unable to pay its debts in the ordinary course of business;
16 or
- 17 d. In an action by the attorney general to dissolve the limited liability company in
18 accordance with section 10-32-122 when it is established that a decree of
19 termination is appropriate.
- 20 2. In determining whether to order relief under this section and in determining what
21 particular relief to order, the court shall take into consideration the financial
22 condition of the limited liability company but may not refuse to order any particular
23 form of relief solely on the grounds that the limited liability company has
24 accumulated or current operating profits.
- 25 3. In an action under subdivision b of subsection 1 in which one or more of the
26 circumstances described in that subdivision is established, a court, upon motion of
27 a limited liability company or a member, may order the sale by a plaintiff or a
28 defendant of all membership interests of the limited liability company held by the
29 plaintiff or defendant to the limited liability company or the moving members,
30 whichever is specified in the motion, if the court determines in the court's discretion

1 that an order is fair and equitable to all parties under all of the circumstances of the
2 case.

3 a. The purchase price of any membership interest sold under this subsection is
4 the fair value of the membership interest as of the date of the commencement
5 of the action or as of another date found equitable by the court. If the articles
6 of organization, a member-control agreement, or another agreement state a
7 price for the redemption or buyout of membership interests, the court shall
8 order the sale for the price and on the terms set forth, unless the court
9 determines that the price or terms are unreasonable under all the
10 circumstances of the case.

11 b. Within five days after entry of the order, the limited liability company shall
12 provide each selling member with the information the limited liability company
13 is required to provide under subsection 6 of section 10-32-55.

14 c. If the parties are unable to agree on fair value within forty days of entry of the
15 order, the court shall determine the fair value of the membership interests
16 under the provisions of subsection 9 of section 10-32-55, may allow interest or
17 costs as provided in subsections 1 and 10 of section 10-32-55, and may
18 allocate payment among the member whose membership interest is being
19 sold and any assignees of the financial rights of that member.

20 d. The purchase price must be paid in one or more installments as agreed on by
21 the parties or, if no agreement can be reached within forty days of entry of the
22 membership interest under this subsection and provided the limited liability
23 company or the moving members post a bond in adequate amount with
24 sufficient sureties or otherwise satisfy the court that any full purchase price of
25 the membership interest, plus the additional costs, expenses, and fees
26 awarded by the court, will be paid when due and payable, the selling member
27 no longer has any rights or status as a member, manager, or governor, except
28 the right to receive the fair value of the membership interest plus other
29 amounts as might be awarded.

30 4. In determining whether to order relief under this section and in determining what
31 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.~~ 5. For purposes of this section, any written agreements, including employment agreements and buy-sell agreements between or among one or more members and the limited liability company are presumed to reflect the parties reasonable expectations concerning matters dealt with in the agreements.

~~5.~~ 6. 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.

~~6.~~ 7. 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.

~~7.~~ 8. 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.

~~8.~~ 9. 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.

1 **SECTION 126. AMENDMENT.** Subsection 2 of section 10-32-122 of the 1997
2 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 3 2. An action ~~must~~ may not be commenced under this section until thirty days after
4 notice to the limited liability company by the attorney general of the reason for the
5 filing of the action. If the reason for filing the action is an act ~~that~~ the limited liability
6 company has done; or omitted to do, and the act or omission may be corrected by
7 an amendment of the articles of organization, a member-control agreement, or the
8 ~~operating agreement~~ bylaws or by performance of or abstention from the act, the
9 attorney general shall give the limited liability company thirty additional days in
10 which to effect the correction before filing the action.

11 **SECTION 127. AMENDMENT.** Section 10-32-131 of the North Dakota Century Code
12 is amended and reenacted as follows:

13 **10-32-131. Disposition of assets upon dissolution.**

- 14 1. Subject to subsection 4 2, ~~except when the business of a dissolved limited liability~~
15 ~~company is being continued under subsection 2 or when the dissolved limited~~
16 ~~liability company is being wound up and terminated under subsection 3 of section~~
17 ~~10-32-112~~, the assets of the dissolved limited liability company must be disposed
18 of to satisfy liabilities according to the following priorities:
- 19 a. To creditors, including members who are creditors, to the extent otherwise
20 permitted by law, in satisfaction of liabilities of the limited liability company
21 other than liabilities for interim distributions to members under section
22 10-32-61 or termination distributions under section 10-32-60;
- 23 b. Unless otherwise provided in the articles of organization or a member-control
24 agreement, to members and former members of the limited liability company
25 in satisfaction of liabilities for distributions under section 10-32-60 or 10-32-61;
26 and
- 27 c. Unless otherwise provided in the articles of organization or a member-control
28 agreement, to members first for a return of their contributions, as restated
29 from time to time under section 10-32-57, and secondly respecting ~~their~~ the
30 member's membership interests in the proportions in which the members
31 share in distributions.

- 1 2. ~~If a business continuation agreement exists, then after dissolution the board of~~
2 ~~governors shall resolve to implement the business continuation agreement and the~~
3 ~~assets of the dissolved limited liability company must be disposed of according to~~
4 ~~that agreement, except:~~
- 5 a. ~~Members and former members have dissenters' rights as provided in sections~~
6 ~~10-32-54 and 10-32-55, but:~~
- 7 (1) ~~No dissenters' rights exist if the business of the dissolved limited liability~~
8 ~~company is being continued pursuant to a business continuation~~
9 ~~agreement made after the dissolution; and~~
- 10 (2) ~~Any dissenters' rights that do exist are limited by subsections 3 and 4.~~
- 11 b. ~~If the business of the dissolved limited liability company is being continued,~~
12 ~~but not through a merger under subsection 3 of section 10-32-112, the~~
13 ~~dissolved limited liability company shall comply with either section 10-32-114~~
14 ~~or 10-32-115.~~
- 15 3. ~~If a person has agreed in a business continuation agreement to waive dissenters'~~
16 ~~rights and nonetheless asserts dissenters' rights under subsection 2:~~
- 17 a. ~~Those rights must be honored; but~~
- 18 b. ~~Unless the business continuation agreement provides otherwise, including~~
19 ~~providing for installment payments:~~
- 20 (1) ~~In determining the fair value of the membership interest, the value of~~
21 ~~the goodwill of the business of the dissolved limited liability company~~
22 ~~must not be considered; and~~
- 23 (2) ~~The payment due the dissenter is subject to an offset equal to:~~
- 24 (a) ~~Any amount owed to the limited liability company by the member;~~
- 25 (b) ~~The amount of damages, if any, suffered by the limited liability~~
26 ~~company as a result of the dissenter's breach of the business~~
27 ~~continuation agreement; and~~
- 28 (c) ~~The amount of other damages, if any, provided for in~~
29 ~~subsection 4.~~
- 30 4. ~~A member who wrongfully resigns or retires is liable to the limited liability company~~
31 ~~for any damages caused by the member's wrongful resignation or retirement. Any~~

member who breaches a member-control agreement is liable to the limited liability company for any damages caused by the breach. Any payment due a member under this section, including payments, if any, to dissenters due to winding up merger under subsection 3 of section 10-32-112, is subject to offset of these damages.

SECTION 128. AMENDMENT. Section 10-32-140 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-140. Foreign limited liability company - Amendments to the certificate of authority.

1. If any statement in the application for a certificate of authority by a foreign limited liability company ~~was~~ is false when made or ~~any arrangements or other facts described have changed, making the application inaccurate in any respect the~~ foreign limited liability company changes the foreign limited liability company's name or purposes sought in this state, the foreign limited liability company ~~shall~~ promptly shall file with the secretary of state an application for an amended certificate of authority executed by an authorized person correcting the statement and in the case of a change in ~~its~~ the foreign limited liability company's name, a certificate to that effect authenticated by the proper officer of the state or country under the laws of which the foreign limited liability company is organized.
2. In the case of a termination or merger, a foreign limited liability company that is not the surviving organization need not file an application for an amended certificate of authority but shall promptly file with the secretary of state a certificate to that effect authenticated by the proper officer of the state or country under the laws of which the foreign limited liability company is organized.
3. A foreign limited liability company that changes the foreign limited liability company's name and applies for an amended certificate of authority and that is the owner of a trademark or trade name, a general partner named in a fictitious name certificate, a general partner in a limited partnership or a limited liability limited partnership, or a managing partner in a limited liability partnership that is on file with the secretary of state shall change the foreign limited liability company's name

1 in each of the foregoing registrations which is applicable when the foreign limited
2 liability company files an application for an amended certificate of authority.

3 **SECTION 129. AMENDMENT.** Section 10-32-142 of the 1997 Supplement to the
4 North Dakota Century Code is amended and reenacted as follows:

5 **10-32-142. Foreign limited liability company - Merger of foreign limited liability**
6 **company authorized to transact business in this state.** ~~Whenever~~ If a foreign limited
7 liability company authorized to transact business in this state is a party to a statutory merger
8 permitted by the laws of the state or country under which ~~it~~ the foreign limited liability company
9 is organized, and the limited liability company is not the surviving organization, the surviving
10 organization shall, within thirty days after the merger becomes effective, file with the secretary
11 of state a certified statement of merger duly authenticated by the proper officer of the state or
12 country where the statutory merger was effected. Any foreign organization, which is the
13 surviving organization in a merger and which will continue to transact business in this state,
14 shall procure ~~either a new or amended~~ certificate of authority if not previously authorized to
15 transact business in this state.

16 **SECTION 130. AMENDMENT.** Subsection 2 of section 10-32-149 of the 1997
17 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 18 2. The annual report must be submitted on forms prescribed by the secretary of state.
19 The information provided must be given as of the date of the execution of the
20 report. The annual report must be signed as prescribed in subsection 46 of section
21 10-32-02, the articles, ~~operating agreement~~ the bylaws, or a resolution approved
22 by the affirmative vote of the required proportion or number of the governors or
23 members entitled to vote. If the limited liability company or foreign limited liability
24 company is in the hands of a receiver or trustee, ~~it~~ the annual report must be
25 signed on behalf of the limited liability company or foreign limited liability company
26 by the receiver or trustee. The secretary of state may destroy ~~all~~ any annual
27 ~~reports~~ report provided for in this section after ~~they have been~~ the annual report is
28 on file for six years.

29 **SECTION 131. AMENDMENT.** Subsection 1 of section 10-32-150 of the 1997
30 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 31 1. The secretary of state shall charge and collect for:

- 1 a. Filing articles of organization and issuing a certificate of organization, one
- 2 hundred twenty-five dollars.
- 3 b. Filing articles of amendment, fifty dollars.
- 4 c. Filing restated articles of organization, one hundred twenty-five dollars.
- 5 d. Filing articles of merger and issuing a certificate of merger, fifty dollars.
- 6 e. Filing abandonment of merger or exchange, fifty dollars.
- 7 f. Filing an application to reserve a name, ten dollars.
- 8 g. Filing a notice of transfer of a reserved name, ten dollars.
- 9 h. Filing a cancellation of reserved name, ten dollars.
- 10 i. Filing a consent to use of name, ten dollars.
- 11 j. Filing a statement of change of address of registered office or change of
- 12 registered agent or both, ten dollars.
- 13 k. Filing a statement of change of address of registered office by registered
- 14 agent, ten dollars for each limited liability company affected by such change.
- 15 l. Filing a registered agent's consent to serve in such capacity, ten dollars.
- 16 m. Filing a resignation as registered agent, ten dollars.
- 17 n. Filing a resolution for the establishment of a class or series of membership
- 18 interest, fifty dollars.
- 19 o. Filing a notice of dissolution, ten dollars.
- 20 p. Filing a statement of revocation of voluntary dissolution proceedings, ten
- 21 dollars.
- 22 q. Filing articles of dissolution and termination, twenty dollars.
- 23 r. Filing an application of a foreign limited liability company for a certificate of
- 24 authority to transact business in this state and issuing a certificate of authority,
- 25 one hundred twenty-five dollars.
- 26 s. Filing an amendment to the certificate of authority by a foreign limited liability
- 27 company, fifty dollars.
- 28 t. Filing a certificate of fact stating a merger of a foreign limited liability company
- 29 holding a certificate of authority to transact business in this state, twenty
- 30 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. The secretary of state shall charge and collect additional fees for late filing of the annual report as follows:
 - (1) After the date prescribed in subsection 3 of section 10-32-149, fifty dollars; and
 - (2) After the termination of the limited liability company, or the revocation of the certificate of authority of a foreign limited liability company, the reinstatement fee of one hundred twenty-five dollars.
- w. Filing any process, notice, or demand for service, twenty-five dollars.
- x. Submitting any document for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the document.
- y. Filing any other statement or report of a limited liability company or foreign limited liability company, ten dollars.

SECTION 132. AMENDMENT. Section 10-33-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-33-01. Definitions. For the purposes of this chapter, unless the context otherwise requires:

- 1. "Address" means:
 - a. In the case of a registered office or principal executive office, the mailing address, including a zip code, of the actual office location which may not be only a post-office box; and
 - b. In any other case, the mailing address, including a zip code.
- 2. "Articles" means:
 - a. In the case of a corporation incorporated under or governed by this chapter, articles of incorporation, articles of amendment, a resolution of election to become governed by this chapter, a statement of change of registered office, registered agent, or name of registered agent, articles of merger, articles of consolidation, articles of abandonment, articles of dissolution, and any annual

- 1 report in which a registered office or registered agent has been established or
2 changed.
- 3 b. In the case of a foreign corporation, the term includes all documents serving a
4 similar function required to be filed with the secretary of state or other officer
5 of the corporation's state of incorporation.
- 6 3. "Board" means the board of directors of a corporation.
- 7 4. "Board member" means an individual serving on the board.
- 8 5. "Bylaws" means the code adopted for the regulation or management of the internal
9 affairs of a corporation, regardless of how designated.
- 10 6. "Corporation" means a corporation, other than a foreign corporation, that is
11 incorporated under or governed by this chapter.
- 12 7. "Director" means a member of the board.
- 13 8. "Filed with the secretary of state" means except as otherwise permitted by law or
14 rule:
- 15 a. The following have been delivered to the secretary of state and have been
16 determined by the secretary of state to conform to law:
- 17 (1) A signed original; or a legible facsimile ~~copy~~ telecommunication of a
18 signed original, of a request for reserved name; or a signed original of
19 all other documents, meeting the applicable requirements of this
20 chapter; and
- 21 (2) The fees provided for in section 10-33-140;
- 22 b. And the secretary of state has:
- 23 (1) Endorsed on the original the word "filed", and the month, day, and year;
24 and
- 25 (2) Recorded the document in the office of the secretary of state.
- 26 9. "Foreign corporation" means a corporation that is formed under laws other than the
27 laws of this state for a purpose for which a corporation may be organized under
28 this chapter.
- 29 10. "Good faith" means honesty in fact in the conduct of an act or transaction.

- 1 11. "Intentionally" means the person referred to has a purpose to do or fail to do the
2 act or cause the result specified, or believes the act or failure to act, if successful,
3 will cause that result. A person intentionally violates a statute:
- 4 a. If the person intentionally does the act or causes the result prohibited by the
5 statute; or
- 6 b. If the person intentionally fails to do the act or cause the result required by the
7 statute, even though the person may not know of the existence or
8 constitutionality of the statute or the scope or meaning of the terms used in
9 the statute.
- 10 12. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended
11 from time to time, and successive federal revenue acts.
- 12 13. "Knows" or has "knowledge" means the person has actual knowledge of a fact. A
13 person does not "know" or have "knowledge" of a fact merely because the person
14 has reason to know of the fact.
- 15 14. "Legal representative" means a person empowered to act for another person,
16 including an agent, manager, officer, partner, or associate of an organization; a
17 trustee of a trust; a personal representative; a trustee in bankruptcy; or a receiver,
18 guardian, custodian, or conservator.
- 19 15. "Member" means a person with membership rights in a corporation under its
20 articles or bylaws, regardless of how the person is identified.
- 21 16. "Members with voting rights" means members or a class of members that has
22 voting rights with respect to the purpose or matter involved.
- 23 17. "Nonprofit purpose" or "nonprofit activity" means a purpose or activity not involving
24 pecuniary gain to any officer, director, or member, other than a member that is a
25 nonprofit organization or subdivision, unit, or agency of the United States or a state
26 or local government.
- 27 18. "Notice":
- 28 a. Is given by a member of a corporation to the corporation or an officer of the
29 corporation when in writing and mailed or delivered to the corporation or the
30 officer at the registered office or principal executive office of the corporation;
31 and

- 1 b. In all other cases, is given to a person:
- 2 (1) When mailed to the person at an address designated by the person or
- 3 at the ~~last-known~~ last-known address of the person;
- 4 (2) When handed to the person; or
- 5 (3) When left at the office of the person with a clerk or other person in
- 6 charge of the office; or
- 7 (a) If there is no one in charge, when left in a conspicuous place in
- 8 the office; or
- 9 (b) If the office is closed or the person to be notified has no office,
- 10 when left at the dwelling house or usual place of abode of the
- 11 person with some person of suitable age and discretion then
- 12 residing therein.
- 13 c. Is given by mail when deposited in the United States mail with sufficient
- 14 postage affixed.
- 15 d. Is deemed received when it is given.
- 16 19. "Officer" means an individual who is more than eighteen years of age and who is:
- 17 a. Elected, appointed, or otherwise designated as an officer by the board or the
- 18 members; or
- 19 b. Considered elected as an officer pursuant to section 10-33-52.
- 20 20. "Organization" means a corporation, whether domestic or foreign, incorporated in
- 21 or authorized to do business in this state under another chapter of this code;
- 22 limited liability company; partnership; limited partnership; limited liability
- 23 partnership; joint venture; association; business trust; estate; trust; enterprise; or
- 24 any other legal or commercial entity.
- 25 21. "Principal executive office" means:
- 26 a. If the corporation has an elected or appointed president, then an office where
- 27 the elected or appointed president of the corporation has an office; or
- 28 b. If the corporation has no elected or appointed president, then the registered
- 29 office of the corporation.
- 30 22. "Registered office" means the place in this state designated in the articles of a
- 31 corporation as the registered office of the corporation.

- 1 23. "Related organization" means an organization that controls, is controlled by, or is
2 under common control with another organization with control existing if an
3 organization:
4 a. Owns, directly or indirectly, at least fifty percent of the shares, membership
5 interests, or other ownership interests of another organization;
6 b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or
7 more of the voting members of the governing body of another organization; or
8 c. Has the power, directly or indirectly, to direct or cause the direction of the
9 management and policies of another organization, whether through the
10 ownership of voting interests, by contract, or otherwise.
- 11 24. "Signed" means ~~that~~ the signature of a person is placed on a document, as
12 provided in subsection 39 of section 41-01-11, and:
13 a. With respect to a document required by this chapter to be filed with the
14 secretary of state, means ~~that~~ the document has been signed by a person
15 authorized to ~~do so~~ sign by this chapter, the articles, the bylaws, a resolution
16 approved by the ~~affirmative vote of the required proportion or number of the~~
17 directors as required by section 10-33-42, or the ~~required proportion or~~
18 ~~number of~~ members with voting rights, if any, as required by section 10-33-72;
19 and
20 b. With respect to a document ~~that is~~ not required by this chapter to be filed with
21 the secretary of state, the signature may be a facsimile affixed, engraved,
22 printed, placed, stamped with indelible ink, transmitted by facsimile
23 telecommunication or electronically, or in any other manner reproduced on the
24 document.
- 25 25. "Subsidiary" of a specified corporation means:
26 a. A corporation having more than fifty percent of the voting power of its shares
27 entitled to vote for directors owned directly or indirectly through related
28 corporations or limited liability companies, by the specified corporation; or
29 b. A limited liability company having more than fifty percent of the voting power
30 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.

