

Fifty-sixth
Legislative Assembly
of North Dakota

ENGROSSED 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
2 subsection to section 10-19.1-65, a new subsection to section 10-19.1-87, a new subsection to
3 section 10-32-13, a new subsection to section 10-33-06, a new subsection to section 10-33-17,
4 a new 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
8 limited liability limited partnerships; to amend and reenact sections 10-06.1-12, 10-06.1-13,
9 10-06.1-17, 10-06.1-27, 10-19.1-01, subsection 2 of section 10-19.1-05, section 10-19.1-11,
10 subsection 1 of section 10-19.1-13, section 10-19.1-23, subsection 2 of section 10-19.1-30,
11 section 10-19.1-61, subsection 5 of section 10-19.1-61.1, subsection 1 of section 10-19.1-63,
12 subsection 4 of section 10-19.1-64, section 10-19.1-66, subsection 2 of section 10-19.1-68,
13 subsection 2 of section 10-19.1-70, subsection 1 of section 10-19.1-73.2, subsection 1 of
14 section 10-19.1-76.2, subsection 3 of section 10-19.1-83, subsection 1 of section 10-19.1-84,
15 subsection 3 of section 10-19.1-88, sections 10-19.1-91, 10-19.1-96, 10-19.1-97, 10-19.1-98,
16 10-19.1-99, 10-19.1-100, 10-19.1-101, 10-19.1-102, 10-19.1-103, subsection 2 of section
17 10-19.1-106, subsection 1 of section 10-19.1-108, subsection 3 of section 10-19.1-112,
18 subsection 1 of section 10-19.1-113.1, sections 10-19.1-129, 10-19.1-137, 10-19.1-139,
19 subsection 1 of section 10-19.1-146, sections 10-19.1-147, 10-30-05, 10-30.1-04, subsection 1
20 of section 10-31-02.1, subsection 2 of section 10-31-11, sections 10-31-13, 10-32-02,
21 10-32-06, 10-32-07, subsection 1 of section 10-32-10, subsection 5 of section 10-32-11,
22 sections 10-32-17, 10-32-22, 10-32-23, 10-32-28, 10-32-30, 10-32-31, 10-32-32, subsection 2
23 of section 10-32-35, sections 10-32-36, 10-32-37, 10-32-38, 10-32-39, subsection 3 of section
24 10-32-40, sections 10-32-40.1, 10-32-42, subsection 1 of section 10-32-43, section 10-32-43.1,
25 subsection 1 of section 10-32-44, section 10-32-48, subsection 2 of section 10-32-48.1,

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

1 repeal sections 45-10.1-54 and 45-22-08 of the North Dakota Century Code, relating to the
2 names of foreign limited partnership and piercing the limited liability shield of limited liability
3 partnerships.

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

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

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

12 The following requirements also apply:

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

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

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

19 **10-06.1-13. Applicability of North Dakota Business Corporation Act.** ~~Chapters~~
20 Chapter 10-19.1 and ~~10-23 are applicable~~ applies to farming or ranching corporations, which
21 have the powers and privileges and are subject to the duties, restrictions, and liabilities of other
22 business corporations except ~~when~~ if inconsistent with the intent of this chapter. This chapter
23 takes precedence in the event of any conflict with ~~the provisions of chapters~~ chapter 10-19.1
24 and ~~10-23~~.

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

27 **10-06.1-17. Annual report - Contents - Filing requirements.** Before April ~~fifteenth~~
28 sixteenth of each year, every corporation engaged in farming or ranching after June 30, 1981,
29 and every limited liability company engaged in farming or ranching shall file with the secretary
30 of state a an annual report executed by ~~its~~ the corporation's or limited liability company's
31 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
8 in 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 the disposition of ~~such~~ the membership interest must be determined by this section upon the
2 withdrawal of the member. Any member who desires to withdraw from the limited liability
3 company shall first offer the membership interest for sale to the remaining members in
4 proportion to the membership interests owned by ~~them~~ the remaining members. If not all of the
5 members wish to purchase the membership interest, any one member can purchase all of the
6 membership interest of the withdrawing member. If no member desires to purchase the
7 membership interest of the withdrawing member, ~~then~~ the limited liability company ~~itself~~ may
8 purchase the membership interest. If the limited liability company chooses not to purchase the
9 membership interest of the withdrawing member, ~~then~~ the withdrawing member may sell the
10 membership interest to any other person eligible to be a member. If the withdrawing member is
11 unable to sell the membership interest to any other person eligible to become a member, ~~then~~
12 the withdrawing member may bring an action in district court to terminate the limited liability
13 company. Upon a finding that the withdrawing member cannot sell the membership interest at
14 a fair price, the court shall enter an order directing that the limited liability company ~~itself~~ or any
15 of the remaining members pro rata or otherwise, ~~shall~~ have twelve months from the date of the
16 court's 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.

- 1 2. "Acquiring organization" means the corporation, foreign corporation, or domestic or
2 foreign limited liability company acquiring in an exchange the shares of a
3 corporation or foreign corporation or the membership interests of a domestic or
4 foreign limited liability company.
- 5 3. "Address" means:
- 6 a. In the case of a registered office or principal executive office, the mailing
7 address, including a zip code of the actual office location, which may not be
8 only a post-office box; and
- 9 b. In any other case, the mailing address, including a zip code.
- 10 ~~3.~~ 4. "Articles" means:
- 11 a. In the case of a corporation incorporated under or governed by this chapter,
12 articles of incorporation, articles of amendment, a resolution of election to
13 become governed by this chapter, a demand retaining the two-thirds majority
14 for shareholder approval of certain transactions, a statement of change of
15 registered office, registered agent, or name of registered agent, a statement
16 establishing or fixing the rights and preferences of a class or series of shares,
17 a statement of cancellation of authorized shares, articles of merger, articles of
18 abandonment, and articles of dissolution.
- 19 b. In the case of a foreign corporation, the term includes all documents serving a
20 similar function required to be filed with the secretary of state or other officer
21 of the corporation's state of incorporation.
- 22 ~~4.~~ 5. "Board" or "board of directors" means the board of directors of a corporation.
- 23 ~~5.~~ 6. "Board member" means:
- 24 a. An individual serving on the board of directors in the case of a corporation;
25 and
- 26 b. An individual serving on the board of governors in the case of a limited liability
27 company.
- 28 ~~6.~~ 7. "Bylaws" means the code adopted for the regulation or management of the internal
29 affairs of a corporation, regardless of how that code is designated.

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- 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