26. "Surviving corporation" means the domestic or foreign corporation resulting from a merger.

27. "Vote" includes authorization by written action.

28. "Written action" means:

- a. A written document signed by all of the persons required to take the action; or
- b. The counterparts of a written document signed by any of the persons taking the action. Each counterpart constitutes the action of the persons signing it, and all the counterparts are one written action by all of the persons signing them.

SECTION 133. A new subsection to section 10-33-06 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

Subsection 5 does not limit the right of the board, by resolution, to take an action that the bylaws may authorize under this subsection without including the authorization in the bylaws, unless the authorization is required to be in the bylaws by another provision of this chapter.

SECTION 134. AMENDMENT. Subsection 1 of section 10-33-10 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The corporate name:

- a. Must be in the English language or in any other language expressed in English letters or characters.
- b. Need not contain the word "company", "corporation", "incorporated", "limited", or an abbreviation of one or more of these words.
- c. May not contain a word or phrase that indicates or implies that it may not be incorporated under this chapter.
- d. May not contain the words "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words.

e. May not contain a word or phrase that indicates or implies that it is incorporated for a purpose other than a legal nonprofit purpose for which a corporation may be incorporated under this chapter.

e- f. Unless a document in compliance with subsection 2 of this section is filed with the articles, may not be the same as or deceptively similar to:

(1) The name, whether foreign and authorized to do business in this state; or domestic, of:

(a) Another corporation;

(b) A corporation incorporated or authorized to do business in this state under another provision of this code;

(c) A limited liability company;

(d) A limited partnership; ~~or~~

(e) A limited liability partnership; or

(f) A limited liability limited partnership.

(2) A name the right to which is, at the time of incorporation, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;

(3) A fictitious name registered in the manner provided in chapter 45-11; or

(4) A trade name registered in the manner provided in chapter 47-25.

SECTION 135. AMENDMENT. Subsection 4 of section 10-33-13 of the 1997

Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. With respect to fees:

a. The fee prescribed in section 10-33-140 for change of registered office must be refunded ~~when~~ if in the secretary of state's opinion a change of address of registered office results from rezoning or postal reassignment.

b. The ~~fee~~ fees prescribed in section 10-33-140 ~~does~~ for change of registered agent, change of registered office, and consent of registered agent do not apply ~~when~~ if the registered agent or registered office is established or changed in the annual report.

SECTION 136. A new subsection to section 10-33-17 of the 1997 Supplement to the

North Dakota Century Code is created and enacted as follows:

Assets held by a corporation, including income or fees from services, are restricted to the uses and purposes for which the property was received or held.

SECTION 137. AMENDMENT. Section 10-33-49 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-33-49. Officers. The officers of a corporation must be individuals who are eighteen years of age or more, and must include a president; and secretary, ~~and treasurer~~. The officers of the corporation may also include a treasurer, one or more vice presidents, and any other officers or agents as may be prescribed by the bylaws. Each officer must be elected by the board at the time and in the manner as may be provided in the bylaws unless the articles or bylaws provide ~~that~~ the members may elect the officers.

SECTION 138. AMENDMENT. Subsection 3 of section 10-33-50 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The treasurer, if any, shall:
 - a. Keep accurate financial records for the corporation;
 - b. Deposit all money, drafts, and checks in the name of and to the credit of the corporation in the banks and depositories designated by the board;
 - c. Endorse for deposit all notes, checks, and drafts received by the corporation as ordered by the board, making proper vouchers;
 - d. Disburse corporate funds and issue checks and drafts in the name of the corporation, as ordered by the board;
 - e. Give to the president and the board, ~~whenever~~ when requested, an account of all transactions by the treasurer and of the financial condition of the corporation; and
 - f. Perform other duties prescribed by the board or by the president.

SECTION 139. AMENDMENT. Subsection 3 of section 10-33-54 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. A vacancy in an office because of death, resignation, removal, disqualification, or other cause may, or in the case of a vacancy in the office of ~~president or treasurer~~, if any, or president, must, be filled for the unexpired part of the term in the manner provided in the articles or bylaws, ~~or~~ as determined by the board, or under section 10-33-52.

1 **SECTION 140. AMENDMENT.** Section 10-33-84 of the 1997 Supplement to the North
2 Dakota Century Code is amended and reenacted as follows:

3 **10-33-84. Indemnification.**

4 1. For purposes of this section:

5 a. "Corporation" includes a domestic or foreign corporation that was the
6 predecessor of the corporation referred to in this section in a merger or other
7 transaction in which the predecessor's existence ceased upon consummation
8 of the transaction.

9 b. "Official capacity" means:

10 (1) With respect to a director, the position of director in a corporation;

11 (2) With respect to a person other than a director, the elective or appointive
12 office or position held by an officer, member of a committee of the
13 board, or the employment relationship undertaken by an employee of
14 the corporation; and

15 (3) With respect to a director, officer, or employee of the corporation who,
16 while a director, officer, or employee of the corporation, is or was
17 serving at the request of the corporation or whose duties in that position
18 involve or involved service as a director, governor, officer, manager,
19 partner, trustee, employee, or agent of another organization or
20 employee benefit plan, the position of that person as a director,
21 governor, officer, manager, partner, trustee, employee, or agent, as the
22 case may be, of the other organization or employee benefit plan.

23 c. "Proceeding" means a threatened, pending, or completed civil, criminal,
24 administrative, arbitration, or investigative proceeding, including a proceeding
25 by or in the right of the corporation.

26 d. "Special legal counsel" means counsel who has not represented the
27 corporation or a related organization, or a director, officer, member of a
28 committee of the board, or employee whose indemnification is in issue.

29 2. Subject to subsection 5, a corporation shall indemnify a person made or threatened
30 to be made a party to a proceeding by reason of the former or present official
31 capacity of the person against judgments, penalties, fines including excise taxes

1 assessed against the person with respect to an employee benefit plan,
2 settlements, and reasonable expenses, including attorneys' fees and
3 disbursements, incurred by the person in connection with the proceeding, if, with
4 respect to the acts or omissions of the person complained of in the proceeding, the
5 person:

- 6 a. Has not been indemnified by another organization or employee benefit plan
7 for the same judgments, penalties, fines including excise taxes assessed
8 against the person with respect to an employee benefit plan, settlements, and
9 reasonable expenses, including attorneys' fees and disbursements, incurred
10 by the person in connection with the proceeding with respect to the same acts
11 or omissions;
- 12 b. Acted in good faith;
- 13 c. Received no improper personal benefit and section 10-33-45, if applicable,
14 has been satisfied;
- 15 d. In the case of a criminal proceeding, had no reasonable cause to believe the
16 conduct was unlawful; and
- 17 e. In the case of acts or omissions occurring in the official capacity described in
18 paragraph 1 or 2 of subdivision b of subsection 1, reasonably believed that
19 the conduct was in the best interests of the corporation, or in the case of acts
20 or omissions occurring in the official capacity described in paragraph 3 of
21 subdivision b of subsection 1, reasonably believed that the conduct was not
22 opposed to the best interests of the corporation. If the person's acts or
23 omissions complained of in the proceeding relate to conduct as a director,
24 governor, officer, manager, trustee, employee, or agent of an employee
25 benefit plan, the conduct is not considered to be opposed to the best interests
26 of the corporation if the person reasonably believed that the conduct was in
27 the best interests of the participants or beneficiaries of the employee benefit
28 plan.

- 29 3. The termination of a proceeding by judgment, order, settlement, conviction, or
30 upon a plea of nolo contendere or its equivalent does not, of itself, establish that
31 the person did not meet the criteria set forth in subsection 2.

1 4. Subject to subsection 5, if a person is made or threatened to be made a party to a
2 proceeding, the person is entitled, upon written request to the corporation, to
3 payment or reimbursement by the corporation of reasonable expenses, including
4 attorneys' fees and disbursements, incurred by the person in advance of the final
5 disposition of the proceeding:

- 6 a. Upon receipt by the corporation of a written affirmation by the person of a
7 good faith belief that the criteria for indemnification set forth in subsection 2
8 have been satisfied and a written undertaking by the person to repay all
9 amounts so paid or reimbursed by the corporation, if it is ultimately
10 determined that the criteria for indemnification have not been satisfied; and
11 b. After a determination that the facts then known to those making the
12 determination would not preclude indemnification under this section.

13 The written undertaking required by subdivision a is an unlimited general obligation
14 of the person making it, but need not be secured and shall be accepted without
15 reference to financial ability to make the repayment.

16 5. The articles or bylaws ~~either~~ may prohibit indemnification or advances of expenses
17 otherwise required by this section or may impose conditions on indemnification or
18 advances of expenses in addition to the conditions contained in subsections 2, 3,
19 and 4 including monetary limits on indemnification or advances for expenses, if the
20 prohibition conditions apply equally to all persons or to all persons within a given
21 class. A prohibition or limit on indemnification or advances may not apply to or
22 affect the right of a person to indemnification or advances of expenses with respect
23 to any acts or omissions of the person occurring ~~prior to~~ before the effective date of
24 a provision in the articles or the date of adoption of a provision in the bylaws
25 establishing the prohibition or limit on indemnification or advances.

26 6. This section does not require, or limit the ability of, a corporation to reimburse
27 expenses, including attorneys' fees and disbursements, incurred by a person in
28 connection with an appearance as a witness in a proceeding at a time when the
29 person has not been made or threatened to be made a party to a proceeding.

30 7. All determinations whether indemnification of a person is required because the
31 criteria provided in subsection 2 have been satisfied and whether a person is

entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subsection 4 must be made:

- a. By the board by a majority of a quorum, if the directors 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, consisting solely of two or more directors not at the time parties to the proceeding, duly designated to act in the matter by a majority of the full board including directors 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 or a committee by vote pursuant to subdivision a or b or, if the requisite quorum of the full board cannot be obtained and the committee cannot be established, by a majority of the full board including directors who are parties;
- d. If a determination is not made under subdivisions a, b, and c, by the members with voting rights, other than members who are a party 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:
 - (1) The later to occur of the termination of a proceeding or a written request for indemnification to the corporation; or
 - (2) 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.

The person seeking indemnification or payment or reimbursement of expenses pursuant to this subdivision has the burden of establishing that the person is entitled to indemnification or payment or reimbursement of expenses.

8. With respect to a person who is not, and who was not at the time of the acts or omissions complained of in the proceedings, a director, officer, or person

possessing, directly or indirectly, the power to direct or cause the direction of the management or policies of the corporation, the determination whether indemnification of this person is required because the criteria set forth in subsection 2 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, having at least one member who is a director. The committee shall report at least annually to the board concerning its actions.

9. A corporation 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 corporation would have been required to indemnify the person against the liability under this section.

10. A corporation with members with voting rights that indemnifies or advances expenses to a person in accordance with this section in connection with a proceeding by or on behalf of the corporation 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.

11. ~~Nothing in this~~ This section may be construed to does not limit the power of the corporation to indemnify ~~other~~ persons other than a director, an officer, an employee, or a member of a committee of the board by contract or otherwise.

SECTION 141. AMENDMENT. Subsection 2 of section 10-33-87 of the 1997

Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. ~~When~~ If a constituent corporation has members with voting rights with respect to mergers and consolidations as required by section 10-33-42, the board of directors of the corporation shall adopt a resolution by a majority vote of all directors approving a proposed plan of merger or consolidation and directing that the plan be submitted to a vote at a meeting of the members with voting rights. Notice of the meeting must be given to the members, accompanied by a copy or summary of the proposed plan. Unless the articles or bylaws require a greater vote, the plan of merger or consolidation is adopted upon receiving the affirmative vote of a majority of the members who vote upon the proposed plan.

1 **SECTION 142. AMENDMENT.** Section 10-33-95 of the 1997 Supplement to the North
2 Dakota Century Code is amended and reenacted as follows:

3 **10-33-95. Certain assets not to be diverted.** ~~When~~ If a corporation dissolves,
4 merges ~~or~~, substantially changes the use or purposes for which the corporation will use
5 corporate assets, consolidates, transfers ~~its~~ corporate assets, or grants a mortgage or other
6 security interest in ~~its~~ corporate assets, assets of the corporation or a constituent corporation;
7 and assets subsequently received by a single corporation after a merger or consolidation; may
8 not be diverted from the uses and purposes for which the assets ~~have been~~ were received and
9 held; or from the uses and purposes expressed or intended by the original donor.

10 **SECTION 143. AMENDMENT.** Section 10-33-130 of the 1997 Supplement to the
11 North Dakota Century Code is amended and reenacted as follows:

12 **10-33-130. Foreign corporation - Amendments to the certificate of authority.** If
13 any statement in the application for a certificate of authority by a foreign corporation ~~was~~ is
14 false when made or any arrangements or other facts described ~~have changed~~ change, making
15 the application inaccurate in any respect, the foreign corporation shall promptly file with the
16 secretary of state an application for an amended certificate of authority executed by an
17 authorized person correcting the statement and, in the case of a change in ~~its~~ the foreign
18 corporation's name, a certificate to that effect authenticated by the proper officer of the
19 jurisdiction under the laws of which the foreign corporation is incorporated. In the case of a
20 dissolution or merger, a foreign corporation that is not the surviving organization need not file
21 an application for an amended certificate of authority but shall promptly file with the secretary of
22 state a certificate to that effect authenticated by the proper officer of the jurisdiction under the
23 laws of which the foreign corporation is incorporated. A foreign nonprofit corporation that
24 changes the foreign nonprofit corporation's name and applies for an amended certificate of
25 authority which is the owner of a trademark or trade name, a general partner named in a
26 fictitious name certificate, a general partner in a limited partnership or a limited liability limited
27 partnership, or a managing partner in a limited liability partnership that is on file with the
28 secretary of state shall change the foreign nonprofit corporation's name in each of the foregoing
29 registrations that apply if the foreign nonprofit corporation files an application for an amended
30 certificate of authority.

1 **SECTION 144. AMENDMENT.** Section 34-09-06 of the 1997 Supplement to the North
2 Dakota Century Code is amended and reenacted as follows:

3 **34-09-06. Contracts between union and employer.** Any contract entered into
4 between the employer and a labor union must be executed on behalf of the employer in ~~his or~~
5 ~~its~~ the employer's true name and signed by the employer, or in case of a corporation by the
6 proper officers authorized by law and the bylaws of ~~such the~~ corporation to execute valid and
7 binding contracts on behalf of the corporation, or in the case of a limited liability company by the
8 proper managers authorized by law and the ~~operating agreement~~ bylaws of ~~such the~~ limited
9 liability company to execute valid and binding contracts on behalf of the limited liability
10 company, and any ~~such~~ contract under this section must be executed on behalf of the labor
11 union in the name of the labor union by the president ~~or, the~~ secretary, or other duly authorized
12 officer of ~~such the~~ labor union. ~~Such~~ A contract under this section is equally binding as to all ~~its~~
13 of the contract's terms and conditions against both the employer and the labor union.

14 **SECTION 145. AMENDMENT.** Section 45-10.1-01 of the 1997 Supplement to the
15 North Dakota Century Code is amended and reenacted as follows:

16 **45-10.1-01. (101) Definitions.** As used in this chapter, unless the context otherwise
17 requires:

18 1. "Address" means:

- 19 a. In the case of a registered office or principal executive office, the mailing
20 address, including the zip code, of the actual office location which may not be
21 only a post-office box; and
22 b. In all other cases, the mailing address, including a zip code.

23 2. "Business" includes every trade, occupation, and profession.

24 3. "Certificate of limited partnership" means the certificate referred to in section
25 45-10.1-08, and the certificate as amended or restated.

26 ~~3.~~ 4. "Contribution" means any cash, property, services rendered, or a promissory note
27 or other binding obligation to contribute cash or property or to perform services,
28 which a partner contributes to a limited partnership in ~~his~~ that partner's capacity as
29 a partner.

5. "Distribution" means a transfer of money or other property from a limited partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

4- 6. "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in section 45-10.1-26.

5- 7. "Filed with the secretary of state" means except as otherwise permitted by law or rule:

a. ~~That either:~~

(1) A signed original or a legible facsimile ~~copy~~ telecommunication of a signed original of a request for reserved name; or

(2) A a signed original of all other documents meeting the applicable requirements of this chapter together with the fees provided in section 45-10.1-15 ~~has been~~ was delivered to the secretary of state and ~~has been~~ was determined by the secretary of state to conform to law.

b. ~~That the~~ The secretary of state shall ~~then:~~

(1) ~~Endorse~~ endorse on the original the word "filed" and the month, day, and year; and

(2) ~~Record~~ record the document in the office of the secretary of state.

6- 8. "Foreign limited partnership" means a partnership formed under the laws of any state other than this state and having as partners one or more general partners and one or more limited partners.

7- 9. "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.

10. "Jurisdiction of origin" means the jurisdiction in which the limited partnership status of the foreign limited partnership is created.

8- 11. "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

9- 12. "Limited partnership" and "domestic limited partnership" means a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

- 1 ~~40.~~ 13. "Notice":
- 2 a. Is given to a limited partnership or to a partner of the limited partnership when
- 3 in writing and mailed or delivered to the limited partnership or the partner at
- 4 the registered office or principal executive office of the limited partnership.
- 5 b. In all other cases, is given to a person:
- 6 (1) When mailed to the person at an address designated by the person or
- 7 at the ~~last-known~~ last-known address of the person;
- 8 (2) When handed to the person; or
- 9 (3) When left at the office of the person with a clerk or other person in
- 10 charge of the office; or
- 11 (a) If there is no one in charge, when left in a conspicuous place in
- 12 the office; or
- 13 (b) If the office is closed or the person to be notified has no office,
- 14 when left at the dwelling house or usual place of abode of the
- 15 person with some person of suitable age and discretion residing
- 16 there.
- 17 c. Is given when deposited in the United States mail with sufficient postage
- 18 affixed.
- 19 d. Is deemed received when it is given.
- 20 ~~44.~~ 14. "Partner" means a general or limited partner.
- 21 ~~42.~~ 15. "Partnership agreement" means any valid agreement, written or oral, of the
- 22 partners as to the affairs of a limited partnership and the conduct of its business.
- 23 ~~43.~~ 16. "Partnership interest" means a partner's share of the profits and losses of a limited
- 24 partnership and the right to receive distributions of partnership assets.
- 25 ~~44.~~ 17. "Principal executive office" means:
- 26 a. An office from which the limited partnership conducts business; or
- 27 b. If the limited partnership has no office from which it conducts business, then
- 28 the registered office of the limited partnership.
- 29 ~~45.~~ 18. "Signed" means that the signature of a person ~~has been~~ is placed on a document,
- 30 as provided in subsection 39 of section 41-01-11, and:

1 a. With respect to a document required by this chapter to be filed with the
2 secretary of state, means ~~that~~ the document ~~has been~~ is signed by a person
3 authorized to ~~do so~~ sign the document by this chapter or by a resolution
4 approved by the affirmative vote of the required proportion or number of
5 partners; and

6 b. With respect to a document ~~that is~~ not required by this chapter to be filed with
7 the secretary of state, means ~~that~~ the signature may be a facsimile affixed,
8 engraved, printed, placed, stamped with indelible ink, transmitted by facsimile
9 or electronically, or in any other manner reproduced on the document.

10 ~~46.~~ 19. "State" means a state, territory, or possession of the United States, the District of
11 Columbia, or the Commonwealth of Puerto Rico.

12 **SECTION 146. AMENDMENT.** Subsection 1 of section 45-10.1-02 of the 1997
13 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14 1. The name of each limited partnership as set forth in ~~its~~ the limited partnership's
15 certificate of limited partnership:

16 a. Must be in the English language or in another language expressed in English
17 letters or characters.

18 b. Must contain without abbreviation the words "limited partnership" or the
19 abbreviation "L.P." or "LP", either of which abbreviation may be used
20 interchangeably for all purposes authorized by this chapter including real
21 estate matters, contracts, and filings with the secretary of state.

22 c. May not contain the name of a limited partner unless:

23 (1) ~~It~~ Except as limited in subdivision g, the name is also the name of a
24 general partner; or

25 (2) The business of the limited partnership ~~had been~~ has carried on under
26 that name before the admission of that limited partner.

27 d. May not contain a word or phrase that indicates or implies ~~it~~ the limited
28 partnership may not be organized under this chapter.

29 e. May not contain a word or phrase indicating or implying ~~it~~ the limited
30 partnership is organized for a purpose other than a legal business purpose for
31 which a limited partnership may be organized under this chapter.

- 1 f. May not contain a word or phrase indicating or implying ~~it~~ the limited
2 partnership is organized other than for a purpose stated in ~~its~~ the limited
3 partnership's certificate of limited partnership.
- 4 g. May not contain the word "corporation", "company", "incorporated", "limited
5 liability company", "limited liability partnership", "limited liability limited
6 partnership", or any abbreviation of ~~these~~ these words.
- 7 h. May not be the same as; or deceptively similar to:
- 8 (1) The name, whether foreign and authorized to do business in this state;
9 or domestic, unless there is filed with the articles a document in
10 compliance with subsection ~~2 of this section~~ 3, of:
- 11 (a) Another limited partnership;
12 (b) A corporation;
13 (c) A limited liability company; ~~or~~
14 (d) A limited liability partnership; or
15 (e) A limited liability limited partnership;
- 16 (2) A name the right to which is, at the time of organization, reserved in the
17 manner provided in section 10-19.1-14, 10-32-11, 10-33-11,
18 45-10.1-03, or 45-22-05;
- 19 (3) A fictitious name registered in the manner provided in chapter 45-11; or
20 (4) A trade name registered in the manner provided in chapter 47-25.

21 **SECTION 147.** A new subsection to section 45-10.1-04 of the 1997 Supplement to the
22 North Dakota Century Code is created and enacted as follows:

23 Proof of the registered agent's consent to serve in the capacity of registered agent
24 must be filed with the secretary of state, together with the filing fees provided in
25 section 45-10.1-15.

26 **SECTION 148.** Section 45-10.1-04.1 of the North Dakota Century Code is created and
27 enacted as follows:

28 **45-10.1-04.1. Change of registered office or agent.**

- 29 1. A limited partnership may change the limited partnership's registered office,
30 change the limited partnership's registered agent, or state a change in the name of

the limited partnership's registered agent, by filing with the secretary of state, along with the fees provided in section 45-10.1-15, a statement containing:

- a. The name of the limited partnership;
- b. The new address of the limited partnership's registered office, if the address of the limited partnership's registered office is to be changed;
- c. The name of the limited partnership's new registered agent, if the limited partnership's registered agent is to be designated or changed;
- d. The name of the limited partnership's registered agent as changed, if the name of the limited partnership's registered agent is to be changed;
- e. A statement that the address of the limited partnership's registered office and the address of the business office of the limited partnership's 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 general partners.

2. A registered agent of a limited partnership 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 was given to the limited partnership as the limited partnership's principal executive office, or to a legal representative of the limited partnership. 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 partnership represented by that agent by filing with the secretary of state a statement for each limited partnership as required in subsection 1, except that the statement need be signed only by the registered agent, need not be responsive to subdivision f of subsection 1, and must state that a copy of the statement was mailed to each of those limited partnerships or to the legal representative of each of those limited partnerships.

4. The fee prescribed in section 45-10.1-15 for change of registered office must be refunded if in the secretary of state's opinion a change of address of registered office results from rezoning or postal reassignment.

SECTION 149. AMENDMENT. Section 45-10.1-08 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-10.1-08. (201) Certificate of limited partnership.

1. In order to form a limited partnership, a certificate of limited partnership must be ~~executed~~ signed and filed in the office of the secretary of state. The certificate must set forth:
 - a. The name of the limited partnership.
 - b. The general character of its business.
 - c. The address of the registered office ~~and the name and address of the agent for service of process required to be maintained by section 45-10.1-04 of the limited partnership and the name of the limited partnership's registered agent at that address.~~
 - d. The name and address of the principal place of business of each general partner.
 - e. Any other matters the general partners determine to include therein.
2. A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the secretary of state or ~~at any later time~~ on the date specified in the certificate of limited partnership ~~if, in either case, there has been substantial compliance with the requirements of this section~~ which is within ninety days after the filing of the certificate of limited partnership with the secretary of state.

SECTION 150. AMENDMENT. Section 45-10.1-09 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-09. (202) Amendment to certificate.

1. A certificate of limited partnership is amended by filing a certificate of amendment ~~thereto~~ in the office of the secretary of state. The certificate must set forth all of the following:
 - a. The name of the limited partnership.
 - b. ~~The date of filing the certificate.~~
 - c. The amendment to the certificate.

2. An amendment to a certificate of limited partnership reflecting the occurrence of the event or events must be filed within thirty days after the happening of any of the following events:
 - a. The admission of a new general partner.
 - b. The withdrawal of a general partner.
 - c. The continuation of the business under section 45-10.1-47 after an event of withdrawal of a general partner.
 - d. A change of ~~office or an~~ registered agent ~~or change of address of registered agent~~.
3. A general partner who becomes aware that any statement in a certificate of limited partnership was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect, shall promptly amend the certificate.
4. A certificate of limited partnership may be amended at any time for any other proper purpose the general partners determine.
5. No person has any liability because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of any event referred to in subsection 2 if the amendment is filed within the thirty-day period specified in subsection 2.
6. A restated certificate of limited partnership may be executed and filed in the same manner as a certificate of amendment.
7. A limited partnership must notify the secretary of state in writing whenever a general partner changes the address of its principal place of business. A corporate annual report filed by the secretary of state that reflects a change of address of a general partner may serve as such notice. This notice is not subject to the amendment fee prescribed in 45-10.1-15.
8. A limited partnership that amends its name and is the owner of a trademark, or uses a fictitious name registered with the secretary of state, or is a general partner of another limited partnership on file with the secretary of state, must effect a change of name in each of such registrations simultaneously with the filing of the amendments.

9. Whenever a general partner that is a corporation files an amendment, or application for an amended certificate of authority, to change its corporate name it must simultaneously file an amendment to a certificate of limited partnership.

SECTION 151. AMENDMENT. Section 45-10.1-10 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-10. (203) Cancellation of certificate. A certificate of limited partnership must be canceled upon the dissolution and the commencement of winding up of the partnership or at any other time there are no limited partners. A certificate of cancellation must be filed in the office of the secretary of state and set forth all of the following:

1. The name of the limited partnership.
2. ~~The date of filing of its certificate of limited partnership.~~
3. ~~The reason for filing the certificate of cancellation.~~
4. The later effective date, ~~which must be a date certain, of cancellation if it the~~ effective date is not to be effective upon the filing of the certificate. A later effective date may not be later than ninety days after the date on which the certificate is filed with the secretary of state.
5. ~~3.~~ Any other information the general partners filing the certificate determine.

SECTION 152. AMENDMENT. Section 45-10.1-11 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-11. (204) Execution of certificates.

1. Each certificate required by sections 45-10.1-08 through 45-10.1-19 to be filed in the office of the secretary of state must be ~~executed in the following manner:~~ signed by at least one general partner.
 - a. ~~An original certificate of limited partnership must be signed by all general partners.~~
 - b. ~~A certificate of amendment must be signed by at least one general partner and by each other general partner designated in the certificate as a new general partner.~~
 - c. ~~A certificate of cancellation must be signed by all general partners.~~

2. Any person may sign a certificate by an attorney in fact, but a power of attorney to sign a certificate relating to the admission of a general partner must specifically describe the admission.

3. The ~~execution~~ signing of a certificate by a general partner constitutes an affirmation under the penalties of perjury that the facts stated ~~therein~~ in the certificate are true.

SECTION 153. AMENDMENT. Section 45-10.1-14 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-14. ~~Renewal of certificate—Filing with secretary~~ Secretary of state - Cancellation Annual report of limited partnership and foreign limited partnership. ~~Any certificate of limited partnership or registration of foreign limited partnership filed under this chapter must be renewed every five years from the date of the initial filing. Limited partnerships existing prior to July 1, 1985, must file the statement of renewal by July 1, 1987, and every five years thereafter. The statement of renewal must be executed by the limited partnership or foreign limited partnership on forms prescribed and furnished by the secretary of state and sent to the address of the registered office at least sixty days prior to the deadline for filing. The statement must include the name of the limited partnership or foreign limited partnership, the state or country of organization, the address of the registered office and the name of the registered agent, and a statement that the limited partnership or foreign limited partnership is still in existence and continues to transact business in this state. If the secretary of state finds that the statement conforms to the requirements of this section, and the proper filing fee has been paid, the secretary of state shall file the statement. If the secretary of state finds that it does not conform, the secretary of state shall promptly return the statement to the limited partnership or the foreign limited partnership for any necessary corrections, and the certificate of limited partnership or registration of foreign limited partnership must be canceled if the statement is not returned corrected within thirty days after the statement was returned for corrections. If any limited partnership or foreign limited partnership fails to file the statement of renewal when due, the secretary of state shall cancel the certificate of limited partnership or registration of foreign limited partnership and shall mail notice of cancellation to the address of the registered office.~~

- 1 1. Each limited partnership, and each foreign limited partnership authorized to
2 transact business in this state, shall file, within the time prescribed by subsection 3,
3 an annual report setting forth:
 - 4 a. The name of the limited partnership or foreign limited partnership and the
5 jurisdiction of origin.
 - 6 b. The address of the registered office of the limited partnership or foreign
7 limited partnership in this state and the name of the limited partnership's or
8 foreign limited partnership's registered agent in this state at that address.
 - 9 c. The address of the limited partnership's or foreign limited partnership's
10 principal executive office.
 - 11 d. A brief statement of the character of the business in which the limited
12 partnership or foreign limited partnership is actually engaged in this state.
 - 13 e. The name and respective address of every general partner of the limited
14 partnership or foreign limited partnership.
- 15 2. The annual report must be submitted on forms prescribed by the secretary of state.
16 The information provided in the annual report must be accurate as of the time of
17 filing the report. The annual report must be signed as prescribed in subsection 15
18 of section 45-10.1-01 or a resolution approved by the affirmative vote of the
19 required proportion or number of partners. If the limited partnership or foreign
20 limited partnership is in the hands of a receiver or trustee, the annual report must
21 be signed on behalf of the limited partnership or foreign limited partnership by the
22 receiver or trustee. The secretary of state may destroy any annual reports
23 provided for in this section after the annual report is on file for six years.
- 24 3. The annual report of a limited partnership or foreign limited partnership must be
25 delivered to the secretary of state before April first of each year, except the first
26 annual report of a limited partnership or foreign limited partnership must be
27 delivered before April first of the year following the calendar year in which the
28 registration was filed by the secretary of state. A limited partnership existing before
29 July 1, 1999, or a foreign limited partnership registered before July 1, 1999, shall
30 file the limited partnership's or foreign limited partnership's first annual report

1 before April first in the year of the expiration of the limited partnership's or foreign
2 limited partnership's registration or renewal registration in effect on July 1, 1999.

3 a. An annual report in a sealed envelope postmarked by the United States postal
4 service on or before April first or an annual report in a sealed packet with a
5 verified shipment date by any other carrier service on or before April first,
6 complies with the delivery requirement under this subsection.

7 b. The secretary of state shall file the report if the report conforms to the
8 requirements of subsection 2.

9 (1) If the report does not conform, the report must be returned to the limited
10 partnership or foreign limited partnership for any necessary corrections.

11 (2) If the report is filed before the deadlines prescribed in this subsection,
12 penalties for the failure to file a report within the time provided do not
13 apply if the report is corrected to conform to the requirements of
14 subsection 2 and returned to the secretary of state within thirty days
15 after the annual report was returned by the secretary of state for
16 correction.

17 4. After the date established under subsection 3, the secretary of state shall notify
18 any limited partnership or foreign limited partnership failing to file an annual report
19 that the limited partnership's or foreign limited partnership's certificate or
20 registration is not in good standing and that the limited partnership's or foreign
21 limited partnership's may be terminated or revoked pursuant to subsection 5.

22 a. The secretary of state must mail notice of termination or revocation to the last
23 registered agent at the last registered office of record.

24 b. If the limited partnership or foreign limited partnership files an annual report
25 after the notice is mailed, together with the annual report filing fee and late
26 filing penalty fee as prescribed by section 45-10.1-15, the secretary of state
27 will restore the limited partnership's or foreign limited partnership's certificate
28 or registration to good standing.

29 5. A limited partnership that does not file an annual report, along with the statutory
30 filing and penalty fees, within six months after the date established in subsection 3,
31 ceases to exist and is considered involuntarily terminated by operation of law.

1 a. The secretary of state shall note the termination of the limited partnership's
2 certificate on the records of the secretary of state and shall give notice of the
3 action to the terminated limited partnership.

4 b. Notice by the secretary of state must be mailed to the limited partnership's
5 last registered agent at the last registered office of record.

6 6. A foreign limited partnership that does not file an annual report, along with the
7 statutory filing and penalty fees, within six months after the date established by
8 subsection 3, forfeits the right to transact business in this state.

9 a. The secretary of state shall note the revocation of the foreign limited
10 partnership's registration on the records of the secretary of state and shall
11 give notice of the action to the foreign limited partnership.

12 b. Notice by the secretary of state must be mailed to the foreign limited
13 partnership's last registered agent at the last registered office of record.

14 7. A limited partnership that is terminated for failure to file an annual report, or a
15 foreign limited partnership's registration is forfeited by failure to file an annual
16 report, may be reinstated by filing a past-due report, together with the statutory
17 filing and penalty fees for an annual report and a reinstatement fee as prescribed in
18 section 45-10.1-15. The fees must be paid and the report filed within one year
19 following the involuntary dissolution or revocation. Reinstatement under this
20 subsection does not affect the rights or liability for the time from the termination or
21 revocation to the reinstatement.

22 **SECTION 154. AMENDMENT.** Section 45-10.1-15 of the North Dakota Century Code
23 is amended and reenacted as follows:

24 **45-10.1-15. Fees for filing documents.** The secretary of state shall charge and
25 collect for:

- 26 1. Filing a limited partnership, one hundred dollars.
- 27 2. Filing a limited partnership amendment, forty dollars.
- 28 3. Filing a limited partnership dissolution, twenty-five dollars.
- 29 4. Filing a limited partnership cancellation, twenty-five dollars.
- 30 5. Filing a reservation of name, ten dollars.

- 1 6. Filing a ~~statement~~ notice of renewal transfer of a reserved limited partnership ~~or~~
2 renewal of registration of foreign limited partnership name, ~~forty~~ ten dollars.
- 3 7. Filing a cancellation of a reserved limited partnership name, ten dollars.
- 4 8. Filing a consent to use a deceptively similar name, ten dollars.
- 5 9. Filing a statement of change of address of registered office or change of registered
6 agent, or both, ten dollars.
- 7 10. Filing a statement of change of address of registered office by registered agent, ten
8 dollars for each limited partnership affected by the change.
- 9 11. Filing a registered agent's consent to serve in the capacity of registered agent, ten
10 dollars.
- 11 12. Filing a resignation as registered agent, ten dollars.
- 12 13. Filing a registration of foreign limited partnership, one hundred dollars.
- 13 ~~8-~~ 14. Filing a certified statement of amendment of foreign limited partnership, twenty-five
14 dollars.
- 15 ~~9-~~ 15. Filing a certified statement of dissolution of foreign limited partnership, twenty-five
16 dollars.
- 17 ~~40-~~ 16. Filing a certified statement of cancellation of foreign limited partnership, twenty-five
18 dollars.
- 19 ~~44-~~ 17. Filing a statement of withdrawal of foreign limited partnership, twenty-five dollars.
- 20 ~~42-~~ 18. Filing ~~a consent to use of a deceptively similar name, ten dollars-~~ an annual report
21 of a limited partnership or foreign limited partnership, twenty-five dollars. The
22 secretary of state shall charge and collect additional fees for late filing of an annual
23 report as follows:
 - 24 a. After the date prescribed in subsection 3 of section 45-10.1-14, twenty dollars;
25 and
 - 26 b. After the termination of the limited partnership or the revocation of the
27 registration of a foreign limited partnership, the reinstatement fee of one
28 hundred dollars.
- 29 19. Any document submitted for approval before the actual time of submission for
30 filing, half of the fee provided in this section for filing the document.

1 **SECTION 155. AMENDMENT.** Section 45-10.1-36 of the North Dakota Century Code
2 is amended and reenacted as follows:

3 **45-10.1-36. (603) Withdrawal of limited partner.** A With respect to the withdrawal of
4 a limited partner may withdraw from a limited partnership at the time or upon the happening of
5 events specified in writing in the partnership agreement.:

- 6 1. If the limited partnership is formed before July 1, 1999, and the agreement does
7 not specify in writing the time when or the events upon the happening of which a
8 limited partner may withdraw or a definite time for the dissolution and winding up of
9 the limited partnership, a limited partner may withdraw upon not less than six
10 months' prior advance written notice to each general partner at the general
11 partner's address on the books of the limited partnership at its the limited
12 partnership's office in this state.
- 13 2. If the limited partnership is formed after June 30, 1999, or if the limited partnership
14 is formed before July 1, 1999, and the partnership agreement does specify in
15 writing the time when or the events upon the happening of which a limited partner
16 may withdraw or a definite time for the dissolution and winding up of the limited
17 partnership, a limited partner may not withdraw from a limited partnership except at
18 the time when or upon the happening of events specified in writing in the
19 partnership agreement.