- 1 c. Similar interests in other organizations.
- 2 ~~29.~~ 31. "Parent" of a specified corporation means a corporation or limited liability company
3 that directly, or indirectly through related corporations or limited liability companies,
4 owns more than fifty percent of the voting power of the shares entitled to vote for
5 directors of the specified corporation.
- 6 ~~30.~~ 32. "Principal executive office" means an office where the elected or appointed
7 president of a corporation has an office, or if the corporation has no elected or
8 appointed president, then the registered office of the corporation.
- 9 ~~31.~~ 33. "Registered office" means the place in this state designated in the articles as the
10 registered office of the corporation.
- 11 ~~32.~~ 34. "Related organization" means an organization that controls, is controlled by, or is
12 under common control with another organization with control existing if an
13 organization:
- 14 a. Owns, directly or indirectly, at least fifty percent of the shares, membership
15 interests, or other ownership interests of another organization;
- 16 b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or
17 more of the voting members of the governing body of another organization; or
- 18 c. Has the power, directly or indirectly, to direct or cause the direction of the
19 management and policies of another organization, whether through the
20 ownership of voting interests, by contract, or otherwise.
- 21 ~~33.~~ 35. "Security" has the meaning given in section 10-04-02.
- 22 ~~34.~~ 36. "Series" means a category of shares, within a class of shares authorized or issued
23 by a corporation by or pursuant to ~~its~~ a corporation's articles, that have some of
24 the same rights and preferences as other shares within the same class, but that
25 differ in designation or one or more rights and preferences from another category
26 of shares within that class.
- 27 ~~35.~~ 37. "Share" means one of the units, however designated, into which the shareholders'
28 proprietary interests in a corporation are divided.
- 29 ~~36.~~ 38. "Shareholder" means a person registered on the books or records of a corporation
30 or ~~its~~ the corporation's transfer agent or registrar as the owner of whole or
31 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
13 telecommunication or electronically, or in any other manner reproduced on
14 the document.
- 15 ~~38.~~ 40. "Subscriber" means a person who subscribes for shares in a corporation, whether
16 before or after incorporation.
- 17 ~~39.~~ 41. "Subsidiary" of a specified corporation means:
- 18 a. A corporation having more than fifty percent of the voting power of ~~its~~ the
19 corporation's shares entitled to vote for directors owned directly, or indirectly
20 through related corporations or limited liability companies, by the specified
21 corporation; or
- 22 b. A limited liability company having more than fifty percent of the voting power
23 of ~~its~~ the limited liability company's membership interests entitled to vote for
24 governors owned directly, or indirectly through related limited liability
25 companies or corporations, by the specified limited liability company.
- 26 ~~40.~~ 42. "Surviving corporation" means the domestic or foreign corporation resulting from a
27 merger.
- 28 43. "Surviving organization" means the corporation or foreign corporation or domestic
29 or foreign limited liability company resulting from a merger.
- 30 ~~41.~~ 44. "Vote" includes authorization by written action.

1 ~~42.~~ 45. "Written action" means a written document signed by all of the persons required to
2 take the action, or the counterparts of a written document signed by any of the
3 persons taking the action described. Each counterpart constitutes the action of the
4 person signing ~~it~~; and all the counterparts, taken together, constitute one written
5 action by all of the persons signing ~~them~~ the counterparts.

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

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

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

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

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

26 **10-19.1-11. Filing of articles of incorporation.** An original of the articles of
27 incorporation must be filed with the secretary of state. If the secretary of state finds that the
28 articles of incorporation conform to law and ~~that~~ all fees ~~have been~~ are paid under ~~chapter~~
29 ~~10-23~~ section 10-19.1-147, the secretary of state shall issue a certificate of incorporation to the
30 incorporators or ~~their~~ the incorporators' representative.

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

- 3 1. The corporate name:
- 4 a. Must be in the English language or in any other language expressed in
5 English letters or characters.
- 6 b. Must contain the word "company", "corporation", "incorporated", "limited", or
7 an abbreviation of one or more of these words.
- 8 c. May not contain a word or phrase ~~that indicates~~ indicating or ~~implies that it~~
9 implying the corporation may not be incorporated under this chapter.
- 10 d. May not contain the words "limited liability company", "limited partnership",
11 "limited liability partnership", "limited liability limited partnership", or any
12 abbreviation of these words.
- 13 e. May not contain a word or phrase ~~that indicates~~ indicating or ~~implies that it~~
14 implying the corporation is incorporated for a purpose other than a legal
15 business purpose for which a corporation may be incorporated under this
16 chapter.
- 17 e- f. May not be the same as, or deceptively similar to:
- 18 (1) The name, whether foreign and authorized to do business in this state,
19 or domestic, unless there is filed with the articles a document ~~which~~
20 that complies with subsection ~~2~~ 7 of this section, of:
- 21 (a) Another corporation;
- 22 (b) A corporation incorporated or authorized to do business in this
23 state under another chapter of this code;
- 24 (c) A limited liability company;
- 25 (d) A limited partnership; ~~or~~
- 26 (e) A limited liability partnership; or
- 27 (f) A limited liability limited partnership;
- 28 (2) A name the right to which is, at the time of incorporation, reserved in
29 the manner provided in section 10-19.1-14, 10-32-11, 10-33-11,
30 45-10.1-03, or 45-22-05;
- 31 (3) A fictitious name registered in the manner provided in chapter 45-11; or

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

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

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

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

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

1 notice of meetings of the board ~~pursuant to~~ under subsection 5 of section
2 10-19.1-43.

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

5 **10-19.1-61. Authorized shares.**

- 6 1. Subject to any restrictions in the articles, a corporation may issue securities and
7 rights to purchase securities only when authorized by the board.
- 8 2. All ~~the~~ shares of a corporation:
- 9 a. Must be of one class and one series, unless the articles establish; or
10 authorize the board to establish; more than one class or series;
- 11 b. Must be common shares entitled to vote and ~~shall~~ have equal rights and
12 preferences in all matters not otherwise provided for by the board, unless and
13 to the extent ~~that~~ the articles have created nonvoting shares or have fixed the
14 relative rights and preferences of different classes and series; and
- 15 c. Must have, unless a different par value is specified in the articles, a par value
16 of one cent per share.
- 17 3. Subject to any restrictions in the articles, the power granted in subsection 2 may
18 be exercised by a resolution approved by ~~the affirmative vote of a majority of the~~
19 ~~directors present~~ as required under section 10-19.1-46 establishing a class or
20 series, setting forth the designation of the class or series, and fixing the relative
21 rights and preferences of the class or series. Any of the rights and preferences of
22 a class or series established in the articles or by resolution of the directors:
- 23 a. May be made dependent upon facts ascertainable outside the articles; or
24 outside the resolution or resolutions establishing the class or series, provided
25 that the manner in which the facts operate upon the rights and preferences of
26 the class or series is clearly and expressly set forth in the articles or in the
27 resolution or resolutions establishing the class or series; and
- 28 b. May incorporate by reference ~~some or all~~ any of the terms of any
29 agreements, contracts, or other arrangements entered into by the issuing
30 corporation in connection with the establishment of the class or series if the
31 corporation retains at ~~its~~ the principal executive office, a copy of the

1 agreements, contracts, or other arrangements or portions incorporated by
2 reference.

3 4. A statement executed by an officer setting forth the name of the corporation and
4 the text of the resolution and certifying the adoption of the resolution and the date
5 of adoption must be filed with the secretary of state, together with the fees
6 provided in ~~chapter 10-23~~ under section 10-19.1-147, before the issuance of any
7 shares for which the resolution creates rights or preferences not set forth in the
8 articles. The resolution is effective when the statement ~~has been~~ is filed with the
9 secretary of state unless the statement specifies a later effective date within thirty
10 days of filing the statement with the secretary of state.

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

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

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

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

1 unissued after the division or combination exceeding the percentage of authorized
2 shares ~~that~~ of that class or series which were unissued before the division or
3 combination.

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

6 1. Subject to any restrictions in the articles:

7 a. The consideration for the issuance of shares may be paid, in whole or in part,
8 in money_{;i}; in other property, tangible or intangible_{;i}; or in labor or services
9 actually performed for the corporation. When payment of the consideration
10 for which shares are to be issued ~~has been~~ is received by the corporation, the
11 shares ~~must be~~ are considered fully paid and nonassessable. Neither
12 promissory notes nor future services constitute payment or part payment for
13 shares of a corporation.

14 b. ~~Upon authorization in accordance with section 10-19.1-61.1, the corporation~~
15 ~~may, without~~ Without any new or additional consideration, a corporation may
16 issue its the corporation's own shares in exchange for or in conversion of its
17 the corporation's outstanding shares, or may, subject to authorization of share
18 dividends, divisions, and combinations according to section 10-19.1-61.1,
19 issue its the corporation's own shares pro rata to its the corporation's
20 shareholders or the shareholders of one or more classes or series, to
21 effectuate share dividends, divisions, or combinations. No shares Shares of
22 a class or series, shares of which are then outstanding, may not be issued to
23 the holders of shares of another class or series, except in exchange for or in
24 conversion of outstanding shares of the other class or series, unless the
25 issuance either is expressly provided for in the articles or is approved at a
26 meeting by the affirmative vote of the holders of a majority of the voting power
27 of all shares of the same class or series as the shares to be issued.