20 **SECTION 156. AMENDMENT.** Section 45-10.1-51 of the 1997 Supplement to the
21 North Dakota Century Code is amended and reenacted as follows:

22 **45-10.1-51. (901) Foreign limited partnership - Law governing.** Subject to the
23 Constitution of North Dakota, the laws of the state jurisdiction under which a foreign limited
24 partnership is organized govern ~~its~~ the organization and internal affairs and the liability of ~~its~~ the
25 limited partners, ~~and a.~~ A foreign limited partnership may not be denied registration by reason
26 of any difference between these the laws of the jurisdiction and the laws of this state.

27 **SECTION 157.** Section 45-10.1-51.1 of the North Dakota Century Code is created and
28 enacted as follows:

29 **45-10.1-51.1. Foreign limited partnership - Name.** A foreign limited partnership may
30 register under any name that would be available to a domestic limited partnership regardless of
31 whether the name is the name under which the foreign limited partnership is authorized in the

jurisdiction of origin. A fictitious name certificate must be filed as provided in chapter 45-11 if registering under a name other than the name as authorized in the jurisdiction of origin.

SECTION 158. AMENDMENT. Section 45-10.1-52 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-10.1-52. (902) Foreign limited partnership - Registration. Before transacting business in this state, a foreign limited partnership shall register with the secretary of state.

1. In order to register, a foreign limited partnership shall submit to the secretary of state, on forms prescribed and furnished by the secretary of state, an application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth all of the following:

~~4-~~ a. The name of the foreign limited partnership and, if different, the name under which ~~it~~ the foreign limited partnership proposes to register and transact business in this state.

~~2-~~ b. The state and date of ~~its~~ the foreign limited partnership's formation.

~~3-~~ c. The general character of the business ~~it~~ the foreign limited partnership proposes to transact in this state.

~~4-~~ d. The name and address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint; ~~the agent~~ and which must be an individual resident of this state, a domestic corporation, a domestic limited liability company, a foreign corporation, or a foreign limited liability company having a place of business in, and authorized to do business in, this state.

~~5-~~ e. A statement that the secretary of state is appointed the agent of the foreign limited partnership for service of process if the agent's authority ~~has been~~ is revoked or if the agent cannot be found or served with the exercise of reasonable diligence.

~~6-~~ f. The address of the principal office of the foreign limited partnership.

~~7-~~ g. The name and address of the principal place of business of each general partner.

~~8-~~ h. The address of the office at which is kept a list of the names and addresses of the limited partners and ~~their~~ the limited partners' capital contributions,

1 together with an undertaking by the foreign limited partnership to keep those
2 records until the foreign limited partnership's registration in this state is
3 canceled or withdrawn.

4 2. The application must be accompanied by a certificate of identification, existence,
5 and status of a foreign limited partnership, duly certified by the proper officer of the
6 state or country under the laws of which it is organized foreign limited partnership's
7 jurisdiction of origin, the consent of registered agent, and the fees required under
8 this chapter.

9 3. If the secretary of state finds the application for registration conforms to law and
10 the fees required by this chapter have been paid, the secretary of state shall file
11 the application for registration and the consent of the registered agent.

12 **SECTION 159. AMENDMENT.** Section 45-10.1-53 of the 1997 Supplement to the
13 North Dakota Century Code is amended and reenacted as follows:

14 **45-10.1-53. (903) Foreign limited partnership - ~~Filing of registration~~ Registered**
15 **~~agent and certain reports.~~** ~~If the secretary of state finds that an application for registration~~
16 ~~conforms to law and all requisite fees have been paid, the secretary of~~ A foreign limited
17 partnership registered in this state shall:

- 18 1. ~~Endorse on the application the word "Filed" and the month, day, and year of the~~
19 ~~filing.~~ Appoint and continuously maintain a registered agent and a registered office
20 in the same manner as provided in section 45-10.1-04; and
21 2. ~~File the application in the office of the secretary of state.~~ File a report upon any
22 change in the address of the registered office or upon any change in the name of
23 the foreign limited partnership's registered agent as provided in section
24 45-10.1-04.1.

25 **SECTION 160.** Section 45-10.1-54.1 of the North Dakota Century Code is created and
26 enacted as follows:

27 **45-10.1-54.1. Foreign limited partnership - Admission of foreign limited**
28 **partnership - Transacting business - Obtaining licenses and permits.** A foreign limited
29 partnership may not:

- 30 1. Transact business in this state or obtain any license or permit required by this state
31 until the foreign limited partnership registers with the secretary of state.

2. Transact in this state any business that is prohibited to a domestic limited partnership organized under this chapter.

3. Be denied registration because the laws of the foreign limited partnership's jurisdiction of origin differ from the laws of this state.

SECTION 161. AMENDMENT. Section 45-10.1-55 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-10.1-55. (905) Foreign limited partnership - Changes and amendments.

1. If any statement in the application for registration of a foreign limited partnership ~~was is~~ false when made or any arrangements or other facts described ~~have~~ ~~changed~~ change, making the application inaccurate in any respect, the foreign limited partnership shall promptly file in the office of the secretary of state a certificate, signed ~~and sworn to~~ by a general partner, correcting the statement.
2. A foreign limited partnership that amends ~~its~~ the foreign limited partnership's name and files a statement as provided in subsection 1 and is the owner of a trademark, ~~or~~ uses a fictitious name registered with the secretary of state, or is a general partner of another limited partnership or a limited liability limited partnership on file with the secretary of state, ~~must~~ shall effect a change of name in each of ~~such the~~ foregoing registrations ~~simultaneously with the filing of which is applicable when the foreign limited partnership files the certificate amending the registration of~~ foreign limited partnership.
3. A foreign limited partnership ~~must~~ shall file a certificate of amendment, signed ~~and sworn to~~ by a general partner, ~~whenever~~ when a general partner that is a corporation files an amendment changing ~~its~~ the general partner's corporate name, or when ~~it~~ the general partner files an application for an amended certificate of authority. This certificate of amendment must be filed simultaneously with the amendment to the articles of incorporation or application for amended certificate of authority.
4. A foreign limited partnership ~~must~~ shall notify the secretary of state in writing ~~whenever~~ when a general partner changes the address of ~~its~~ the general partner's principal place of business. A corporate annual report filed by the secretary of state that reflects a change of address of a general partner may serve as ~~such a~~

notice under this subsection. This notice is not subject to the amendment fee prescribed in 45-10.1-15.

SECTION 162. AMENDMENT. Section 45-10.1-58 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-10.1-58. (908) Foreign limited partnership - Action by secretary of state.

1. The secretary of state may revoke the registration of a foreign limited partnership ~~for transacting~~ upon occurrence of any of the following:

a. Transacting business in this state in violation of sections 45-10.1-52 through 45-10.1-58, or that has failed to file a renewal statement as required by section 45-10.1-14. The secretary of state may not revoke the registration of a foreign limited partnership;

b. Failing to:

(1) Maintain a registered office as required by this chapter;

(2) Appoint and maintain a registered agent as required by this chapter;

(3) File a report upon any change in the address of the foreign limited partnership's registered office;

(4) File a report upon any change in the name or business address of the registered agent; or

(5) File in the office of the secretary of state any amendment to the foreign limited partnership's registration as specified in section 45-10.1-55; or

c. Misrepresenting any material matter in any registration, certificate, report, or other document submitted by the foreign limited partnership pursuant to this chapter.

2. Except for the annual report for which the registration may be revoked as provided in section 45-10.1-14, registration of a foreign limited partnership may not be revoked by the secretary of state unless the:

a. The secretary of state ~~has given~~ gave the foreign limited partnership not less than at least sixty days' notice by mail addressed to its the foreign limited partnership's registered office in this state and the or, if the foreign limited partnership fails to appoint and maintain a registered agent in this state, addressed to the foreign limited partnership's principal executive office of

record, and the foreign limited partnership has failed to remedy the deficiency prior to revocation.; and

b. During the sixty-day period, the foreign limited partnership failed to file the report of change regarding the registered office or 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 partnership to transact business in this state ceases and the secretary of state shall issue a notice of revocation and shall mail the notice to the principal executive office of the foreign limited partnership.

SECTION 163. Section 45-10.1-58.1 of the North Dakota Century Code is created and enacted as follows:

45-10.1-58.1. Foreign limited partnership - Action by attorney general. The attorney general may bring an action to restrain a foreign limited partnership from transacting business in this state in violation of this chapter.

SECTION 164. AMENDMENT. Section 45-11-08.2 of the North Dakota Century Code is amended and reenacted as follows:

45-11-08.2. Cancellation. The secretary of state shall cancel any:

1. Any fictitious name filed before August 1, 1997, by a limited liability partnership upon written request for cancellation, from one or more partners, with the without a filing fee of ten dollars.

2. Any other fictitious name upon written request for cancellation, from one or more partners, with the filing fee of ten dollars.

SECTION 165. AMENDMENT. Section 45-13-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-13-01. (101) Definitions. In chapters 45-13 through 45-21 unless the context or subject matter otherwise requires:

1. "Business" includes every trade, occupation, and profession.

2. "Chief executive office" means an office from which the partnership conducts business.

3. "Debtor in bankruptcy" means a person who is the subject of:

- 1 a. An order for relief under title 11 of the United States Code or a comparable
2 order under a successor statute of general application; or
3 b. A comparable order under federal, state, or foreign law governing insolvency.

4 ~~3.~~ 4. "Distribution" means a transfer of money or other property from a partnership to a
5 partner in the partner's capacity as a partner or to the partner's transferee.

6 5. "Filed with the secretary of state" means, except as otherwise permitted by law or
7 rule:

8 a. A signed original or a legible facsimile telecommunication of a signed original
9 of a request for reserved name or the signed original of all other documents
10 meeting the applicable requirements of this chapter together with the fees
11 provided in section 45-13-05 was delivered to the secretary of state and was
12 determined by the secretary of state to conform to law.

13 b. The secretary of state shall then endorse on the original the word "filed" and
14 the month, day, and year, and record the document in the office of the
15 secretary of state.

16 6. "Foreign limited liability partnership" means a partnership that is formed under laws
17 other than the laws of this state and has the status of a limited liability partnership
18 under those laws.

19 7. "Limited liability partnership" means a partnership that filed a registration under
20 chapter 45-22 and does not have a similar statement in effect in any other
21 jurisdiction.

22 8. "Notice":

23 a. Is given to a partnership or to a partner of a partnership when in writing and
24 mailed or delivered to the partnership or to the partner at the chief executive
25 office of the partnership.

26 b. In all other cases is given to a person:

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

29 (2) When handed to the person; or

30 (3) When left at the office of the person with a clerk or other person in
31 charge of the office or, if there is no one in charge, when left in a

1 conspicuous place in the office or, if the office is closed or the person to
2 be notified has no office, when left at the dwelling, house, or other usual
3 place of abode of the person with some person of suitable age and
4 discretion residing there.

5 c. Is given when deposited in the United States mail with sufficient postage
6 affixed.

7 d. Is deemed received when it is given.

8 4. 9. "Partnership" means an association of two or more persons to carry on as
9 coowners a business for profit formed under section 45-14-02, predecessor law, or
10 comparable law of another jurisdiction.

11 5. 10. "Partnership agreement" means the agreement, whether written, oral, or implied,
12 among the partners concerning the partnership, including amendments to the
13 partnership agreement.

14 6. 11. "Partnership at will" means a partnership in which the partners have not agreed to
15 remain partners until the expiration of a definite term or the completion of a
16 particular undertaking.

17 7. 12. "Partnership interest" or "partner's interest in the partnership" means all of a
18 partner's interests in the partnership, including the partner's transferable interest
19 and all management and other rights.

20 8. ~~"Person" includes any legal or commercial entity. The term includes governmental~~
21 ~~subdivision, agency, or instrumentality.~~

22 9. 13. "Property" means all property, real, personal, or mixed, tangible or intangible, or
23 any interest therein.

24 14. "Signed" means the signature of a person is placed on a document, as provided in
25 subsection 39 of section 41-01-11, and:

26 a. With respect to a document required by this chapter to be filed with the
27 secretary of state, means the document is signed by a person authorized to
28 do so by this chapter or by a resolution approved by the affirmative vote of the
29 required proportion or number of partners; and

30 b. With respect to a document not required by this chapter to be filed with the
31 secretary of state, means the signature may be a facsimile affixed, engraved,

1 printed, placed, stamped with indelible ink, transmitted by facsimile
2 telecommunication or electronically, or in any other manner reproduced on the
3 document.

4 ~~40.~~ 15. "State" means a state of the United States, the District of Columbia, the
5 Commonwealth of Puerto Rico, or any territory or insular possession subject to the
6 jurisdiction of the United States.

7 ~~44.~~ 16. "Statement" means a statement of partnership authority under section 45-15-03, a
8 statement of denial under section 45-15-04, a statement of dissociation under
9 section 45-19-04, a statement of dissolution under section 45-20-05, a statement of
10 merger under section 45-21-07, or an amendment or cancellation of any of the
11 foregoing.

12 ~~42.~~ 17. "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and
13 encumbrance.

14 **SECTION 166. AMENDMENT.** Subsection 2 of section 45-13-03 of the 1997
15 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16 2. The partnership agreement may not:

- 17 a. Vary the rights and duties under section 45-13-05 except to eliminate the duty
18 to provide copies of statements to all of the partners;
19 b. Unreasonably restrict the right of access to books and records under
20 subsection 2 of section 45-16-03;
21 c. Eliminate the duty of loyalty under subsection 2 of section 45-16-04 or
22 subdivision c of subsection 2 of section 45-18-03, but:
23 (1) The partnership agreement may identify specific types or categories of
24 activities that do not violate the duty of loyalty, if not manifestly
25 unreasonable; or
26 (2) All of the partners or a number or percentage specified in the
27 partnership agreement may authorize or ratify, after full disclosure of all
28 material facts, a specific act or transaction that otherwise would violate
29 the duty of loyalty;
30 d. Unreasonably reduce the duty of care under subsection 3 of section 45-16-04
31 or subdivision c of subsection 2 of section 45-18-03;

- e. Eliminate the obligation of good faith and fair dealing under subsection 4 of section 45-16-04, but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;
- f. Vary the power to dissociate as a partner under subsection 1 of section 45-18-02, except to require the notice under subsection 1 of section 45-18-01 to be in writing;
- g. Vary the right of a court to expel a partner in the events specified in subsection 5 of section 45-18-01;
- h. Vary the requirement to wind up the partnership business in cases specified in subsection 4, 5, or 6 of section 45-20-01; ~~or~~
- i. Vary the law applicable to a limited liability partnership under chapter 45-22;
or
- j. Restrict rights of third parties under chapters 45-13 through 45-21.

SECTION 167. Section 45-13-04.1 of the North Dakota Century Code is created and enacted as follows:

45-13-04.1. Partnership name.

1. A partnership name filed in a statement under section 45-13-05:
 - a. Must be in the English language or in any other language expressed in English letters or characters;
 - b. May not contain a word or phrase indicating or implying the partnership may not be organized under this chapter;
 - c. May not contain a word or phrase indicating or implying the partnership is organized for a purpose other than a legal business purpose for which a partnership may be organized under this chapter;
 - d. May not contain the word "corporation", "company", "incorporated", "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words; and
 - e. May not be the same as, or deceptively similar to:

- (1) The name, whether foreign and authorized to do business in this state or domestic, unless filed with the statement is a document which complies with subsection 3 of:
 - (a) Another partnership;
 - (b) A limited liability company;
 - (c) A corporation;
 - (d) A limited partnership;
 - (e) A limited liability partnership; or
 - (f) A limited liability limited partnership;
 - (2) A name, the right of which is, at the time of filing, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
 - (3) A fictitious name registered in the manner provided in chapter 45-11; or
 - (4) A trade name registered in the manner provided in chapter 47-25.
2. The secretary of state shall determine whether a partnership name is deceptively similar to another name for purposes of this chapter.
3. This subsection does not affect the right of a domestic partnership existing on July 1, 1999, or a foreign partnership authorized to do business in this state on July 1, 1999, to continue the use of the foreign partnership's name. If the secretary of state determines a partnership name is deceptively similar to another name for purposes of this chapter, the partnership name may not be used unless there is filed with the statement:
 - a. The written consent of the holder of the rights to the name to which the proposed name is determined to be deceptively similar; or
 - b. A certified copy of a judgment of a court in this state establishing the earlier right of the applicant to the use of the name in this state.
4. This section and section 45-13-04.2 do not:
 - a. Abrogate or limit the law of unfair competition or unfair practices; chapter 47-25; the laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, service marks; or any other rights to the exclusive use of a name or symbol.

b. Derogate the common law or any principle of equity.

5. A partnership that is merged with another partnership or domestic or foreign limited partnership, or that is formed by the reorganization of one or more partnerships or domestic or foreign limited partnerships, or that acquires by sale, lease, or other disposition to or exchange with a partnership all or substantially all of the assets of another partnership or domestic or foreign limited partnership including the partnership's or limited partnership's name, may have the same name as that used in this state by any other partnership or domestic or foreign limited partnership if the other partnership or domestic or foreign limited partnership:

a. Is formed under the laws of this state;

b. Is authorized to transact business or conduct activities in this state;

c. Holds a reserved name in the manner provided in section 45-10.1-03;

d. Holds a fictitious name registered in the manner provided in chapter 45-11; or

e. Holds a trade name registered in the manner provided in chapter 47-25.

6. The use of a name by a partnership in violation of this section does not affect or vitiate the partnership's partnership existence. However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the partnership from doing business under a name assumed in violation of this section, although a statement may have been filed with the secretary of state.

7. If a partnership's period of existence is expired or a partnership's statement filed under section 45-13-05 is expired, the partnership may reacquire the right to use that name by refiling a statement pursuant to section 45-13-05, unless the name was adopted for use or reserved by another person, in which case the filing must be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 2. A partnership that cannot reacquire the use of the partnership's partnership name shall adopt a new partnership name that complies with this section.

SECTION 168. Section 45-13-04.2 of the North Dakota Century Code is created and enacted as follows:

45-13-04.2. Reserved name.

- 1 1. The exclusive right to the use of a partnership name otherwise permitted by section
2 45-13-04.1 may be reserved by any person.
- 3 2. The reservation is made by filing with the secretary of state a request that the
4 name be reserved together with the fees provided in section 45-13-05.
 - 5 a. If the name is available for use by the applicant, the secretary of state shall
6 reserve the name for the exclusive use of the applicant for a period of twelve
7 months.
 - 8 b. The reservation may be renewed for successive twelve-month periods.
- 9 3. The right to the exclusive use of a partnership name reserved pursuant to this
10 section may be transferred to another person by or on behalf of the applicant for
11 whom the name was reserved by filing with the secretary of state a notice of the
12 transfer and specifying the name and address of the transferee together with the
13 fees provided in section 45-13-05.
- 14 4. The right to the exclusive use of a partnership name reserved pursuant to this
15 section may be canceled by or on behalf of the applicant for whom the name was
16 reserved by filing with the secretary of state a notice of the cancellation together
17 with the fees provided in section 45-13-05.
- 18 5. The secretary of state may accept for filing a legible facsimile telecommunication of
19 the signed original of any request for reserved name.
- 20 6. The secretary of state may destroy any reserved name request and any index of
21 reserved names one year after expiration.

22 **SECTION 169. AMENDMENT.** Section 45-13-05 of the 1997 Supplement to the North
23 Dakota Century Code is amended and reenacted as follows:

24 **45-13-05. (105) Execution, filing, and recording of statements.**

- 25 1. A statement may be filed in the office of the secretary of state. A certified copy of a
26 statement that is filed in an office in another state may be filed in the office of the
27 secretary of state. Either filing has the effect provided in chapters 45-13 through
28 45-21 with respect to partnership property located in or transactions that occur in
29 this state.
- 30 2. A certified copy of a statement that has been filed in the office of the secretary of
31 state and recorded in the office for recording transfers of real property has the

1 effect provided for recorded statements in chapters 45-13 through 45-21. A
2 recorded statement that is not a certified copy of a statement filed in the office of
3 the secretary of state does not have the effect provided for recorded statements in
4 chapters 45-13 through 45-21.

5 3. A statement filed by a partnership must be executed by at least two partners.

6 Other statements must be executed by a partner or other person authorized by
7 chapters 45-13 through 45-21. An individual who executes a statement as, or on
8 behalf of, a partner or other person named as a partner in a statement shall
9 personally declare under penalty of perjury that the contents of the statement are
10 accurate.

11 4. A person authorized by chapters 45-13 through 45-21 to file a statement may
12 amend or cancel the statement by filing an amendment or cancellation that names
13 the partnership, identifies the statement, and states the substance of the
14 amendment or cancellation.

15 5. A person who files a statement pursuant to this section shall promptly send a copy
16 of the statement to every nonfiling partner and to any other person named as a
17 partner in the statement. Failure to send a copy of a statement to a partner or
18 other person does not limit the effectiveness of the statement as to a person not a
19 partner.

20 6. ~~A partnership name filed in a statement under this section may not be the same as~~
21 ~~or deceptively similar to the name of any other partnership filed under this section~~
22 ~~or any corporation, limited liability company, or limited partnership, or a trade name~~
23 ~~or fictitious name certificate on file with the secretary of state, unless there is filed~~
24 ~~with the partnership statement a written consent of the holder of the similar name~~
25 ~~to use the name proposed by the partnership.~~

26 7. Any statement filed under this section must be renewed every five years from the
27 date of the initial filing. A statement of renewal must be executed by the
28 partnership on a form furnished by the secretary of state which is sent to the
29 address of the chief executive office at least sixty days before the deadline for
30 filing. If the secretary of state finds that the statement of renewal conforms to the
31 requirements of this section, and the proper filing fee has been paid, the secretary

of state shall file the statement of renewal. If the secretary of state finds that the statement of renewal does not so conform, the secretary of state shall return the statement of renewal to the partnership for any necessary corrections. If the statement of renewal is not returned corrected within thirty days after the statement of renewal was returned for correction, the statement of renewal is subject to cancellation. If any partnership fails to file the statement of renewal, the secretary of state shall cancel the initial statement and shall mail notice of the cancellation to the address of the chief executive office.

~~8.~~ 7. A partnership shall notify the secretary of state in writing upon a change in address of the partnership's chief executive office. A statement of renewal filed by the secretary of state which reflects a change of address of the chief executive office of the partnership may serve as ~~such a~~ notice under this subsection.

~~9.~~ 8. a. The secretary of state shall charge and collect a fee for:

- (1) Filing a statement under this section, one hundred dollars.
- (2) Filing an amendment under this section, forty dollars.
- (3) Filing a cancellation under this section, ~~twenty-four~~ twenty-five dollars.
- (4) Filing a renewal under this section, forty dollars.
- (5) Filing a request to reserve a partnership name, ten dollars.
- (6) Filing a notice of transfer of a reserved partnership name, ten dollars.
- (7) Filing a cancellation of reserved partnership name, ten dollars.
- (8) Filing a statement of conversion, fifty dollars.
- (9) Filing a statement of merger, fifty dollars.
- (10) Any document submitted for approval before the actual time of submission for filing, half of the fee provided in this section for filing the document.

b. The officer responsible for recording transfers of real property may collect a fee for recording a statement.

SECTION 170. AMENDMENT. Section 45-13-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-13-06. (106) Law governing internal relations.

- 1 1. ~~The~~ Except as otherwise provided in subsection 2, the law of the jurisdiction in
2 which a partnership has ~~its~~ the partnership's chief executive office governs
3 relations among the partners and between the partners and the partnership.
4 2. The law of this state governs relations among the partners and between the
5 partners and the partnership and the liability of partners for an obligation of a
6 limited liability partnership.

7 **SECTION 171. AMENDMENT.** Section 45-14-01 of the 1997 Supplement to the North
8 Dakota Century Code is amended and reenacted as follows:

9 **45-14-01. (201) Partnership as entity.**

- 10 1. A partnership is an entity distinct from ~~its~~ the partnership's partners.
11 2. A limited liability partnership continues to be the same entity in existence before
12 the filing of the registration under chapter 45-22.

13 **SECTION 172. AMENDMENT.** Subsection 1 of section 45-15-03 of the 1997
14 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 15 1. A partnership may file a statement of partnership authority; which:
16 a. Must include:
17 (1) The name of the partnership;
18 (2) The street address of ~~its~~ the partnership's chief executive office and of
19 one office in this state, if there is one;
20 (3) ~~The names name and mailing addresses address of all of the partners~~
21 ~~and of an agent appointed and maintained by the partnership each~~
22 partner;
23 (4) The address of the registered office of the limited partnership and the
24 name of the registered agent at that address;
25 (5) ~~The names name of the partners each partner~~ authorized to execute an
26 instrument transferring real property held in the name of the
27 partnership; and
28 ~~(5) (6)~~ (6) The nature of business to be transacted; ~~and~~.
29 b. May state the authority, or limitations on the authority, of some or all of the
30 partners to enter into other transactions on behalf of the partnership and any
31 other matter.

1 **SECTION 173.** Section 45-15-03.1 of the North Dakota Century Code is created and
2 enacted as follows:

3 **45-15-03.1. Registered office - Registered agent.**

- 4 1. A partnership that files and maintains a statement of partnership authority shall
5 continuously maintain a registered office in this state. A registered office need not
6 be the same as the principal place of business or the chief executive office of the
7 partnership.
- 8 2. A partnership that files a statement of partnership authority shall appoint and
9 continuously maintain a registered agent who may be:
- 10 a. An individual residing in this state;
11 b. A domestic corporation;
12 c. A domestic limited liability company; or
13 d. A foreign corporation or foreign limited liability company authorized to transact
14 business in this state.
- 15 3. The registered agent shall maintain a business office identical to the registered
16 agent's registered office.
- 17 4. Proof of the registered agent's consent to serve in the capacity of registered agent
18 must be filed with the secretary of state, together with the fees provided in section
19 45-13-05.

20 **SECTION 174.** Section 45-15-03.2 of the North Dakota Century Code is created and
21 enacted as follows:

22 **45-15-03.2. Change of registered office or agent.**

- 23 1. A partnership that files and maintains a statement of partnership authority may
24 change the partnership's registered office, change the partnership's registered
25 agent, or state a change in the name of the partnership's registered agent, by filing
26 with the secretary of state, along with the fees provided in section 45-13-05, a
27 statement containing:
- 28 a. The name of the partnership;
29 b. If the address of the partnership's registered office is changing, the new
30 address of the partnership's registered office;

- c. If the partnership's registered agent is being designated or changing, the name of the partnership's new registered agent;
- d. If the name of the partnership's registered agent is changing, the name of the partnership's registered agent as changed;
- e. A statement that the address of the partnership's registered office and the address of the business office of the partnership's 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 partners.

2. A registered agent of a partnership 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 was given to the partnership at the partnership's chief executive office, or to a legal representative of the partnership. The appointment of the agent terminates thirty days after 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 partnership represented by that agent by filing with the secretary of state a statement for each partnership as required in subsection 1, except the statement need be signed only by the registered agent, need not be responsive to subdivision f of subsection 1, and must state that a copy of the statement was mailed to each of those partnerships or to the legal representative of each of those partnerships.

SECTION 175. AMENDMENT. Subsection 1 of section 45-15-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in subsection 2 and in chapter 45-22, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

SECTION 176. AMENDMENT. Section 45-22-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Address" means:

- 1 a. In the case of a registered office or principal executive office, the mailing
2 address, including the zip code, of the actual office location which may not be
3 only a post-office box; and
4 b. In all other cases, the mailing address, including a zip code.
- 5 2. "Domestic limited liability partnership" means a ~~general~~ partnership that is
6 organized under the laws of this state with a registration ~~or a renewal registration~~ in
7 effect and which is not a foreign limited liability partnership.
- 8 3. "Filed with the secretary of state" means, except as otherwise permitted by law, or:
9 a. That ~~either:~~
10 (1) A a signed original or a legible facsimile ~~copy~~ telecommunication of a
11 signed original of a request for reserved name; or
12 (2) A a signed original of all other documents meeting the applicable
13 requirements of this chapter, together with the fees provided in section
14 45-22-23, ~~has been~~ was delivered to the secretary of state and ~~has~~
15 ~~been~~ was determined by the secretary of state to conform to law.
16 b. That the secretary of state shall then:
17 (1) Endorse on the original the word "filed" and the month, day, and year;
18 and
19 (2) Record the document in the office of the secretary of state.
- 20 4. "Foreign limited liability partnership" means a partnership organized as a limited
21 liability partnership:
22 a. ~~Which is organized~~ under laws other than the laws of this state ~~for a purpose~~
23 ~~or purposes for which a limited liability partnership may be organized under~~
24 ~~this chapter;~~
25 b. ~~With a registration or renewal registration in effect; and~~
26 c. ~~In~~ in which is in good standing in ~~its~~ the partnership's jurisdiction of origin.
- 27 5. ~~"General partnership" means an association of two or more persons to carry on as~~
28 ~~coowners of a business for profit formed under North Dakota law, predecessor law,~~
29 ~~or comparable law of another jurisdiction.~~
- 30 6. "Jurisdiction of origin" ~~refers to~~ means the jurisdiction in which the limited liability
31 partnership status of the foreign limited liability partnership was created.

- 1 ~~7.~~ 6. "Limited liability partnership" means a domestic limited liability partnership or a
2 foreign limited liability partnership.
- 3 ~~8.~~ 7. "Managing partner" means one of the partners charged with the management in
4 this state of the limited liability partnership or foreign limited liability partnership and
5 if no partners are so specifically designated, then all partners.
- 6 ~~9.~~ 8. "Notice":
7 a. Is given to a limited liability partnership or to a partner of the limited liability
8 partnership when in writing and mailed or delivered to the limited liability
9 partnership or the partner at the registered office or principal executive office
10 of the limited liability partnership; ~~and.~~
11 b. In all other cases, is given to a person:
12 (1) When mailed to the person at an address designated by the person or
13 at the last known address of the person; or
14 (2) When handed to the person; or
15 (3) When left at the office of the person with a clerk or other person in
16 charge of the office; or
17 (a) If there is no one in charge, when left in a conspicuous place in
18 the office; or
19 (b) If the office is closed or the person to be notified has no office,
20 when left at the dwelling house or usual place of abode of the
21 person with some person of suitable age and discretion then
22 residing therein.
23 c. Is given when deposited in the United States mail with sufficient postage
24 affixed.
25 d. Is deemed received when ~~it is~~ given.
- 26 ~~40.~~ 9. "Originally registered" and "original registration" ~~refers to~~ means the document
27 establishing the limited liability partnership status of the foreign limited liability
28 partnership in ~~its~~ the foreign limited liability partnership's jurisdiction of origin.
- 29 10. "Partnership" means an association of two or more persons to carry on as
30 coowners of a business for profit formed under chapters 45-13 through 45-21,
31 predecessor law, or comparable law of another jurisdiction.

- 1 11. "Principal executive office" means:
- 2 a. An office from which the limited liability partnership conducts business; or
- 3 b. If the limited liability partnership has no office from which it the limited liability
- 4 partnership conducts business, ~~then~~ the registered office of the limited liability
- 5 partnership.
- 6 12. "Register" means the act of filing with the secretary of state which causes:
- 7 a. A domestic limited liability partnership to be created; or
- 8 b. A foreign limited liability partnership to be authorized to transact business in
- 9 this state.
- 10 13. "Registered office" means the place in this state designated as the registered office
- 11 of the limited liability partnership.
- 12 14. "Registration" means the document which, when filed with the secretary of state,
- 13 causes:
- 14 a. A domestic limited liability partnership to be created; or
- 15 b. A foreign limited liability partnership to be authorized to do business in this
- 16 state.
- 17 15. ~~"Renewal registration" means the document by which the status of a domestic~~
- 18 ~~limited liability partnership or a foreign limited liability partnership is extended for an~~
- 19 ~~additional one-year period.~~
- 20 16. "Signed" means ~~that~~ the signature of a person ~~has been~~ is placed on a document,
- 21 as provided in subsection 39 of section 41-01-11~~;~~.
- 22 a. With respect to a document required by this chapter to be filed with the
- 23 secretary of state, the term means ~~that~~ the document ~~has been~~ is signed by a
- 24 person authorized to do so by this chapter, or by or pursuant to an agreement
- 25 among the partners, or by a resolution approved by the affirmative vote of the
- 26 required proportion or number of partners; ~~and~~.
- 27 b. With respect to a document not required by this chapter to be filed with the
- 28 secretary of state, the signature may be a facsimile affixed, engraved, printed,
- 29 placed, stamped with indelible ink, transmitted by telecommunication or
- 30 electronically, or in any other manner reproduced on the document.

SECTION 177. AMENDMENT. Section 45-22-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-03. Registration.

1. A partnership may become a limited liability partnership pursuant to this section.

a. In determining whether the underlying ~~general~~ partnership necessary for registration as a domestic limited liability partnership has been formed, the rules set forth in section 45-14-02 apply.

b. The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the necessary vote of partners required to amend the partnership agreement, unless the partnership agreement contains a requirement that the vote of a greater number of partners is necessary to amend provisions relating to the partners' obligations to contribute to the partnership, in which case by the necessary vote of the partners to amend these provisions.

2. After the approval required by subdivision b of subsection 1, a partnership shall become a limited liability partnership by filing a registration with the secretary of state. A domestic limited liability partnership or foreign limited liability partnership that is transacting business in this state must have in effect and filed with the secretary of state a registration that complies with this section.

a. ~~For one year from its~~ From the effective date of filing, the registration of:

(1) a. A domestic limited liability partnership establishes ~~its~~ the status as a domestic limited liability partnership; and

(2) b. A foreign limited liability partnership authorizes ~~it to transact~~ the transaction of business in this state.

~~Unless a renewal registration is properly filed with the secretary of state, the registration is subject to revocation by the secretary of state as provided in section 45-22-16.~~

b. ~~The limited liability partnership or foreign limited liability partnership may file a renewal registration that complies with this section no earlier than sixty days before the expiration of the one-year period.~~

(1) ~~A registration may be renewed for successive one-year periods.~~

(2) ~~A proper renewal registration extends the registration of a limited liability partnership or foreign limited liability partnership for another one-year period, measured from the end of the previous one-year period.~~

(3) ~~Unless a renewal registration is properly filed with the secretary of state, the registration shall be subject to revocation by the secretary of state as provided in section 45-22-16.~~

3. A registration ~~or renewal registration~~ must contain:

a. With respect to a domestic limited liability partnership:

(1) The name of the domestic limited liability partnership.

(2) The nature of the business to be transacted in this state.

(3) The address of the principal executive office of the domestic limited liability partnership.

(4) The address of the registered office of the domestic limited liability partnership and the name of ~~its~~ the registered agent at that address.

(5) The name and address of each managing partner.

(6) ~~An acknowledgment that the status of limited liability partnership will automatically expire, unless the partnership files a proper renewal registration.~~ A statement that the partnership elects to be a limited liability partnership.

(7) ~~An acknowledgment that other jurisdictions, including other jurisdictions that have limited liability partnership statutes, may not provide any limited liability shield or may not provide as broad a limited liability shield as does this chapter.~~ A deferred effective date, if any.

b. With respect to a foreign limited liability partnership:

(1) The name of the foreign limited liability partnership and, if different, the name under which ~~it~~ the foreign limited liability partnership proposes to transact business in this state.

(2) The jurisdiction of ~~its original registration~~ origin.

(3) The date on which the foreign limited liability partnership expires in the jurisdiction of ~~its~~ origin.

- 1 (4) The nature of the business to be transacted in this state.
- 2 (5) The address of the principal executive office of the foreign limited
- 3 liability partnership.
- 4 (6) The address of the registered office of the foreign limited liability
- 5 partnership and the name of ~~its~~ the foreign limited liability partnership's
- 6 registered agent at that address.
- 7 (7) The name and address of each managing partner.
- 8 (8) An acknowledgment that the status of the foreign limited liability
- 9 partnership in this state will automatically expire:
- 10 ~~(a) Unless the foreign limited liability partnership files a proper~~
- 11 ~~renewal registration; and~~
- 12 ~~(b) Unless~~ unless the foreign limited liability partnership continuously
- 13 maintains ~~its~~ a limited liability partnership status in ~~its~~ the
- 14 jurisdiction of origin.
- 15 c. The registration must be accompanied by payment of the fees provided in
- 16 section 45-22-22 together with a certificate of good standing or certificate of
- 17 existence authenticated by the registering officer of the state or country where
- 18 the foreign limited liability partnership is originally registered and the consent
- 19 of the designated registered agent for service of process to serve in that
- 20 capacity.
- 21 4. An original of the registration ~~or renewal registration~~ must be filed with the
- 22 secretary of state.
- 23 a. If the secretary of state finds ~~that~~ the registration ~~or renewal registration~~
- 24 conforms to law and ~~that~~ the fees provided in section 45-22-22 ~~have been~~ are
- 25 paid, the secretary of state shall endorse on the original the word "filed" and
- 26 the day, month, and year of the filing and shall file the original in the office of
- 27 the secretary of state.
- 28 b. If any statement in the registration ~~or renewal registration~~ is false when
- 29 made or becomes inaccurate after the registration ~~or renewal registration~~ is
- 30 filed, making the registration ~~or renewal registration~~ false or inaccurate in any
- 31 respect:

(1) ~~The, the~~ limited liability partnership ~~or foreign limited liability partnership~~
shall file promptly with the secretary of state an amended or corrected
registration ~~or renewal registration~~ or reflect the changes on ~~its the~~
limited liability partnership's next renewal registration; and annual
report.