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

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

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

6 A denial or limitation of preemptive rights otherwise provided under this section
7 does not limit the power of the corporation to grant first refusal rights or other rights
8 to purchase from the corporation shares or other securities of the corporation to
9 shareholders, subscribers, or other persons before the shares or other securities
10 are offered to or acquired by any other person.

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

13 **10-19.1-66. Share certificates - Issuance and contents - Uncertificated shares.**

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

17 2. The shares of a corporation must be represented by certificates signed by the
18 president, ~~or by~~ a vice president, and by the secretary, or by an assistant secretary
19 of the corporation.

20 ~~2.~~ 3. If a person signs or has a facsimile signature placed upon a certificate while an
21 officer, transfer agent, or registrar of a corporation, the certificate may be issued by
22 the corporation, even if the person ~~has ceased to have~~ ceases having that
23 capacity before the certificate is issued, with the same effect as if the person had
24 that capacity at the date of ~~its~~ the certificate's issue.

25 ~~3.~~ 4. Every certificate representing shares issued by a corporation ~~which~~ that is
26 authorized to issue shares of more than one class must set forth upon the face or
27 back of the certificate, or must state that the corporation will furnish to any
28 shareholders upon request and without charge, a full or summary statement of the
29 designations, preferences, limitations, and relative rights of the shares of each
30 class authorized to be issued and, if the corporation is authorized to issue any
31 preferred or special class or series, the variations in the relative rights and

1 preferences between the shares of each ~~such~~ of the series so far as to the extent
2 the ~~same~~ relative rights and preferences have been fixed and determined and the
3 authority of the board to fix and determine the relative rights and preferences of
4 subsequent series. Each certificate representing shares must state upon its face:

- 5 a. The name of the corporation.
6 b. That the corporation is organized under the laws of this state.
7 c. The name of the person to whom issued.
8 d. The number and class of shares, and the designation of the series, if any,
9 ~~which such~~ the certificate represents.
10 e. The par value of ~~such~~ any share represented by ~~such~~ the certificate; or a
11 statement ~~that~~ the shares are without par value.

12 ~~4.~~ 5. A certificate signed as provided ~~in~~ under subsection 1 is prima facie evidence of
13 the ownership of the shares referred to in the certificate.

14 ~~5.~~ 6. Unless uncertificated shares are prohibited by the articles or bylaws, a resolution
15 approved by the affirmative vote of a majority of the directors present may provide
16 that some or all of any or all classes and series of ~~its~~ the corporation's shares will
17 be uncertificated shares.

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

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

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

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

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

3 2. A corporation may not pay money for fractional shares if that action would result in
4 the cancellation of more than twenty percent of the outstanding shares of a class
5 or series. A determination by the board of the fair value of fractions of a share is
6 conclusive in the absence of fraud. A ~~certificate for a~~ certificated or uncertificated
7 ~~fractional share does, but, and any scrip or warrants do not unless they provide~~
8 ~~otherwise, entitle~~ warrants if expressly provided, entitles the shareholder to
9 exercise voting rights or to receive distributions. The board may cause scrip or
10 warrants to be issued subject to the condition ~~that they~~ the scrip or warrants
11 become void if not exchanged for full shares before a specified date, or that the
12 shares for which scrip or warrants are exchangeable may be sold by the
13 corporation and the proceeds distributed to the holder of the scrip or warrants, or
14 to any other condition or set of conditions the board may impose.

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

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

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

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

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

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

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

28 b. ~~Any~~ A copy, facsimile telecommunication, or other reproduction of the original
29 writing or transmission may be substituted or used in lieu of the original
30 writing or transmission for any purpose for which the original writing or
31 transmission could be used; if the copy, facsimile, telecommunication, or

1 other reproduction is a complete and legible reproduction of the entire original
2 writing or transmission.

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

7 **SECTION 22. AMENDMENT.** Subsection 3 of section 10-19.1-83 of the 1997
8 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

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

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

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

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

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

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

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

18 **10-19.1-91. Indemnification.**

19 1. For purposes of this section:

- 20 a. "Corporation" includes a domestic or foreign corporation that was the
21 predecessor of the corporation referred to in this section in a merger or other
22 transaction in which the predecessor's existence ceased upon consummation
23 of the transaction.
- 24 b. "Official capacity" means:
- 25 (1) With respect to a director, the position of director in a corporation;
- 26 (2) With respect to a person other than a director, the elective or appointive
27 office or position held by an officer, member of a committee of the
28 board, or the employment relationship undertaken by an employee of
29 the corporation; and
- 30 (3) With respect to a director, officer, or employee of the corporation who,
31 while a director, officer, or employee of the corporation, is or was

- 1 serving at the request of the corporation or whose duties in that position
2 involve or involved service as a director, officer, manager, partner,
3 trustee, employee, or agent of another organization or employee
4 benefit plan, the position of that person as a director, officer, manager,
5 partner, trustee, employee, or agent, as the case may be, of the other
6 organization or employee benefit plan.
- 7 c. "Proceeding" means a threatened, pending, or completed civil, criminal,
8 administrative, arbitration, or investigative proceeding, including a proceeding
9 by or in the right of the corporation.
- 10 d. "Special legal counsel" means counsel who has not represented the
11 corporation or a related organization, or a director, officer, member of a
12 committee of the board, or employee whose indemnification is in issue.
- 13 2. Subject to subsection 5, a corporation shall indemnify a person made or
14 threatened to be made a party to a proceeding by reason of the former or present
15 official capacity of the person against judgments, penalties, fines including excise
16 taxes assessed against the person with respect to an employee benefit plan,
17 settlements, and reasonable expenses, including attorneys' fees and
18 disbursements, incurred by the person in connection with the proceeding, if, with
19 respect to the acts or omissions of the person complained of in the proceeding, the
20 person:
- 21 a. Has not been indemnified by another organization or employee benefit plan
22 for the same judgments, penalties, fines including excise taxes assessed
23 against the person with respect to an employee benefit plan, settlements, and
24 reasonable expenses, including attorneys' fees and disbursements, incurred
25 by the person in connection with the proceeding with respect to the same acts
26 or omission;
- 27 b. Acted in good faith;
- 28 c. Received no improper personal benefit and section 10-19.1-51, if applicable,
29 has been satisfied;
- 30 d. In the case of a criminal proceeding, had no reasonable cause to believe the
31 conduct was unlawful; and

- 1 e. In the case of acts or omissions occurring in the official capacity described in
2 paragraph 1 or 2 of subdivision b of subsection 1, reasonably believed that
3 the conduct was in the best interests of the corporation, or in the case of acts
4 or omissions occurring in the official capacity described in paragraph 3 of
5 subdivision b of subsection 1, reasonably believed that the conduct was not
6 opposed to the best interests of the corporation. If the person's acts or
7 omissions complained of in the proceeding relate to conduct as a director,
8 officer, trustee, employee, or agent of an employee benefit plan, the conduct
9 is not considered to be opposed to the best interests of the corporation if the
10 person reasonably believed that the conduct was in the best interests of the
11 participants or beneficiaries of the employee benefit plan.
- 12 3. The termination of a proceeding by judgment, order, settlement, conviction, or
13 upon a plea of ~~nolo contendere~~ contendere or ~~its~~ an equivalent plea does not, of
14 itself, establish that the person did not meet the criteria set forth in subsection 2.
- 15 4. Subject to subsection 5, if a person is made or threatened to be made a party to a
16 proceeding, the person is entitled, upon written request to the corporation, to
17 payment or reimbursement by the corporation of reasonable expenses, including
18 attorneys' fees and disbursements, incurred by the person in advance of the final
19 disposition of the proceeding:
- 20 a. Upon receipt by the corporation of a written affirmation by the person of a
21 good faith belief that the criteria for indemnification set forth in subsection 2
22 have been satisfied and a written undertaking by the person to repay all
23 amounts so paid or reimbursed by the corporation, if ~~it~~ the ultimate
24 determination is ~~ultimately determined~~ that the criteria for indemnification
25 have not been satisfied; and
- 26 b. After a determination that the facts then known to those making the
27 determination would not preclude indemnification under this section.
- 28 The written undertaking required by subdivision a is an unlimited general obligation
29 of the person making it, but need not be secured and shall be accepted without
30 reference to financial ability to make the repayment.