(2) ~~With respect to foreign limited liability partnerships:~~

(a) ~~c.~~ In the case of a change in ~~its~~ a foreign limited liability partnership's name, a
foreign limited liability partnership shall file promptly with the secretary of state
a certificate to that effect authenticated by the proper officer of the ~~state or~~
~~country under the laws of which the foreign limited liability partnership is~~
originally registered; or jurisdiction of origin.

(b) ~~d.~~ In the case of a termination or merger:

~~[4]~~ (1) A foreign limited liability partnership that is not the surviving
organization need not file an amended registration but, within thirty
days after the merger or termination becomes effective, shall file with
the secretary of state a certificate to that effect authenticated by the
proper officer of the ~~state or country under the laws of which the foreign~~
~~limited liability partnership is originally registered~~ partnership's
jurisdiction of origin.

~~[2]~~ (2) It is not necessary for any foreign limited liability partnership, which is
the surviving organization in a merger, to procure ~~either~~ a new or
amended registration unless the name of the foreign limited liability
partnership is changed or unless the foreign limited liability partnership
desires to pursue in this state purposes other than those which ~~it the~~
foreign limited liability partnership is authorized to transact in this state.

e. ~~With respect to renewals:~~

(1) ~~A renewal registration received by the secretary of state in a sealed~~
~~envelope postmarked by the United States postal service on or before~~
~~the lapse, or a renewal registration in a sealed packet with a verified~~
~~shipment date by any other carrier service on or before the lapse, and~~
~~properly addressed to the secretary of state is deemed to be in~~

- 1 ~~compliance with the requirement for timely delivery. When a lapse falls~~
2 ~~on a Saturday, Sunday, or other holiday as defined in section 1-03-01,~~
3 ~~a postmark or verified shipment date on the next business day is in~~
4 ~~compliance with this requirement.~~
- 5 (2) ~~The secretary of state must file the renewal registration if the renewal~~
6 ~~registration conforms to the requirements of this section.~~
- 7 (3) ~~If the renewal registration does not conform, the registration must be~~
8 ~~returned to the limited liability partnership or foreign limited liability~~
9 ~~partnership for any necessary corrections. If the corrected renewal~~
10 ~~registration is filed after the lapse date, but within thirty days after it is~~
11 ~~returned for correction, the penalties for failure to file the renewal~~
12 ~~registration within the time required do not apply.~~
- 13 (4) ~~Each limited liability partnership or foreign limited liability partnership~~
14 ~~that fails or refuses to file its renewal registration on or before the lapse~~
15 ~~date of a registration must pay an additional late renewal fee as~~
16 ~~provided in section 45-22-22.~~
- 17 ~~d. e.~~ The secretary of state may destroy any ~~registrations and renewal registrations~~
18 ~~which have been~~ registration that is on file for seven years.
- 19 5. A managing partner must be separately registered with the secretary of state at the
20 time of the registration of a domestic limited liability partnership ~~whenever~~ if that
21 managing partner is ~~either~~ a domestic or foreign:
- 22 a. Corporation;
23 b. Limited liability company;
24 c. Limited partnership;
25 d. Limited liability partnership; ~~or~~
26 e. Limited liability limited partnership; or
27 f. ~~General partnership~~ Partnership using a fictitious name.
- 28 6. With respect to a domestic limited liability partnership:
29 a. A ~~general~~ partnership's decision to file a registration is an ordinary matter that
30 may be decided by a majority of the partners.

b. The decision to withdraw ~~or not renew~~ a registration may be undertaken only with the consent of all ~~of the~~ partners or as otherwise expressly provided in a written partnership agreement.

7. A ~~general~~ partnership that registers as a limited liability partnership is not deemed to have dissolved as a result of the registration.

8. If a limited liability partnership or foreign limited liability partnership dissolves without winding up ~~its~~ business or changes ~~its~~ the jurisdiction of origin, a partnership ~~which~~ that is a successor to ~~such~~ the limited liability partnership or foreign limited liability partnership and which intends to be a limited liability partnership or foreign limited liability partnership ~~shall~~ is not ~~be~~ required to file a new registration or renewal and ~~shall be~~ is deemed to have filed any documents required or permitted under this section which were filed by the predecessor partnership.

9. The status of a partnership as a limited liability partnership is effective on the later of the filing of the registration or a date specified in the registration which is within ninety days after the filing of the registration.

a. The status of a partnership as a domestic limited liability partnership and the authority of a foreign limited liability partnership to transact business in this state remains effective, regardless of changes in the partnership, until the partnership's registration is voluntarily withdrawn pursuant to section 45-22-13 or revoked by the secretary of state pursuant to sections 45-22-16 and 45-22-21.1.

b. The status of a partnership as a limited liability partnership and the liability of the partnership's partners for obligation of the partnership is not affected by errors or later changes in the information required to be contained in the registration under subsection 3.

SECTION 178. AMENDMENT. Section 45-22-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-04. Limited liability partnership - Name.

1. The name of a limited liability partnership:

- 1 a. Must be in the English language or in any other language, expressed in
- 2 English letters or characters.
- 3 b. Must contain ~~the~~:
- 4 (1) The words "limited liability partnership" or ~~either~~ the abbreviation
- 5 "L.L.P." or the abbreviation "LLP", either of which abbreviations ~~can~~
- 6 may be used interchangeably for all purposes authorized by this
- 7 chapter, including real estate matters, contracts, and filings with the
- 8 secretary of state¹; or
- 9 (2) In the case of a foreign limited liability partnership, any other words or
- 10 abbreviations as may be authorized or required under the laws of the
- 11 jurisdiction of ~~original registration~~ origin.
- 12 c. May not contain a word or phrase ~~that indicates~~ indicating or ~~implies that it~~
- 13 implying the limited liability partnership may not be formed under this chapter.
- 14 d. May not contain the word "corporation", "company", "incorporated", "limited
- 15 liability company", "limited partnership", "limited liability limited partnership", or
- 16 any abbreviation of these words.
- 17 e. May not contain a word or phrase ~~that indicates~~ indicating or ~~implies that it~~
- 18 implying the limited liability partnership is formed for a purpose other than one
- 19 or more business purposes for which a partnership may be formed under
- 20 North Dakota law.
- 21 e- f. May not be the same as²; or deceptively similar to:
- 22 (1) The name, whether foreign and authorized to do business in this state³;
- 23 or domestic, unless there is filed with the registration a document ~~which~~
- 24 that complies with subsection ~~2~~ 3 of this section, ~~or~~ of:
- 25 (a) Another limited liability partnership;
- 26 (b) A corporation;
- 27 (c) A limited liability company; ~~or~~
- 28 (d) A limited partnership; or
- 29 (e) A limited liability limited partnership;

- (2) A name, the right to which is at the time of registration reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
 - (3) A fictitious name registered in the manner provided in chapter 45-11; or
 - (4) A trade name registered in the manner provided in chapter 47-25.
- f. ~~g.~~ Need not be filed as provided in chapter 45-11 except ~~when~~ if transacting business under a name other than the name as registered under this chapter.
2. The secretary of state shall determine whether a name is deceptively similar to another name for purposes of this section.
3. If the secretary of state determines that a limited liability partnership name is deceptively similar to another name for purposes of this chapter, ~~then~~ the limited liability partnership name may not be used unless there is filed with the registration:
 - a. The written consent of the holder of the rights to the name to which the proposed name has been determined to be deceptively similar; or
 - b. A certified copy of a judgment of a court in this state establishing the ~~prior~~ earlier right of the applicant to the use of the name in this state.
4. This section and section 45-22-05 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, and service marks; or
 - (4) Any other rights to the exclusive use of names or symbols.
 - b. Derogate the common law or principles of equity.
5. A limited liability partnership that is merged with ~~another~~ a domestic or foreign organization, that is registered by the reorganization of one or more domestic or foreign organizations, or that acquires by sale, lease, or other disposition to or exchange with a domestic organization all or substantially all of the assets of another domestic or foreign organization including ~~its~~ the organization's name, may

have the same name as that used in this state by any of the other organizations, if the other organization:

- a. ~~Was~~ is incorporated, organized, formed, or registered under the laws of this state;
- b. Is authorized to transact business or conduct activities in this state;
- c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
- d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
- e. Holds a trade name registered in the manner provided in chapter 47-25.

6. The use of a name by a limited liability partnership in violation of this section does not affect or vitiate ~~its~~ the limited liability partnership's status as a limited liability partnership ~~existence~~. However, a court of this state may, upon application of the state or of an interested or affected person, enjoin the limited liability partnership from doing business under a name assumed in violation of this section, even though ~~its~~ the limited liability partnership's registration may have been filed with the secretary of state.

7. With respect to foreign limited liability partnerships:

- a. A foreign limited liability partnership may register under any name that would be available to a domestic limited liability partnership, regardless of whether ~~or not~~ the name is the same under which ~~it~~ the foreign limited liability partnership is authorized in ~~its~~ the jurisdiction of original registration.
- b. A fictitious name certificate must be filed as provided in chapter 45-11 only ~~when~~ if registering under a name other than the name as authorized in the jurisdiction of original registration.

SECTION 179. AMENDMENT. Section 45-22-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-05. Reserved name.

1. The exclusive right to the use of a limited liability partnership ~~or foreign limited liability partnership~~ name otherwise permitted by section 45-22-04 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 45-22-22.
- a. 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.
- b. The reservation may be renewed for successive twelve-month periods.
3. The right to the exclusive use of a limited liability partnership ~~or foreign limited liability partnership~~ 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 45-22-22.
4. The right to the exclusive use of a limited liability partnership ~~or foreign limited liability partnership~~ 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 section 45-22-22.
5. The secretary of state may accept for filing a legible facsimile copy of the signed original of any request for a reserved name.
6. The secretary of state may destroy ~~all~~ any reserved name ~~requests~~ request and name request index ~~thereof~~ one year after expiration.

SECTION 180. AMENDMENT. Section 45-22-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-06. Failure to use required name. If a person purports to enter into a contract or other undertaking on behalf of a limited liability partnership and with intent to defraud does not disclose to the other party that part of the limited liability partnership's name that complies with subsection 1 of section 45-22-04, ~~then~~ that person is personally liable on the contract or undertaking; unless that person can show in making the contract or accepting the undertaking that the other party had knowledge or notice that the partnership was a limited liability partnership, or did not rely on the partnership being an ordinary ~~general~~ partnership. Any partner of a limited liability partnership who with intent to defraud consents to a person not

making the disclosure described in this section is also personally liable on the contract or undertaking, unless that partner can make the showing described in this section.

SECTION 181. AMENDMENT. Section 45-22-07 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-07. Unauthorized assumption of limited liability partnership powers - Liability. A person who assumes to act as a limited liability partnership knowing that ~~no~~ a registration ~~or renewal registration~~ is not in effect is jointly and severally liable for all debts and liabilities incurred or arising as a result.

SECTION 182. Section 45-22-08.1 of the North Dakota Century Code is created and enacted as follows:

45-22-08.1. Partner liability.

1. An obligation of a partnership incurred while the partnership is a domestic limited liability partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the domestic limited liability partnership.
2. A partner is not personally liable, directly or indirectly, including by way of indemnification, contribution, or otherwise under section 45-19-03, 45-20-06, 45-20-07, 45-21-03, or 45-21-06 or any other basis of law, for an obligation under this section solely by reason of being a partner or acting as a partner.
3. This section applies notwithstanding any inconsistent provision in the partnership agreement.
4. This section does not limit or impair the right of a domestic limited liability partnership or the domestic limited liability partnership's partners to make claims against any particular partner on the grounds that the particular partner has, in the partner's capacity as a partner, breached a duty to a domestic limited liability partnership.

SECTION 183. AMENDMENT. Section 45-22-10 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-10. Liability of partners for illegal distributions. With respect to the liability of partners for illegal distributions:

1. A Except as provided in subsection 3, a partner who receives a distribution from a domestic limited liability partnership ~~that~~ which would have been in violation of

section 10-19.1-92 had the limited liability partnership been a corporation with a board of directors is liable to the domestic limited liability partnership, ~~its~~ the domestic limited liability partnership's receiver, or other person winding up ~~its~~ the domestic limited liability partnership's affairs, but only to the extent that the distribution received by the partner exceeded the amount that properly could have been paid under section 10-19.1-92.

2. An action may not be commenced under this section more than two years from the date of the distribution.

3. A partner actively engaged in the partnership business is not liable to the domestic limited liability partnership for any distribution that is or was regularly paid to the partner on account of engagement in the partnership business to the extent the distribution is reasonable compensation for the partner's services to or on behalf of the partnership.

SECTION 184. AMENDMENT. Section 45-22-11 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-11. Registered office and agent.

1. A limited liability partnership ~~or foreign limited liability partnership~~ 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 partnership ~~or foreign limited liability partnership~~.
2. A limited liability partnership ~~or foreign limited liability partnership~~ shall appoint and continuously maintain a registered agent in ~~its~~ the registration who may be:
 - a. An individual residing in this state;
 - b. A domestic corporation, ~~a~~ domestic limited liability company, or ~~a~~ domestic limited liability partnership; or
 - c. A foreign corporation, foreign limited liability company, or foreign limited liability partnership authorized to transact business in this state.
3. Proof of the registered agent's consent to serve in ~~that~~ the capacity of registered agent must be filed with the secretary of state, together with the fees provided in section 45-22-22.

1 **SECTION 185. AMENDMENT.** Section 45-22-12 of the 1997 Supplement to the North
2 Dakota Century Code is amended and reenacted as follows:

3 **45-22-12. Change of registered office or agent.**

- 4 1. A limited liability partnership ~~or foreign limited liability partnership~~ may change ~~its~~
5 the limited liability partnership's registered office, change ~~its~~ the limited liability
6 partnership's registered agent, or state a change in the name of ~~its~~ the limited
7 liability partnership's registered agent, by filing with the secretary of state, along
8 with the fees provided in section 45-22-22, a statement containing:
- 9 a. The name of the limited liability partnership ~~or foreign limited liability~~
10 ~~partnership~~.
- 11 b. If the address of ~~its~~ the limited liability partnership's registered office is ~~to be~~
12 ~~changed~~ changing, the new address of ~~its~~ the limited liability partnership's
13 registered office.
- 14 c. If ~~its~~ the limited liability partnership's registered agent is to be designated or
15 ~~changed~~ is changing, the name of ~~its~~ the limited liability partnership's new
16 registered agent.
- 17 d. If the name of ~~its~~ the limited liability partnership's registered agent is ~~to be~~
18 ~~changed~~ changing, the name of ~~its~~ the limited liability partnership's registered
19 agent as changed.
- 20 e. A statement that the address of ~~its~~ the limited liability partnership's registered
21 office and the address of the business office of ~~its~~ the limited liability
22 partnership's registered agent, as changed, will be identical.
- 23 f. A statement that the change of registered office or registered agent was
24 authorized by resolution of the partnership.
- 25 2. A registered agent may resign by filing with the secretary of state a written notice of
26 resignation, including a statement that a signed copy of the notice ~~has been~~ was
27 given to the limited liability partnership ~~or foreign limited liability partnership~~ at ~~its~~
28 the limited liability partnership's principal executive office, or to a legal
29 representative of the limited liability partnership ~~or foreign limited liability~~
30 ~~partnership~~. The appointment of the agent terminates thirty days after the notice is
31 filed with the secretary of state.

- 1 3. If the business address or name of a registered agent changes, the agent shall
2 change the address of the registered office or name of the registered agent of each
3 limited liability partnership ~~or foreign limited liability partnership~~ represented by that
4 agent by filing with the secretary of state a statement for each limited liability
5 partnership ~~or foreign limited liability partnership~~ as required in subsection 1,
6 except ~~that it~~ the statement need be signed only by the registered agent, need not
7 be responsive to subdivision c or f of subsection 1, and must state that a copy of
8 the statement ~~has been~~ was mailed to each of those limited liability partnerships ~~or~~
9 ~~foreign limited liability partnerships~~ or to the legal representative of each of those
10 limited liability partnerships ~~or foreign limited liability partnerships~~.
11 4. The fee prescribed in section 45-22-22 for the change of registered office must be
12 refunded ~~when~~ if, in the opinion of the secretary of state, the change of address of
13 registered office results from rezoning or postal reassignment.

14 **SECTION 186. AMENDMENT.** Section 45-22-13 of the 1997 Supplement to the North
15 Dakota Century Code is amended and reenacted as follows:

16 **45-22-13. Voluntary withdrawal of status.**

- 17 1. A partnership may end ~~its~~ the partnership's status as a limited liability partnership
18 ~~or foreign limited liability partnership~~ at any time by filing a withdrawal statement
19 with the secretary of state.
20 2. The withdrawal statement must contain:
21 a. With respect to a domestic limited liability partnership:
22 (1) The name of the domestic limited liability partnership.
23 (2) A statement that the domestic limited liability partnership is withdrawing
24 ~~its~~ the current registration.
25 (3) An acknowledgment by the domestic limited liability partnership that the
26 withdrawal ends ~~its~~ the domestic limited liability partnership's status as
27 a limited liability partnership status with respect to periods after the
28 effective date of the withdrawal.
29 b. With respect to a foreign limited liability partnership:
30 (1) The name of the foreign limited liability partnership.
31 (2) The jurisdiction of origin.

- (3) A statement that the foreign limited liability partnership is not transacting business in this state as a foreign limited liability partnership.
- (4) A statement that the foreign limited liability partnership surrenders ~~its~~ authority to transact business in this state as a foreign limited liability partnership and is withdrawing ~~its~~ the foreign limited liability partnership's current registration.
- (5) An acknowledgment by the foreign limited liability partnership that the withdrawal ends ~~its~~ the foreign limited liability partnership's authorization to transact business in this state as a foreign limited liability partnership ~~status in this state~~ with respect to periods after the effective date of the withdrawal.
- (6) A statement the foreign limited liability partnership revokes the authority of ~~its~~ the foreign limited liability partnership's registered agent in this state to accept service of process and consents that service of process based upon any cause of action arising in this state during the time the foreign limited liability partnership was authorized to transact business in this state may be made on the foreign limited liability partnership by service upon the secretary of state.
- (7) A post-office address to which a person may mail a copy of any process against the foreign limited liability partnership.
3. The withdrawal statement may state a delayed withdrawal date, ~~if that date is before the expiration date of the current registration.~~ If the withdrawal statement does not state an effective date, ~~then~~ the statement is effective when filed.
4. If the foreign limited liability partnership is not the surviving organization in a merger or termination, ~~then~~ the filing with the secretary of state of a certificate to that effect authenticated by the proper officer of the state or country under the laws of which the foreign limited liability partnership is originally registered constitutes a valid withdrawal statement.

SECTION 187. AMENDMENT. Section 45-22-14 of the 1997 Supplement to the North

Dakota Century Code is amended and reenacted as follows:

45-22-14. Filing after dissolution.

1. A dissolved limited liability partnership ~~or a foreign limited liability partnership~~ that is winding up ~~its~~ affairs may continue ~~its~~ the limited liability partnership's status as a limited liability partnership ~~or foreign limited liability partnership~~ through termination ~~either~~ by:

a. ~~Continuing~~ continuing to file an annual ~~renewal~~ registrations report until termination; ~~or~~

b. ~~Filing a final renewal registration that, in addition to providing the information required by subsection 3 of section 45-22-03:~~

(1) ~~States the partnership is dissolved and is winding up its affairs.~~

(2) ~~Identifies the cause of the dissolution.~~

(3) ~~States the renewal registration is the final renewal registration and will remain in effect until termination.~~

2. ~~A final renewal registration that complies with subdivision b of subsection 1 must not contain the statement required in:~~

a. ~~Paragraph 6 of subdivision a of subsection 3 of section 45-22-03 in the case of a domestic limited liability partnership; or~~

b. ~~Paragraph 8 of subdivision b of subsection 3 of section 45-22-03 in the case of a foreign limited liability partnership.~~

3. When the dissolved limited liability partnership ~~or foreign limited liability partnership~~ ~~has wound~~ winds up ~~its~~ affairs, ~~it~~ the limited liability partnership shall file with the secretary of state a termination notice, together with the fees provided in section 45-22-22. The termination notice must:

a. Contain:

(1) The name of the limited liability partnership ~~or foreign limited liability partnership~~.

(2) A statement the limited liability partnership ~~or foreign limited liability partnership~~ has dissolved and wound up its affairs.

(3) A statement the limited liability partnership ~~or foreign limited liability partnership~~ is terminated.

- b. Be signed by one former managing partner who ~~has~~ did not wrongfully
~~dissolved~~ dissolve the partnership or, in the case of a foreign limited liability
partnership, by a ~~managing~~ authorized partner.

SECTION 188. AMENDMENT. Section 45-22-15 of the 1997 Supplement to the North
Dakota Century Code is amended and reenacted as follows:

45-22-15. Limited liability after dissolution. With respect to limited liability after
dissolution:

1. Subject to section 45-22-14, the limited liability shield described in sections
45-22-08 and 45-22-09 continues in full force for the dissolved domestic limited
liability partnership regardless of any dissolution, winding up, and termination.
2. If a domestic limited liability partnership dissolves and ~~its~~ the domestic limited
liability partnership's business is continued by a successor ~~general~~ partnership
under section 45-20-02, ~~then~~ the limited liability described in ~~sections~~ section
45-22-08 ~~and 45-22-09~~ also applies to that successor domestic limited liability
partnership until the ~~expiration~~ withdrawal of the registration that the dissolved
domestic limited liability partnership had in effect under section 45-22-03 at the
moment of dissolution. The successor ~~general~~ partnership may at any time file ~~its~~
the partnership's own registration under section 45-22-03.

SECTION 189. AMENDMENT. Section 45-22-16 of the 1997 Supplement to the North
Dakota Century Code is amended and reenacted as follows:

45-22-16. Revocation of registration.

1. The registration of a limited liability partnership ~~or foreign limited liability~~
~~partnership~~ may be revoked by the secretary of state upon the occurrence of any
of these events:
 - a. The limited liability partnership ~~or foreign limited liability partnership has failed~~
fails:
 - (1) To appoint and maintain a registered agent as required by this chapter;
 - (2) To file a report upon any change in the name or business address of
the registered agent; or

- 1 (3) To file any ~~required~~ amendment to ~~its~~ the limited liability partnership's
2 registration; ~~or required to be filed pursuant to subdivision b or c of~~
3 subsection 4 of section 45-22-03.
- 4 (4) ~~To file a renewal registration as provided in subsection 2 of section~~
5 ~~45-22-03.~~
- 6 b. An intentional misrepresentation ~~has been~~ is made in any material matter in
7 any registration, report, affidavit, or other document submitted by the limited
8 liability partnership ~~or foreign limited liability partnership~~ pursuant to this
9 chapter.
- 10 2. The secretary of state may not revoke the registration of a limited liability
11 partnership ~~or foreign limited liability partnership~~ unless:
- 12 a. The secretary of state ~~has given~~ gave the limited liability partnership ~~or~~
13 ~~foreign limited liability partnership~~ at least sixty days' notice of the reason for
14 the pending revocation by mail addressed to ~~its~~ the limited liability
15 partnership's registered office or, if the limited liability partnership ~~or foreign~~
16 ~~limited liability partnership~~ fails to appoint and maintain a registered agent in
17 this state, ~~then~~ by mail addressed to ~~its~~ the limited liability partnership's
18 principal executive office; and
- 19 b. During the sixty-day period, the limited liability partnership ~~or foreign limited~~
20 ~~liability partnership has failed~~ fails:
- 21 (1) To appoint and maintain a registered agent as required by this chapter;
- 22 (2) To file the report of change regarding the name or business address of
23 the registered agent;
- 24 (3) To file ~~the required~~ any amendment to ~~its~~ the limited liability
25 partnership's registration required to be filed pursuant to subdivision b
26 or c of subsection 4 of section 45-22-03; or
- 27 (4) ~~To file a renewal registration as provided in subsection 2 of section~~
28 ~~45-22-03; or~~
- 29 (5) To correct the misrepresentation.
- 30 3. Upon the expiration of the sixty-day period without the limited liability partnership ~~or~~
31 ~~foreign limited liability partnership having cured~~ curing the reason for the pending

1 revocation set forth in the notice, the registration is revoked. The secretary of state
2 shall note the revocation in the records of the secretary of state and shall give
3 notice of the revocation to the limited liability partnership ~~or foreign limited liability~~
4 ~~partnership~~. Notice by the secretary of state must be mailed to the last registered
5 agent at the last registered office of record. If the limited liability partnership ~~or~~
6 ~~foreign limited liability partnership failed~~ fails to appoint and maintain a registered
7 office in this state, ~~then the notice must be mailed to its~~ the limited liability
8 partnership's principal executive office.

9 **SECTION 190. AMENDMENT.** Section 45-22-17 of the 1997 Supplement to the North
10 Dakota Century Code is amended and reenacted as follows:

11 **45-22-17. Service of process on a limited liability partnership ~~or foreign limited~~**
12 **~~liability partnership.~~**

- 13 1. A process, notice, or demand required or permitted by law to be served on a
14 limited liability partnership ~~or foreign limited liability partnership~~ may be served
15 ~~either~~ on the registered agent or on any responsible person found at the registered
16 office or on the secretary of state as provided in this section.
- 17 2. If neither the registered agent nor a responsible person can be found at the
18 registered office and if a responsible person affiliated with the limited liability
19 partnership ~~or foreign limited liability partnership~~ cannot be found at the principal
20 place of business in this state, the secretary of state is the agent of the limited
21 liability partnership ~~or foreign limited liability partnership~~ on whom the process,
22 notice, or demand may be served.
- 23 a. The return of the sheriff; or affidavit of a person not a party, that ~~no~~ a
24 registered agent or responsible person ~~may~~ cannot be found at ~~either~~ the
25 registered office or at the principal place of business in this state is conclusive
26 evidence ~~that~~ the limited liability partnership ~~or foreign limited liability~~
27 ~~partnership~~ has no registered agent or responsible person at ~~its~~ the limited
28 liability partnership's registered office or at ~~its~~ the limited liability partnership's
29 principal place of business in this state.
- 30 b. Service on the secretary of state of any process, notice, or demand is deemed
31 personal service on the limited liability partnership ~~or foreign limited liability~~

partnership and may be made by filing with the secretary of state one original and two copies of the process, notice, or demand together with the fees provided in section 45-22-22.

c. The secretary of state immediately shall forward, by certified mail addressed to the limited liability partnership ~~or foreign limited liability partnership~~ at its the limited liability partnership's registered office or ~~at its~~ principal place of business in this state, a copy of the process, notice, or demand.

d. 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.

3. The secretary of state shall maintain a record of every process, notice, and demand served on the secretary of state under this section, including the date of service and the action taken with reference to ~~it~~ the process, notice, or demand.

4. This section does not limit the right of a person to serve process, notice, or demand required or permitted by law to be served on a limited liability partnership ~~or foreign limited liability partnership~~ in any other manner permitted by law.

SECTION 191. AMENDMENT. Section 45-22-18 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-18. Foreign limited liability partnership governing law.

1. The laws of the foreign limited liability partnership's jurisdiction ~~under which a foreign limited liability partnership is originally registered of origin~~ govern its organization, internal affairs, and the liability of partners for the debts, obligations, and liabilities of or chargeable to the partnership or another partner or partners.:

a. The relations among the partners of a foreign limited liability partnership, or the relations between any partner or partners of a foreign limited liability partnership and the foreign limited liability partnership; and

b. The liability of partners for obligations of a foreign limited liability partnership.

2. A foreign limited liability partnership may not be denied registration to transact business in this state by reason of any difference between ~~those~~ the laws of the foreign limited liability partnership's jurisdiction of origin and the laws of this state.

3. A foreign limited liability partnership holding a valid registration in this state has the same, but no greater, rights and privileges as a domestic limited liability

partnership. The registration does not authorize the foreign limited liability partnership to engage in any business or exercise any ~~of its powers for purposes~~ power that a domestic limited liability partnership ~~is forbidden by law to exercise in this state~~ may not engage in or exercise as a limited liability partnership.

SECTION 192. AMENDMENT. Section 45-22-20 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-20. Transaction of business by a foreign limited liability partnership without registration.

1. A foreign limited liability partnership transacting business in this state may not maintain any cause of action in any court of this state until the partnership ~~has registered~~ registers with the secretary of state.
2. The failure of a foreign limited liability partnership to register with the secretary of state does not impair the validity of any contract or act of the foreign limited liability partnership or prevent the foreign limited liability partnership from defending any claim for relief in any court of this state.
3. A limitation on the personal liability of a partner is not waived solely by the foreign limited liability partnership transacting business in this state without having filed a registration with the secretary of state.
4. A foreign limited liability partnership, by transacting business in this state without ~~having registered~~ registering with the secretary of state, appoints the secretary of state as ~~its~~ the agent upon whom any notice, process, or demand may be served.

SECTION 193. AMENDMENT. Subsection 1 of section 45-22-21 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The following activities of a foreign limited liability partnership, 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~~ partners 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 partnership's own partnership interests or

maintaining trustees or depositories with respect to those partnership interests.

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~~ the orders become contracts.

g. Creating or acquiring indebtedness, ~~mortgages~~ with or without a mortgage, and or other security interests in real or personal property.

h. ~~Securing or collecting~~ Collecting debts or enforcing, including foreclosing mortgages; and security interests in property securing the debts canceling contracts for deed; enforcing other security interests on property; securing debts; accepting deeds or other instruments of title from debtors in lieu of foreclosure; canceling or other enforcement; and holding, protecting, and maintaining property acquired under this subdivision.

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.

~~k.~~ j. 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.

k. Transacting business in interstate commerce.

SECTION 194. Section 45-22-21.1 of the North Dakota Century Code is created and enacted as follows:

45-22-21.1. Secretary of state - Annual report of domestic limited liability partnership and foreign limited liability partnership.

1. Each domestic limited liability partnership and each foreign limited liability partnership 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 partnership and the jurisdiction of origin.

b. The address of the registered office of the limited liability partnership in this state, and the name of the limited liability partnership's registered agent in this state at that address.

- c. The address of the limited liability partnership's chief executive office.
- d. A brief statement of the character of the business in which the limited liability partnership is actually engaged in this state.
- e. The name and respective address of each managing partner of the domestic limited liability partnership or a resident partner or a designated partner of a foreign limited liability partnership.

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 16 of section 45-22-01, the partnership agreement, or in a resolution approved by the affirmative vote of the required proportion or number of partners. If the limited liability partnership is in the hands of a receiver or trustee, the annual report must be signed on behalf of the limited liability partnership by the receiver or trustee. The secretary of state may destroy any annual report provided for in this section after the annual report is on file for six years.

3. The annual report of a limited liability partnership must be delivered to the secretary of state before April first of each year, except the first annual report of a limited liability partnership must be delivered before April first of the year following the calendar year in which the registration is filed by the secretary of state. A limited liability partnership in existence on July 1, 1999, shall file the first annual report before April first in the year of the expiration of the registration in effect on July 1, 1999.

a. An annual report in a sealed envelope postmarked by the United States postal service before April first, or an annual report in a sealed packet with a verified shipment date by any other carrier service before April first, complies with this requirement.

b. The secretary of state must file the annual report if the annual report conforms to the requirements of subsection 2.

(1) If the annual report does not conform, the annual report must be returned to the limited liability partnership for any necessary corrections.

- 1 (2) If the annual report is filed before the deadlines prescribed in this
2 subsection, penalties for the failure to file a report within the time
3 provided do not apply if the annual report is corrected to conform to the
4 requirements of subsection 2 and returned to the secretary of state
5 within thirty days after the annual report was returned by the secretary
6 of state for correction.
- 7 4. After the date established under subsection 3, the secretary of state shall notify
8 any limited liability partnership failing to file an annual report that the limited liability
9 partnership's registration is not in good standing and the limited liability partnership
10 may be revoked pursuant to subsection 5.
- 11 a. The secretary of state shall mail notice of revocation to the last registered
12 agent at the last registered office of record.
- 13 b. If the limited liability partnership files an annual report after the notice is
14 mailed, together with the annual report filing fee and late filing penalty fee as
15 prescribed by section 45-22-22, the secretary of state shall restore the limited
16 liability partnership's certificate of organization or certificate of authority to
17 good standing.
- 18 5. A domestic limited liability partnership that does not file an annual report, along
19 with the statutory filing and penalty fees, within six months after the date
20 established in subsection 3, forfeits the limited liability partnership's registration.
- 21 a. The secretary of state shall note the revocation of the domestic limited liability
22 partnership's registration on the records of the secretary of state and shall
23 give notice of the action to the revoked domestic limited liability partnership.
- 24 b. Notice by the secretary of state must be mailed to the domestic limited liability
25 partnership's last registered agent at the last registered office of record.
- 26 6. A foreign limited liability partnership that does not file an annual report, along with
27 the statutory filing and penalty fees, within six months after the date established by
28 subsection 3, forfeits the foreign limited liability partnership's registration and
29 authority to transact business in this state.

- a. The secretary of state shall note the revocation of the foreign limited liability partnership's registration and authority on the records of the secretary of state and shall give notice of the action to the foreign limited liability partnership.
- b. Notice by the secretary of state must be mailed to the foreign limited liability partnership's last registered agent at the last registered office of record.
- c. The secretary of state's decision that a registration must be revoked under this subsection is final.

7. A domestic limited liability partnership with a registration that is revoked for failure to file an annual report or a foreign limited liability partnership with registration and authority that are 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 reinstatement fee as prescribed in section 45-22-22. The fees must be paid and the report filed within one year following the revocation. Reinstatement under this subsection does not affect any right or liability of a domestic limited liability partnership or a foreign limited liability partnership for the time from the revocation to the reinstatement.

SECTION 195. AMENDMENT. Section 45-22-22 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-22. Fees and charges.

1. The secretary of state shall charge and collect for:
 - a. Filing a registration as a domestic limited liability partnership, twenty-five dollars. ~~When~~ If there are more than two managing partners, an additional three dollars must be paid for each additional managing partner not to exceed two hundred fifty dollars.
 - b. Filing a ~~renewal~~ registration as a foreign limited liability partnership, ~~twenty-five~~ fifty dollars.
 - c. ~~Late filing of a renewal registration after the lapse of a registration, twenty dollars. This fee is in addition to the renewal registration fee.~~ Filing an annual report of a domestic limited liability partnership or foreign limited liability partnership, twenty-five dollars. The secretary of state shall charge and collect additional fees for late filing of an annual report as follows:

- 1 (1) After the date prescribed in subsection 3 of section 45-22-21.1, twenty
2 dollars; and
- 3 (2) After the revocation of the domestic limited liability partnership
4 registration or the foreign limited liability partnership registration, the
5 reinstatement fee of fifty dollars.
- 6 d. Filing a statement of correction; or amended registration, twenty-five dollars.
- 7 e. Filing an application to reserve a name, ten dollars.
- 8 f. Filing a notice of transfer of a reserved name, ten dollars.
- 9 g. Filing a cancellation of reserved name, ten dollars.
- 10 h. Filing a consent to use of name, ten dollars.
- 11 i. Filing a statement of change of address of registered office or change of
12 registered agent or both, ten dollars.
- 13 j. Filing a statement of change of address of registered office by registered
14 agent, ten dollars for each domestic limited liability partnership or foreign
15 limited liability partnership affected by ~~such~~ the change.
- 16 k. Filing a registered agent's consent to serve in ~~such~~ the capacity of registered
17 agent, ten dollars.
- 18 l. Filing a resignation as registered agent, ten dollars.
- 19 m. Filing a notice of withdrawal, ten dollars.
- 20 n. Filing a certificate of fact stating a merger of a foreign limited liability
21 partnership registered with the secretary of state, fifty dollars.
- 22 o. Filing any other statement of a domestic limited liability partnership, ten
23 dollars.
- 24 p. Filing any process, notice, or demand for service, twenty-five dollars.
- 25 q. ~~Filing a registration as a foreign limited liability partnership, fifty dollars.~~ Any
26 document submitted for approval before the actual time of submission for
27 filing, one-half of the fee provided in this section for filing the document.
- 28 2. The secretary of state shall charge and collect for:
- 29 a. Furnishing a copy of any document, instrument, or paper relating to a
30 domestic limited liability partnership or foreign limited liability partnership, one
31 dollar for every four pages, or fraction ~~thereof~~ of pages.

- 1 b. A certificate certifying a copy or reciting facts related to a domestic limited
2 liability partnership or foreign limited liability partnership, twenty dollars.
3 c. Each page of any document or form sent by electronic transmission, one
4 dollar.

5 **SECTION 196. AMENDMENT.** Section 45-22-23 of the 1997 Supplement to the North
6 Dakota Century Code is amended and reenacted as follows:

7 **45-22-23. Powers - Enforcement - Penalty - Appeal.**

- 8 1. The secretary of state shall administer this chapter.
9 2. The secretary of state may propound to any limited liability partnership ~~or foreign~~
10 ~~limited liability partnership~~ subject to this chapter and to any partner, any
11 interrogatory reasonably necessary and proper to ascertain whether the
12 partnership has complied with this chapter.
13 a. Any interrogatory must be answered within thirty days after mailing; or within
14 any additional time fixed by the secretary of state. ~~The answers~~ Every
15 answer to the interrogatory must be full and complete and be made in writing
16 and under oath.
17 b. If an interrogatory is directed:
18 (1) To an individual, ~~it~~ the interrogatory must be answered by that
19 individual; ~~or~~
20 (2) To a domestic limited liability partnership ~~or foreign limited liability~~
21 ~~partnership~~, ~~it~~ the interrogatory must be answered by a managing
22 partner; ~~or~~
23 (3) To a foreign limited liability partnership, the interrogatory must be
24 answered by a resident or, if no partner is a resident partner, a partner
25 designated by the foreign limited liability partnership.
26 c. The secretary of state need not file any document to which an interrogatory
27 relates until the interrogatory ~~has been~~ is answered, and not then except if
28 the answers disclose ~~that such~~ the document is not in conformity with this
29 chapter.