- 1 5. The articles or bylaws ~~either~~ may prohibit indemnification or advances of expenses
2 otherwise required ~~by~~ under this section or may impose conditions on
3 indemnification or advances of expenses in addition to the conditions contained in
4 subsections 2, 3, and 4 including monetary limits on indemnification or advances
5 for expenses, if the prohibitions or conditions apply equally to all persons or to all
6 persons within a given class. A prohibition or limit on indemnification or advances
7 may not apply to or affect the right of a person to indemnification or advances of
8 expenses with respect to any ~~acts~~ act or ~~omissions~~ omission of the person
9 occurring ~~prior to~~ before the effective date of a provision in the articles or the date
10 of adoption of a provision in the bylaws establishing the prohibition or limit on
11 indemnification or advances.
- 12 6. This section does not require, or limit the ability of, a corporation to reimburse
13 expenses, including attorneys' fees and disbursements, incurred by a person in
14 connection with an appearance as a witness in a proceeding at a time when the
15 person has not been made or threatened to be made a party to a proceeding.
- 16 7. All determinations whether indemnification of a person is required because the
17 criteria provided in subsection 2 have been satisfied and whether a person is
18 entitled to payment or reimbursement of expenses in advance of the final
19 disposition of a proceeding as provided in subsection 4 must be made:
- 20 a. By the board by a majority of a quorum, if the directors who are at the time
21 parties to the proceeding are not counted for determining either a majority or
22 the presence of a quorum;
- 23 b. If a quorum under subdivision a cannot be obtained, by a majority of a
24 committee of the board, consisting solely of two or more directors not at the
25 time parties to the proceeding, duly designated to act in the matter by a
26 majority of the full board including directors who are parties;
- 27 c. If a determination is not made under subdivision a or b, by special legal
28 counsel, selected either by a majority of the board or a committee by vote
29 pursuant to subdivision a or b or, if the requisite quorum of the full board
30 cannot be obtained and the committee cannot be established, by a majority of
31 the full board including directors who are parties;

- 1 d. If a determination is not made under subdivisions a, b, and c, by the
2 shareholders, other than the shareholders who are a party to the proceeding;
3 or
4 e. If an adverse determination is made under subdivisions a through d, or under
5 subsection 8, or if no determination is made under subdivisions a through d,
6 or under subsection 8, within sixty days after:
- 7 (1) The later to occur of the termination of a proceeding or a written
8 request for indemnification to the corporation; or
9 (2) A request for an advance of expenses, as the case may be, by a court
10 in this state, which may be the same court in which the proceeding
11 involving the person's liability took place, upon application of the person
12 and any notice the court requires.
- 13 The person seeking indemnification or payment or reimbursement of
14 expenses pursuant to this subdivision has the burden of establishing that the
15 person is entitled to indemnification or payment or reimbursement of
16 expenses.
- 17 8. With respect to a person who is not, and who was not at the time of the acts or
18 omissions complained of in the proceedings, a director, officer, or person
19 possessing, directly or indirectly, the power to direct or cause the direction of the
20 management or policies of the corporation, the determination whether
21 indemnification of this person is required because the criteria set forth in
22 subsection 2 have been satisfied and whether this person is entitled to payment or
23 reimbursement of expenses in advance of the final disposition of a proceeding as
24 provided in subsection 4 may be made by an annually appointed committee of the
25 board, having at least one member who is a director. The committee shall report
26 at least annually to the board concerning its actions.
- 27 9. A corporation may purchase and maintain insurance on behalf of a person in that
28 person's official capacity against any liability asserted against and incurred by the
29 person in or arising from that capacity, whether or not the corporation would have
30 been required to indemnify the person against the liability under the provisions of
31 this section.

- 1 10. A corporation that indemnifies or advances expenses to a person in accordance
2 with this section in connection with a proceeding by or on behalf of the corporation
3 shall report to the shareholders in writing the amount of the indemnification or
4 advance and to whom and on whose behalf ~~the indemnification or advance~~ was
5 paid not later than the next meeting of shareholders.
- 6 11. ~~Nothing in this~~ This section may be construed to ~~does not~~ limit the power of the
7 corporation to indemnify ~~other~~ persons other than a director, officer, employee, or
8 member of a committee of the board by contract or otherwise.

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

11 **10-19.1-96. Merger - Exchange - Transfer.**

- 12 1. ~~Any two or more corporations~~ With or without a business purpose, a corporation
13 may merge, ~~resulting in a single corporation, with or without a business purpose,~~
14 ~~pursuant to a plan of merger approved in the manner provided in sections~~
15 ~~10-19.1-97 through 10-19.1-103.~~ with:
- 16 a. Another domestic corporation under a plan of merger approved in the manner
17 provided in sections 10-19.1-97 through 10-19.1-103.
- 18 b. A limited liability company under a plan of merger approved in the manner
19 provided in sections 10-32-101 through 10-32-106.
- 20 c. A foreign corporation or foreign limited liability company under a plan of
21 merger in the manner provided in section 10-19.1-103.
- 22 2. ~~A corporation may acquire all of the outstanding shares of one or more classes or~~
23 ~~series of another corporation pursuant~~ With respect to a plan of an exchange
24 ~~approved in the manner provided in sections 10-19.1-97 through 10-19.1-99 and~~
25 ~~sections 10-19.1-101 through 10-19.1-103.;~~
- 26 a. A corporation may acquire all the ownership interests of one or more classes
27 or series of another domestic corporation under a plan of exchange approved
28 in the manner provided in sections 10-19.1-97 through 10-19.1-103.
- 29 b. A corporation may acquire all the ownership interests of one or more classes
30 or series of a limited liability company under a plan of exchange approved in
31 the manner provided in sections 10-32-101 through 10-32-106.

- 1 c. A limited liability company may acquire all the ownership interests of one or
2 more classes or series of a corporation under a plan of exchange approved in
3 the manner provided in sections 10-19.1-97 through 10-19.1-103 and chapter
4 10-32.
- 5 d. A foreign corporation or foreign limited liability company may acquire all the
6 ownership interests of one or more classes or series of a corporation under a
7 plan of exchange approved in the manner provided in section 10-19.1-103.
- 8 3. A corporation may sell, lease, transfer, or otherwise dispose of all or substantially
9 all of ~~its~~ the corporation's property and assets in the manner provided in section
10 10-19.1-104.
- 11 4. A corporation may participate in a merger or exchange with a ~~domestic~~ limited
12 liability company ~~pursuant to chapter 10-32~~. The dissenter's rights for
13 shareholders of a corporation are governed by this chapter.

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

16 **10-19.1-97. Plan of merger or exchange.**

- 17 1. A plan of merger or exchange must contain:
- 18 a. ~~The names~~ name of the ~~corporations~~ corporation and of each other
19 constituent organization proposing to merge or participate in an exchange
20 and:
- 21 (1) In the case of a merger, the name of the surviving ~~corporation~~
22 organization; or
- 23 (2) In the case of an exchange, the name of the acquiring ~~corporation~~
24 organization;
- 25 b. The terms and conditions of the proposed merger or exchange;
- 26 c. ~~With respect to the~~ The manner and basis of conversion for converting or
27 exchange exchanging ownership interests:
- 28 (1) In the case of a merger, the manner and basis of converting the ~~shares~~
29 ownership interests of the constituent ~~corporations~~ organizations into
30 securities of the surviving ~~corporation~~ organization or of any other

- 1 ~~corporation~~ organization or, in whole or in part, into money or other
2 property; or
- 3 (2) In the case of an exchange, the manner and basis of exchanging the
4 ~~shares~~ ownership interests to be acquired for securities of the acquiring
5 ~~corporation~~ organization or any other ~~corporation~~ organization or, in
6 whole or in part, into money or other property;
- 7 d. In the case of a merger, a statement of any amendments to the articles of
8 incorporation or articles of organization of the surviving ~~corporation~~
9 organization proposed as part of the merger; and
- 10 e. Any other provisions with respect to the proposed merger or exchange ~~that~~
11 which are deemed necessary or desirable.
- 12 2. ~~The procedure authorized by this~~ This section does not limit the power of a
13 corporation to acquire all or part of the ~~shares~~ ownership interests of one or more
14 classes or series of another ~~corporation~~ organization through a negotiated
15 agreement with the ~~shareholders~~ owners or otherwise.

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

18 **10-19.1-98. Plan approval.**

- 19 1. A resolution containing the plan of merger or exchange must be approved by the
20 ~~affirmative vote of a majority of the directors present at a meeting of the governing~~
21 board as required by section 10-19.1-46 or 10-32-83 of each constituent
22 ~~corporation~~ organization and must then be submitted at a regular or special
23 meeting to the ~~shareholders~~ owners of:
- 24 a. ~~Each~~ each constituent ~~corporation~~ organization, in the case of a plan of
25 merger; ~~and~~
- 26 b. ~~The corporation~~ or the constituent organization whose ~~shares~~ ownership
27 interests will be acquired by the acquiring ~~corporation~~ constituent organization
28 in the exchange, in the case of a plan of exchange. If ~~shareholders holding~~
29 owners owning any class or series of ~~stock of the corporation~~ ownership
30 interests in a constituent organization are entitled to vote on the plan of
31 merger or exchange ~~pursuant to~~ under this subsection, written notice must be

1 given to every ~~shareholder~~ owner of that constituent organization, whether or
2 not entitled to vote at the meeting, ~~no fewer~~ not less than fourteen days nor
3 more than sixty days before the meeting, in the manner provided in section
4 10-19.1-73 for notice of meetings of shareholders in the case of a domestic
5 corporation and in the manner provided in section 10-32-40 in the case of a
6 limited liability company. The written notice must state that a purpose of the
7 meeting is to consider the proposed plan of merger or exchange. A copy or
8 short description of the plan of merger or exchange must be included in or
9 enclosed with the notice.

10 2. At the meeting a vote of the ~~shareholders~~ owners must be taken on the proposed
11 plan. The plan of merger or exchange is adopted when approved by the
12 affirmative vote of the holders of a majority of the voting power of all ~~shares~~
13 ownership interests entitled to vote. Except as provided in subsection 3, a class or
14 series of shares of the corporation is entitled to vote as a class or series if any
15 provision of the plan would, if contained in a proposed amendment to the articles
16 of incorporation, entitle the class or series of ~~shares~~ ownership interests to vote as
17 a class or series and, in the case of an exchange, if the class or series is included
18 in the exchange.

19 3. A class or series of ~~shares~~ ownership interests of the ~~corporation~~ constituent
20 organization is not entitled to vote as a class or series solely because the plan of
21 merger affects a cancellation of ~~shares~~ ownership interests of the class or series if
22 the plan of merger or exchange affects a cancellation of all ~~shares~~ ownership
23 interests of the ~~corporation~~ constituent organization of all classes and series that
24 are outstanding immediately ~~prior to~~ before the merger or exchange and
25 ~~shareholders~~ owners of ~~shares~~ ownership interests of that class or series are
26 entitled to obtain payment for the fair value of their ~~shares~~ ownership interests
27 under section 10-19.1-87 or 10-32-54 in the event of the merger.

28 4. Notwithstanding subsections 1 and 2, submission of a plan of merger or exchange
29 to a vote at a meeting of ~~shareholders~~ owners of a surviving ~~corporation~~
30 constituent organization is not required if:

31 a. The articles ~~of the corporation~~ will not be amended in the transaction;

- 1 b. Each ~~holder owner~~ of shares of ownership interests in the corporation that
2 constituent organization which were outstanding immediately before the
3 effective date of the transaction will hold the same number of ~~shares~~
4 ownership interests with identical rights immediately ~~thereafter~~ after the
5 effective date;
- 6 c. The voting power of the outstanding ~~shares~~ ownership interests of the
7 ~~corporation~~ constituent organization entitled to vote immediately after the
8 merger or exchange, plus the voting power of the ~~shares~~ ownership interests
9 of the ~~corporation~~ constituent organization entitled to vote issuable on
10 conversion of, or on the exercise of rights to purchase, securities issued in the
11 transaction, will not exceed by more than twenty percent the voting power of
12 the outstanding ~~shares~~ ownership interests of the ~~corporation~~ constituent
13 organization entitled to vote immediately before the transaction; and
- 14 d. The number of participating ~~shares~~ ownership interests of the ~~corporation~~
15 constituent organization immediately after the merger, plus the number of
16 participating ~~shares~~ ownership interests of the ~~corporation~~ constituent
17 organization issuable on conversion of, or on the exercise of rights to
18 purchase, securities issued in the merger, will not exceed by more than
19 twenty percent the number of participating ~~shares~~ ownership interests of the
20 ~~corporation~~ constituent organization immediately before the merger.
21 "Participating ~~shares~~ ownership interests" are outstanding ~~shares~~ ownership
22 interests of the ~~corporation that~~ constituent organization which entitle their
23 ~~holders~~ owners to participate without limitation in distributions by the
24 ~~corporation~~ constituent organization.
- 25 5. If the merger or exchange is with a domestic limited liability company, the plan of
26 merger or exchange must also be approved in the manner provided in chapter
27 10-32.

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

30 **10-19.1-99. Articles of merger - Certificate.**

- 1 1. Upon receiving the approval required by section 10-19.1-98, articles of merger
2 must be prepared which contain:
 - 3 a. The plan of merger; and
 - 4 b. A statement that the plan ~~has been~~ is approved by each ~~corporation pursuant~~
5 to constituent organization under chapter 10-19.1 or chapter 10-32.
- 6 2. The articles of merger must be signed on behalf of each constituent ~~corporation~~
7 organization and filed with the secretary of state, together with the fees provided in
8 ~~chapter 10-23~~ section 10-19.1-147.
- 9 3. The secretary of state shall issue a certificate of merger to the surviving
10 ~~corporation constituent organization~~ or ~~its~~ the surviving constituent organization's
11 legal representative. The certificate must contain the effective date of merger.