- 1 d. The secretary of state shall certify to the attorney general, for any action the
2 attorney general determines appropriate, any interrogatory and answers
3 ~~which~~ that disclose a violation of this chapter.
- 4 e. Each managing partner of a domestic limited liability partnership or a resident
5 partner or designated partner of a foreign limited liability partnership who fails
6 or refuses within the time provided by this section to answer truthfully and fully
7 every interrogatory propounded to that person by the secretary of state is
8 guilty of an infraction.
- 9 f. Any interrogatory propounded by the secretary of state and the answers are
10 not open to public inspection under section 44-04-18. The secretary of state
11 may not disclose any ~~facts~~ fact or information obtained from an interrogatory
12 except ~~insofar as may be~~ to the extent permitted by law or ~~insofar as is~~
13 required for evidence in any criminal ~~proceedings~~ proceeding or other action
14 by this state.

- 15 3. If the secretary of state rejects any document required by this chapter to be
16 approved by the secretary of state before the document may be filed, the secretary
17 of state, ~~within ten days after receipt of the document,~~ shall give written notice of
18 the rejection to the person who delivered the document, specifying the reasons for
19 rejection. That person may appeal to the district court of the county in which the
20 registered office of the domestic limited liability partnership or foreign limited
21 liability partnership is, or is proposed to be, situated by filing with the clerk of ~~such~~
22 that court a petition setting forth a copy of the document sought to be filed and a
23 copy of the written rejection of the document by the secretary of state. The court
24 shall try the matter de novo. The court shall ~~either~~ sustain the action of the
25 secretary of state or direct the secretary of state to take any action the court
26 determines proper.
- 27 4. If the secretary of state revokes the registration of any foreign limited liability
28 partnership pursuant to section 45-22-16, the foreign limited liability partnership
29 may appeal to district court of the county where the registered office of the foreign
30 limited liability partnership in this state is situated by filing with the clerk of ~~such~~
31 that court a petition setting forth a copy of ~~its~~ the foreign limited liability

partnership's registration and a copy of the notice of revocation given by the secretary of state. The court shall try the matter de novo. The court shall either sustain the action of the secretary of state or direct the secretary of state to take any action the court determines proper.

5. The attorney general may maintain an action to restrain a foreign limited liability partnership from transacting business in this state in violation of this chapter.

SECTION 197. AMENDMENT. Subsection 2 of section 45-22-24 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 domestic limited liability partnerships or foreign limited liability partnerships 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.

SECTION 198. AMENDMENT. Section 45-22-25 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-25. Forms to be furnished by the secretary of state. ~~All renewal registrations~~
Every annual report must be made on forms prescribed by the secretary of state. Upon request, the secretary of state may furnish forms for all other documents to be filed in the office of the secretary of state. However, the use of these documents, unless otherwise specifically required by law, is not mandatory.

SECTION 199. AMENDMENT. Section 45-22-26 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-26. Audit reports and audit of limited liability partnerships receiving state subsidies for production of alcohol or methanol for combination with gasoline. Any limited liability partnership ~~or foreign limited liability partnership~~ 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 partnership ~~or foreign limited liability partnership~~, to the legislative audit and fiscal review committee. The audit must be submitted within ninety days of the close of the taxable

year of the limited liability partnership ~~or foreign limited liability partnership~~. 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 partnership ~~or foreign limited liability partnership~~ required to submit an annual report under this section.

SECTION 200. AMENDMENT. Subdivision b of subsection 1 of section 45-22-27 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- b. "Private limited liability partnership" means a domestic limited liability partnership or foreign limited liability partnership, 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.

SECTION 201. Chapter 45-23 of the North Dakota Century Code is created and enacted as follows:

45-23-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Address" means:

- a. In case of a registered office or principal executive office, the mailing address of the actual office location which may not be only a post-office box; and
- b. In all other cases, the mailing address.

2. "Domestic limited liability limited partnership" means a limited liability limited partnership that is formed under this chapter.

3. "Filed with the secretary of state", except as otherwise permitted by law or rule, means:

- a. That a signed original or legible facsimile telecommunication of a signed original of a request for reserved name or a signed original of all of the documents meeting the applicable requirements of this chapter, together with the fees provided in section 45-23-08, was delivered to the secretary of state and was determined by the secretary of state to conform to law.
- b. That the secretary of state shall then endorse on the original the word "filed" and the month, day, and year and record the document in the office of the secretary of state.

4. "Foreign limited liability limited partnership" means a limited liability limited partnership that is:

a. Organized under the laws other than the laws of this state for a purpose or purposes for which a limited liability limited partnership may be organized under this chapter; and

b. In good standing in the jurisdiction of origin.

5. "Foreign limited partnership" means a limited partnership that is:

a. Organized under laws other than the laws of this state for a purpose for which a limited partnership may be organized under chapter 45-10.1; and

b. Authorized to transact business in this state as provided in chapter 45-10.1.

6. "Jurisdiction of origin" refers to the jurisdiction in which the limited liability limited partnership status of a foreign limited liability limited partnership was created.

7. "Limited liability limited partnership" means a domestic limited liability limited partnership.

8. "Limited partnership" means a limited partnership formed under chapter 45-10.1.

9. "Notice":

a. Is given to a limited liability limited partnership or to a partner of the limited liability limited partnership when in writing and mailed or delivered to the limited liability limited partnership or to the partner at the registered office or principal executive office of the partnership; and

b. In all other cases, 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 if there is no one in charge, when left in a conspicuous place in the office and 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 residing in that house or abode.

c. Is given when deposited in the United States mail with sufficient postage affixed.

d. Is deemed received when given.

10. "Principal executive office" means:

- a. An office from which the limited liability limited partnership conducts business;
or
b. If the limited liability limited partnership has no office from which the limited liability limited partnership conducts business, then the registered office of the limited liability limited partnership.

11. "Registered office" means the place in this state designated as the registered office of the limited liability limited partnership.

12. "Signed" means the signature of a person is placed on a document, as provided in section 41-01-11.

- a. With respect to a document required by this chapter to be filed with the secretary of state, means the document is signed by a person authorized to sign by this chapter, or pursuant to an agreement among the partners, or by a resolution approved by the affirmative vote of the required proportion or number of partners; and
b. With respect to a document not required by this chapter to be filed with the secretary of state, the signature may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the document.

45-23-02. Applicability of chapter 45-10.1.

1. In any case not provided for in this chapter, chapter 45-10.1 governs.
2. If applying chapter 45-10.1 to a limited liability limited partnership:
a. All references in chapter 45-10.1 to "limited partnership" refer to "limited liability limited partnership"; and
b. All references in chapter 45-10.1 to "foreign limited partnership" refer to "foreign limited liability limited partnership".
3. If any provision of this chapter conflicts with chapter 45-10.1, that provision of this chapter takes precedence.

45-23-03. Limited liability limited partnership name.

1. The name of each limited liability limited partnership as set forth in the limited liability limited partnership's certificate of limited liability limited partnership:

- 1 a. Must be in the English language or in another language expressed in English
2 letters or characters.
- 3 b. Must contain:
- 4 (1) Without abbreviation the words "limited liability limited partnership" or
5 the abbreviation "L.L.L.P." or "LLLP", either of which abbreviation may
6 be used interchangeably for any purpose authorized by this chapter
7 including real estate matters, contracts, and filings with the secretary of
8 state; or
- 9 (2) In the case of a foreign limited liability limited partnership, any other
10 words or abbreviations as may be authorized or required under the laws
11 of the jurisdiction of origin.
- 12 c. May not contain the name of a limited partner unless:
- 13 (1) The name is also the name of a general partner; or
- 14 (2) The business of the limited liability limited partnership was carried on
15 under that name before the admission of that limited partner.
- 16 d. May not contain the word "corporation", "company", "incorporated", "limited
17 liability company", "limited liability partnership", or any abbreviation of these
18 words.
- 19 e. May not contain a word or phrase indicating or implying the limited liability
20 limited partnership may not be organized under this chapter.
- 21 f. May not contain a word or phrase indicating or implying the limited liability
22 limited partnership is organized for a purpose other than a legal business
23 purpose for which a limited liability limited partnership may be organized
24 under this chapter.
- 25 g. May not contain a word or phrase indicating or implying the limited liability
26 limited partnership is organized other than for a purpose stated in the
27 certificate of the limited liability limited partnership.
- 28 h. May not be the same as, or deceptively similar to:
- 29 (1) The name, whether foreign and authorized to do business in this state
30 or domestic, unless there is filed with the certificate a document in
31 compliance with subsection 2, of:

- (a) Another limited liability limited partnership;
 - (b) A limited partnership;
 - (c) A corporation;
 - (d) A limited liability company; or
 - (e) A limited liability partnership;
- (2) A name the right to which is, at the time of organization, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
- (3) A fictitious name registered in the manner provided in chapter 45-11; or
- (4) A trade name registered in the manner provided in chapter 47-25.
2. The secretary of state shall determine whether a limited liability limited partnership name is deceptively similar to another name for purposes of this chapter.
3. If the secretary of state determines a limited liability limited partnership name is deceptively similar to another name for purposes of this chapter, the limited liability limited partnership name may not be used unless there is filed with the certificate:
 - a. The written consent of the holder of the registered trade name or the holder of the rights to the name to which the proposed name has been determined to be deceptively similar; or
 - b. A certified copy of a judgment of a court in this state establishing the earlier right of the applicant to the use of the name in this state.
4. This section does not abrogate or limit the law of unfair competition or unfair practices; chapter 47-25; the laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, service marks; or any other rights to the exclusive use of any name or symbol. This section does not derogate the common law or the principles of equity.
5. A limited liability limited partnership that is merged with another domestic or foreign organization, that is organized by the reorganization of one or more domestic or foreign organizations, or that acquires by sale, lease, or other disposition to or exchange with a domestic organization all or substantially all of the assets of another domestic or foreign organization, including the organization's name, may

1 include in the limited liability limited partnership's name the name of any of the
2 other organizations, if the other organization:

3 a. Is incorporated, organized, formed, or registered under the laws of this state;

4 b. Is authorized to transact business or conduct activities in this state;

5 c. Holds a reserved name in the manner provided in section 10-19.1-14,
6 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;

7 d. Holds a fictitious name registered in the manner provided in chapter 45-11; or

8 e. Holds a trade name registered in the manner provided in chapter 47-25.

9 6. The use of a name of a limited liability limited partnership in violation of this section
10 does not affect or vitiate a limited liability limited partnership's existence. However,
11 a court in this state may, upon application of the state or of an interested or
12 affected person, enjoin the limited liability limited partnership from doing business
13 under a name assumed in violation of this section, although a certificate of limited
14 liability limited partnership may have been filed with the secretary of state.

15 **45-23-04. Limited liability limited partnership formation.**

16 1. If a limited partnership does not exist, a limited liability limited partnership may be
17 formed by filing with the secretary of state, together with the fees provided in
18 section 45-23-08, a certificate of limited liability limited partnership:

19 a. That complies with the name requirements in section 45-23-03;

20 b. That contains a statement that limited liability limited partnership status is
21 elected; and

22 c. That otherwise conforms to the requirements of section 45-10.1-08.

23 2. An existing limited partnership:

24 a. May elect to become a limited liability limited partnership:

25 (1) By obtaining approval to be governed by this chapter by the vote
26 necessary to amend the limited partnership agreement except, in the
27 case of a limited partnership agreement that expressly considers
28 contribution obligations, the vote necessary to amend those provisions;

29 (2) By complying with the name requirements of section 45-23-03; and

30 (3) By filing with the secretary of state, together with the fees provided in
31 sections 45-10.1-15 and 45-23-08, a document that is designated as

both an amended certificate of limited partnership and a certificate of limited liability limited partnership which:

(a) Amends the limited partnership name to comply with the name requirements of section 45-23-03;

(b) Contains a statement that limited liability limited partnership status is elected; and

(c) Otherwise conforms to the requirements of section 45-10.1-09.

b. Continues to be the same entity in existence before the filing with the secretary of state pursuant to this section.

45-23-05. Effective date of formation or election under this chapter. With respect to the date on which a limited liability limited partnership is formed or on which a limited partnership elects to be governed by this chapter:

1. If a limited partnership does not exist, a limited liability limited partnership is formed on the later of the filing of the certificate of limited liability limited partnership or the date specified in the certificate of limited liability limited partnership which is within ninety days after the filing of the certificate of limited liability limited partnership.

2. An existing limited partnership electing to become a limited liability limited partnership is governed by this chapter on the later of the filing of the document designated as both an amendment to the certificate of limited partnership and a certificate of limited liability limited partnership or the date specified in that document which is within ninety days after the filing of the document.

45-23-06. General partner liability. An obligation of a limited liability limited partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the limited liability limited partnership. A general partner is not personally liable, directly or indirectly by way of contribution or otherwise, for an obligation of the limited liability limited partnership solely by reason of being or acting as a general partner. This section applies notwithstanding anything inconsistent in the partnership agreement.

45-23-07. Foreign limited partnership - Adopting limited liability limited partnership status. An existing foreign limited partnership authorized to transact business in this state pursuant to section 45-10.1-52 which subsequently adopts and maintains limited

liability limited partnership status in the jurisdiction of origin shall file with the secretary of state, together with the fees required in sections 45-10.1-15 and 45-23-08:

1. A document designated as both an amended foreign limited partnership registration as required by section 45-10.1-55 and a foreign limited liability limited partnership registration as required by section 45-10.1-52; and
2. A certificate of identification, existence, and status of a foreign limited liability limited partnership, duly certified by the proper officer of the jurisdiction of origin.

45-23-08. Fees for filing documents. The secretary of state shall charge and collect for:

1. Filing a certificate of limited liability limited partnership, one hundred dollars.
2. Filing a certificate of limited liability limited partnership amendment, forty dollars.
3. Filing a certificate of limited liability limited partnership dissolution, twenty-five dollars.
4. Filing a certificate of limited liability limited partnership cancellation, twenty-five dollars.
5. Filing a reservation of limited liability limited partnership name, ten dollars.
6. Filing a notice of transfer of reserved limited liability limited partnership name, ten dollars.
7. Filing a cancellation of a reserved limited liability limited partnership name, ten dollars.
8. Filing a consent to use of a deceptively similar name, ten dollars.
9. Filing a statement of change of address of registered office or change of registered agent, or both, ten dollars.
10. Filing a statement of change of address of registered office by registered agent, ten dollars for each limited liability limited partnership affected by the change.
11. Filing a registered agent's consent to serve in the capacity of registered agent, ten dollars.
12. Filing a resignation as registered agent, ten dollars.
13. Filing a registration of foreign limited liability limited partnership, one hundred dollars.

14. Filing a certified statement of amendment of foreign limited liability limited partnership, twenty-five dollars.

15. Filing a certified statement of dissolution of foreign limited liability limited partnership, twenty-five dollars.

16. Filing a certified statement of cancellation of foreign limited liability limited partnership, twenty-five dollars.

17. Filing a statement of withdrawal of foreign limited liability limited partnership, twenty-five dollars.

18. Filing an annual report of limited liability limited partnership, twenty-five dollars.

The secretary of state shall charge and collect additional fees for late filing of the annual report as follows:

a. After the date prescribed in subsection 3 of section 45-10.1-14, twenty dollars;
and

b. After the termination of the limited liability limited partnership or the revocation of the registration of a foreign limited liability limited partnership, the reinstatement fee of one hundred dollars.

19. Any document submitted for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the document.

SECTION 202. AMENDMENT. Subsection 6 of section 47-22-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. Consists of or comprises a trademark ~~which so that~~ resembles a trademark registered in this state or a trade name, corporate name, limited liability company name, limited liability partnership name, limited partnership name, limited liability limited partnership name, or fictitious name registered with the office of the secretary of state, as to be likely, when applied to the goods of the applicant, to cause confusion or mistake or to deceive.

SECTION 203. AMENDMENT. Section 47-25-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

47-25-03. Trade name - Nature. ~~No~~ A trade name registered may not be the same as or deceptively similar to any other trade name, domestic or foreign corporation name, domestic or foreign limited liability company name, ~~or a name of any domestic or foreign limited~~

1 partnership ~~authorized to do business in this state~~ name, domestic or foreign limited liability
2 partnership name, domestic or foreign limited liability limited partnership name, or a name the
3 right to which is in any manner reserved or registered in the office of the secretary of state,
4 unless there is filed with the trade name registration a written consent of the holder of the
5 similar name to use the proposed name, or if a franchise, a written consent from the franchiser.

6 **SECTION 204. AMENDMENT.** Section 61-13-03.1 of the North Dakota Century Code
7 is amended and reenacted as follows:

8 **61-13-03.1. Articles of organization or ~~operating agreement~~ bylaws may restrict**
9 **sales to members - When membership interest to become appurtenant to land - Sale of**
10 **water to others.** Any limited liability company organized for irrigation purposes may provide in
11 ~~its~~ the articles of organization or ~~operating agreement~~ bylaws that water ~~shall~~ must be sold,
12 distributed, supplied, or delivered only to owners of ~~its~~ the limited liability company's
13 membership interests and that ~~such~~ these membership interests ~~shall~~ must be appurtenant to
14 the land described in the document evidencing ~~such~~ these membership interests. ~~When~~ If a
15 copy of ~~such~~ the articles of organization or ~~operating agreement~~ bylaws is recorded in the office
16 of the register of deeds of the county in which ~~such~~ the lands are situated, ~~such~~ the
17 membership interests ~~shall~~ become appurtenant to ~~said~~ the lands and ~~shall~~ may be transferred
18 only with the sale or transfer of ~~such~~ the lands, except in the event of sale or forfeiture of ~~such~~
19 the membership interests for delinquent assessments ~~thereon~~ on the land as provided in
20 section 61-13-04. Notwithstanding ~~such~~ any provision in ~~its~~ the limited liability company's
21 articles of organization or ~~operating agreement~~ bylaws, any limited liability company organized
22 for irrigation purposes may sell water to an irrigation district, this state, or any department or
23 agency ~~thereof~~ of this state, and to the United States, or any department or agency ~~thereof~~ of
24 the United States, at the same rates as to holders of membership interests of ~~such~~ the limited
25 liability company. ~~In the event~~ If lands to which any ~~such~~ membership interest is appurtenant
26 are acquired by the state, the United States, or any department or agency ~~thereof~~ of the state
27 or the United States, ~~such~~ the membership interest ~~shall~~ must be canceled by the limited
28 liability company, ~~which shall~~ and must be reissued to any persons ~~subsequently~~ acquiring title
29 to ~~such~~ the land at a later date.

30 **SECTION 205. REPEAL.** Sections 45-10.1-54 and 45-22-08 of the 1997 Supplement
31 to the North Dakota Century Code are repealed.