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

14 **10-19.1-100. Merger of subsidiary into parent.**

- 15 1. A parent owning at least ninety percent of the outstanding ~~shares ownership~~
16 interests of each class and series of a subsidiary directly, or indirectly through
17 related corporations; or limited liability companies may merge the subsidiary into
18 ~~itself~~ the parent or into any other subsidiary at least ninety percent of the
19 outstanding ~~shares ownership interests~~ of each class and series of which is owned
20 by the parent directly, or indirectly through related corporations or limited liability
21 companies, without a vote of the ~~shareholders owners~~ of ~~itself~~ the parent or any
22 subsidiary; or may merge ~~itself the parent~~, or ~~itself the parent~~ and one or more
23 subsidiaries into one of the subsidiaries under this section.
- 24 2. A resolution approved by ~~the affirmative vote of a majority of the present~~ directors
25 of the parent as required by section 10-19.1-46 or of the present governors of the
26 parent required by section 10-32-83 must set forth a plan of merger that contains:
 - 27 a. The name of the subsidiary or subsidiaries, the name of the parent, and the
28 name of the surviving ~~corporation~~ constituent organization;
 - 29 b. The manner and basis of converting the ~~shares ownership interests~~ of the
30 subsidiary or subsidiaries or the parent into securities of the parent,

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

- 1 c. The date a copy of the plan of merger was mailed to ~~shareholders~~ owners,
2 other than the parent or a subsidiary, of each subsidiary that is a constituent
3 ~~corporation~~ organization in the merger; and
- 4 d. A statement that the plan of merger ~~has been~~ is approved by the parent
5 under this section.
- 6 4. ~~6.~~ Within thirty days after a copy of the plan of merger is mailed to ~~shareholders~~
7 owners of each subsidiary that is a constituent ~~corporation~~ organization to the
8 merger; or upon waiver of the mailing by the ~~holders~~ owners of all outstanding
9 ~~shares~~ ownership interests of each subsidiary that is a constituent ~~corporation~~
10 organization to the merger, the articles of merger must be signed on behalf of the
11 parent and filed with the secretary of state, ~~along~~ with the fees provided in ~~chapter~~
12 ~~40-23~~ section 10-19.1-147.
- 13 5. ~~7.~~ The secretary of state shall issue a certificate of merger to the ~~parent~~ surviving
14 constituent organization or ~~its~~ the surviving constituent organization's legal
15 representative or, if the parent is a constituent corporation but is not the surviving
16 ~~corporation in a merger, to the surviving corporation or its legal representative.~~
17 The certificate must contain the effective date of the merger.
- 18 6. ~~8.~~ If all of the ~~shares~~ ownership interests of one or more domestic subsidiaries that is
19 a constituent ~~party~~ organization to a merger under this section are not owned by
20 the parent directly, or indirectly through related ~~corporations~~ constituent
21 organizations, immediately ~~prior to~~ before the merger, the ~~shareholders~~ owners of
22 each domestic subsidiary have dissenter's rights under section 10-19.1-87 or
23 10-32-54, without regard to subsection 3 of section 10-19.1-87 ~~and section~~
24 ~~40-19.1-88~~ or subsection 2 of section 10-32-54. If the parent is a constituent
25 ~~corporation~~ organization but is not the surviving ~~corporation~~ organization in the
26 merger, ~~and~~ the articles of incorporation or articles of organization of the surviving
27 ~~corporation~~ organization immediately after the merger differ from the articles of
28 incorporation or articles of organization of the parent immediately ~~prior to~~ before
29 the merger in a manner that would entitle ~~a shareholder~~ an owner of the parent to
30 dissenter's rights under subdivision a of subsection 1 of section 10-19.1-87 or
31 under subdivision a of subsection 1 of section 10-32-54, if ~~and~~ the articles of

1 incorporation or articles of organization of the surviving ~~corporation~~ constituent
2 organization constitute an amendment to the articles of ~~the corporation~~
3 incorporation or articles of organization of the parent, that ~~shareholder~~ owner of
4 the parent has dissenter's rights as provided under sections 10-19.1-87 ~~and~~
5 ~~10-19.1-88~~ or 10-32-54. Except as provided in this subsection, sections
6 10-19.1-87 and ~~10-19.1-88~~ 10-32-54 do not apply to any merger affected under
7 this section.

8 ~~7.~~ 9. A merger among a parent and one or more subsidiaries or among two or more
9 subsidiaries of a parent may be accomplished under sections 10-19.1-97 through
10 10-19.1-99 instead of this section, in which case this section does not apply.

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

13 **10-19.1-101. Abandonment of plan of merger or exchange.**

14 1. After a plan of merger or exchange ~~has been~~ is approved by the ~~shareholders~~
15 owners entitled to vote on the approval of the plan as provided in section
16 10-19.1-98 and before the effective date of the plan, it ~~is~~ the plan may be
17 abandoned:

18 a. With respect to the approval of the abandonment:

19 (1) If the ~~shareholders~~ owners of the ownership interests of each of the
20 constituent ~~corporations~~ organizations entitled to vote on the approval
21 of the plan as provided in section 10-19.1-98 ~~have~~ approved the
22 abandonment at a meeting by the affirmative vote of the ~~holders~~
23 owners of a majority of the voting power of the ~~shares~~ ownership
24 interests entitled to vote ~~and, if:~~

25 (2) If the ~~shareholders~~ owners of a constituent ~~corporation~~ organization
26 are not entitled to vote on the approval of the plan under section
27 10-19.1-98, the governing board ~~of directors~~ of the constituent
28 ~~corporation~~ organization has approved the abandonment by the
29 affirmative vote ~~of a majority of the directors present~~ required by
30 section 10-19.1-46 or by section 10-32-83; and

1 (3) If the merger or exchange is with a foreign corporation or limited liability
2 company, if abandonment is approved in the manner as may be
3 required by the laws of the jurisdiction under which the corporation is
4 incorporated or the limited liability company is organized.

5 b. If the plan itself provides for abandonment and all conditions for abandonment
6 set forth in the plan are met; or

7 c. Pursuant to subsection 2.

8 2. If articles of merger ~~have~~ are not ~~been~~ filed with the secretary of state and the plan
9 is to be abandoned; or if a plan of exchange is to be abandoned before the
10 effective date of the plan, a resolution abandoning the plan of merger or exchange
11 may be approved by the affirmative vote of ~~a majority of the directors present~~ the
12 governing board required by section 10-19.1-46 or 10-32-83, subject to the
13 contract rights of any other person under the plan.

14 3. If articles of merger ~~have been~~ are filed with the secretary of state, ~~the board but~~
15 are not yet effective, the constituent organizations, in the case of abandonment
16 under paragraph 1 of subdivision a of subsection 1, the constituent organization or
17 any one of them under paragraph 2 of subdivision a of subsection 1, as the
18 abandoning constituent organization in the case of abandonment under
19 subsection 2, shall file with the secretary of state, ~~together~~ with the fees provided
20 in ~~chapter 10-23~~ section 10-19.1-147, articles of abandonment that contain:

21 a. The ~~name~~ names of the constituent ~~corporations~~ organizations;

22 b. The provision of this section under which the plan is abandoned; and

23 c. The text of the resolution approved by the affirmative vote of a majority of the
24 directors present abandoning the plan.

25 4. If the certificate of merger ~~has been~~ is issued, the board shall surrender the
26 certificate to the secretary of state upon filing the articles of abandonment.

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

29 **10-19.1-102. Effective date of merger or exchange - Effect.**

- 1 1. A merger is effective when the articles of merger are filed with the secretary of
2 state or on a later date specified in the articles of merger. An exchange is effective
3 on the date specified in the plan of exchange.
- 4 2. When a merger becomes effective:
- 5 a. The constituent ~~corporations~~ organizations become a single ~~corporation~~
6 entity, the surviving corporation or the surviving limited liability company, as
7 the case may be.
- 8 b. The separate existence of all constituent ~~corporations~~ organizations except
9 the surviving ~~corporation~~ organization ceases.
- 10 c. As to any corporation that was a constituent organization and is not the
11 surviving constituent organization, the articles of merger serve as articles of
12 termination, and unless previously filed, the notice of dissolution.
- 13 d. As to rights, privileges, powers, duties, and liabilities:
- 14 (1) If the surviving organization is a limited liability company, the surviving
15 limited liability company has all the rights, privileges, immunities, and
16 powers and is subject to all of the duties and liabilities of a domestic
17 limited liability company.
- 18 (2) ~~The~~ If the surviving ~~corporation~~ organization is a corporation, the
19 surviving corporation has all the rights, privileges, immunities, and
20 powers, and is subject to all the duties and liabilities, of a corporation
21 incorporated under this chapter.
- 22 e. e. The surviving ~~corporation~~ organization possesses all the rights, privileges,
23 immunities, and franchises, of a public as well as of a private nature, of each
24 of the constituent ~~corporations~~ organizations.
- 25 (1) All property, ~~real, personal, and mixed~~, and all debts due on any
26 account, including subscriptions to shares; and all other choses in
27 action, and every other interest of or belonging to or due to each of the
28 constituent ~~corporations~~ organizations vests in the surviving
29 ~~corporation~~ organization without any further act or deed.
- 30 (2) Confirmatory deeds, assignments, or similar instruments to accomplish
31 that vesting may be signed and delivered at any time in the name of a

1 constituent ~~corporation~~ organization by ~~its~~ the organization's current
2 officers or managers, as the case may be, or, if the ~~corporation~~
3 organization no longer exists, by ~~its~~ the organization's last officers or
4 managers.

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

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

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

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

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

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

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

1 **10-19.1-103. Merger or exchange with foreign corporation or foreign limited**
2 **liability company.**

3 1. A domestic corporation may merge with or participate in an exchange with a
4 foreign corporation or foreign limited liability company by following the procedures
5 set forth in this section, if:

6 a. With respect to a merger, the merger is permitted by the laws of the ~~state~~
7 jurisdiction under which the foreign corporation or foreign limited liability
8 company is incorporated; ~~and~~ or organized.

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

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

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

23 4. If the surviving ~~corporation~~ organization in a merger will be a foreign corporation or
24 foreign limited liability company and will transact business in this state, ~~it~~ the
25 organization shall comply with the provisions of this chapter ~~10-22~~ with respect to
26 foreign corporations or chapter 10-32 with respect to foreign limited liability
27 companies. In every case the surviving foreign corporation or foreign limited
28 liability company shall file with the secretary of state:

29 a. An agreement that it may be served with process in this state in a proceeding
30 for the enforcement of an obligation of a constituent ~~corporation~~ organization
31 and in a proceeding for the enforcement of the rights of a dissenting

- 1 ~~shareholder~~ owner of an ownership interest of a constituent ~~corporation~~
2 organization against the surviving foreign corporation or foreign limited liability
3 company;
- 4 b. An irrevocable appointment of the secretary of state as ~~is~~ the organization's
5 agent to accept service of process in any proceeding, and an address to
6 which process may be forwarded; and
- 7 c. An agreement that ~~it~~ the organization will promptly pay to the dissenting
8 ~~shareholders~~ owners of ownership interests of each domestic constituent
9 corporation and domestic constituent limited liability company the amount, if
10 any, to which they are entitled under section ~~40-19.1-87~~ 10-19.1-88 or
11 10-32-55.

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

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

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

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

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

- 29 3. Revocation of dissolution proceedings is effective when a notice of revocation is
30 filed with the secretary of state, together with the fees provided in ~~chapter 10-23~~

1 section 10-19.1-147. The corporation may ~~thereafter~~ resume business after this
2 revocation.

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

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

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

11 **10-19.1-129. Service of process on corporation and nonresident directors.**

12 1. The registered agent must be an agent of the corporation and any nonresident
13 director upon whom any process, notice, or demand required or permitted by law
14 to be served on the corporation or director may be served. Acceptance of a
15 directorship includes the appointment of the secretary of state as an agent for
16 personal service of legal process, notice, or demand.
17 2. A process, notice, or demand required or permitted by law to be served upon a
18 corporation may be served either upon the registered agent of the corporation, or
19 upon an officer of the corporation, or upon the secretary of state as provided in this
20 section.
21 3. If neither the corporation's registered agent nor an officer of the corporation can be
22 found at the registered office, or if a corporation fails to maintain a registered agent
23 in this state and an officer of the corporation cannot be found at the registered
24 office, then the secretary of state is the agent of the corporation upon whom the
25 process, notice, or demand may be served. The return of the sheriff, or the
26 affidavit of a person who is not a party, that no registered agent or officer can be
27 found at the registered office must be provided to the secretary of state. Service
28 on the secretary of state of any process, notice, or demand is deemed personal
29 service upon the corporation and must be made by filing with the secretary of state
30 an original and two copies of the process, notice, or demand, along with the fees
31 provided in ~~chapter 10-23~~ section 10-19.1-147. The secretary of state shall

1 immediately forward, by registered mail, addressed to the corporation at ~~its~~ the
2 registered office, a copy of the process, notice, or demand. Service on the
3 secretary of state is returnable in not less than thirty days notwithstanding a
4 shorter period specified in the process, notice, or demand.

5 4. Process, notice, or demand may be served on a dissolved corporation as provided
6 in this subsection. The court shall determine if service is proper. If a corporation
7 has voluntarily dissolved or a court has entered a decree of dissolution, service
8 may be made according to subsection 2 so long as claims are not finally barred
9 under section 10-19.1-124. If a corporation has been involuntarily dissolved
10 pursuant to section ~~10-23-02-2~~ 10-19.1-146, service may be made according to
11 subsection 2.

12 5. A record of all processes, notices, and demands served upon the secretary of
13 state under this section, including the date of service and the action taken with
14 reference to it must be maintained in the office of the secretary of state.

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

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

20 **10-19.1-137. Foreign corporation - Amendments to the certificate of authority.** If
21 any statement in the application for a certificate of authority by a foreign corporation ~~was~~ is
22 false when made or ~~any arrangements or other facts described have changed, making the~~
23 ~~application inaccurate in any respect~~ the foreign corporation changes the foreign corporation's
24 name or purposes sought in this state, the foreign corporation ~~shall~~ promptly shall file with the
25 secretary of state an application for an amended certificate of authority executed by an
26 authorized person correcting the statement and, in the case of a change in ~~its~~ the foreign
27 corporation's name, a certificate to that effect authenticated by the proper officer of the
28 jurisdiction under the laws of which the foreign corporation is incorporated.

29 1. In the case of a dissolution, a foreign corporation need not file an application for an
30 amended certificate of authority but shall promptly file with the secretary of state a

1 certificate to that effect authenticated by the proper officer of the jurisdiction under
2 the laws of which the foreign corporation is incorporated.

3 2. A foreign corporation that changes the foreign corporation's name and applies for
4 an amended certificate of authority, and is the owner of a trademark or trade
5 name, is a general partner named in a fictitious name certificate, is a general
6 partner in a limited partnership or limited liability limited partnership, or is a
7 managing partner in a limited liability partnership that is on file with the secretary of
8 state, shall change the foreign corporation's name in each of the foregoing
9 registrations that is applicable when the foreign corporation files an application for
10 an amended certificate of authority.

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

13 **10-19.1-139. Foreign corporation - Merger of foreign corporation authorized to**
14 **transact business in this state.** ~~Whenever~~ If a foreign corporation authorized to transact
15 business in this state is a party to a statutory merger permitted by the laws of the jurisdiction
16 under which ~~the foreign corporation~~ is incorporated, and the foreign corporation is not the
17 surviving organization, the surviving organization shall, within thirty days after the merger
18 becomes effective, file with the secretary of state a certified statement of merger duly
19 authenticated by the proper officer of the state or country where the statutory merger was
20 effected. Any foreign organization ~~which~~ that is the surviving organization in a merger and
21 which will continue to transact business in this state; shall procure a ~~new~~ certificate of authority
22 if not previously authorized to transact business in the state.

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

25 1. Each corporation and each foreign corporation authorized to transact business in
26 this state; shall file, within the time prescribed by subsection 3, an annual report
27 setting forth:
28 a. The name of the corporation or foreign corporation and the state or country
29 under the laws of which ~~the corporation or foreign corporation~~ is
30 incorporated.

- 1 b. The address of the registered office of the corporation or foreign corporation
2 in this state, the name of ~~its~~ the corporation's or foreign corporation's
3 registered agent in this state at that address, and the address of ~~its~~ the
4 corporation's or foreign corporation's principal executive office.
- 5 c. A brief statement of the character of the business in which the corporation or
6 foreign corporation is actually engaged in this state.
- 7 d. The names and respective addresses of the officers and directors of the
8 corporation or foreign corporation.
- 9 e. A statement of the aggregate number of shares the corporation or foreign
10 corporation has authority to issue, itemized by classes, par value of shares,
11 shares without par value, and series, if any, within a class.
- 12 f. A statement of the aggregate number of issued shares, itemized by classes,
13 par value of shares, shares without par value, and series, if any, within a
14 class.
- 15 g. ~~A statement, expressed in dollars, of the amount of shareholders' equity in~~
16 ~~the corporation or foreign corporation. Shareholders' equity is the net~~
17 ~~difference between total assets and total liabilities and may include the sum of~~
18 ~~the following:~~
- 19 ~~(1) Consideration received for issued shares;~~
20 ~~(2) Additional paid-in capital;~~
21 ~~(3) Capital surplus;~~
22 ~~(4) Undivided profits;~~
23 ~~(5) Retained earnings or retained deficit;~~
24 ~~(6) Unrealized holding gains or losses;~~
25 ~~(7) Consideration paid for treasury shares; and~~
26 ~~(8) Any other amounts the corporation has transferred to shareholders'~~
27 ~~equity.~~
- 28 h. ~~Irrespective of the manner of its designation by the laws under which a~~
29 ~~foreign corporation is incorporated, the shareholders' equity of a foreign~~
30 ~~corporation must be determined on the same basis and in the same manner~~

- 1 ~~as the shareholders' equity of a domestic corporation, for the purpose of~~
2 ~~computing fees and other charges imposed by this chapter.~~
- 3 i. A statement, expressed in dollars, of the value of all the property owned by
4 the corporation, wherever located, and the value of the property of the
5 corporation located within this state, and a statement, expressed in dollars, of
6 the total gross income of the corporation for the twelve months ending on
7 December thirty-first preceding the date ~~herein~~ provided under this section for
8 the filing of the annual report and the gross amount ~~thereof~~ accumulated by
9 the corporation at or from places of business in this state. If, on December
10 thirty-first preceding the time ~~herein~~ provided under this section for the filing
11 of the report, the corporation had not been in existence for a period of twelve
12 months, or, in the case of a foreign corporation, had not been authorized to
13 transact business in this state for a period of twelve months, ~~then~~ the
14 statement with respect to total gross income must be furnished for the period
15 between the date of incorporation or the date of ~~its~~ the corporation's
16 authorization to transact business in this state and December thirty-first.
- 17 j. h. Any additional information ~~as may be~~ necessary or appropriate ~~in order~~ to
18 enable the secretary of state to determine and assess the proper amount of
19 fees payable by the corporation.

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

22 **10-19.1-147. Fees for filing documents - Issuing certificates - License fees.** The
23 secretary of state shall charge and collect for:

- 24 1. Filing articles of incorporation and issuing a certificate of incorporation, thirty
25 dollars.
- 26 2. Filing articles of amendment, twenty dollars.
- 27 3. Filing restated articles of incorporation, thirty dollars.
- 28 4. Filing articles of merger or consolidation and issuing a certificate of merger or
29 consolidation, fifty dollars.
- 30 5. Filing articles of abandonment of merger, fifty dollars.
- 31 6. Filing an application to reserve a corporate name, ten dollars.

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- 1 7. Filing a notice of transfer of a reserved corporate name, ten dollars.
- 2 8. Filing a cancellation of reserved corporate name, ten dollars.
- 3 9. Filing a consent to use of name, ten dollars.
- 4 10. Filing a statement of change of address of registered office or change of registered
5 agent, or both, ten dollars.
- 6 11. Filing a statement of change of address of registered office by registered agent,
7 ten dollars for each corporation affected by such change.
- 8 12. Filing a registered agent's consent to serve in such capacity, ten dollars.
- 9 13. Filing a resignation as registered agent, ten dollars.
- 10 14. Filing a statement of the establishment of a series of shares, twenty dollars.
- 11 15. Filing a statement of cancellation of shares, twenty dollars.
- 12 16. Filing a statement of reduction of stated capital, twenty dollars.
- 13 17. Filing a statement of intent to dissolve, ten dollars.
- 14 18. Filing a statement of revocation of voluntary dissolution proceedings, ten dollars.
- 15 19. Filing articles of dissolution, twenty dollars.
- 16 20. Filing an application of a foreign corporation for a certificate of authority to transact
17 business in this state and issuing a certificate of authority, forty dollars.
- 18 21. Filing an application of a foreign corporation for an amended certificate of authority
19 to transact business in this state and issuing an amended certificate of authority,
20 forty dollars.
- 21 22. Filing a certificate of fact stating a merger or consolidation of a foreign corporation
22 holding a certificate of authority to transact business in this state, fifty dollars.
- 23 23. Filing an application for withdrawal of a foreign corporation and issuing a certificate
24 of withdrawal, twenty dollars.
- 25 24. Filing an annual report of a corporation or foreign corporation, twenty-five dollars.
26 The secretary of state shall charge and collect additional fees for late filing of the
27 annual report as follows:
28 a. Within ninety days after the date provided in subsection 3 of section
29 10-19.1-146, twenty dollars;
30 b. Thereafter, sixty dollars; and

- 1 c. After the involuntary dissolution of a corporation, or the revocation of the
2 certificate of authority of a foreign corporation, the reinstatement fee of one
3 hundred thirty-five dollars.
- 4 25. Filing any process, notice, or demand for service, twenty-five dollars.
- 5 26. Furnishing a certified copy of any document, instrument, or paper relating to a
6 corporation, one dollar for every four pages or fraction thereof and fifteen dollars
7 for the certificate and affixing the seal thereto.
- 8 27. License fee of fifty dollars for the first fifty thousand dollars of a corporation's
9 authorized shares, or fraction thereof, and the further sum of ten dollars if paid at
10 the time of authorization, or twelve dollars if paid after authorized shares are
11 issued, for every additional ten thousand dollars of its authorized shares, or
12 fraction thereof, in excess of fifty thousand dollars.
- 13 a. A license fee is payable by a corporation at the time of:
- 14 (1) Filing articles of incorporation;
- 15 (2) Filing articles of amendment increasing the number or value of
16 authorized shares; or
- 17 (3) Filing articles of merger or consolidation increasing the number or value
18 of authorized shares a surviving or new corporation will have authority
19 to issue above the aggregate number or value of shares the constituent
20 corporations had authority to issue.
- 21 b. A license fee payable on an increase in authorized shares must be imposed
22 only on the additional shares, but the amount of previously authorized shares
23 must be taken into account in determining the rate applicable to the additional
24 authorized shares.
- 25 c. For the purposes of this subsection, shares without par value are considered
26 worth one dollar per share.
- 27 d. The minimum sum of fifty dollars must be paid for authorized shares at the
28 time of filing articles of incorporation.
- 29 e. A corporation increasing authorized shares by articles of amendment or
30 articles of merger must have previously paid for a minimum of fifty thousand
31 dollars of authorized shares. Thereafter, a corporation may postpone the

1 payment for any additional amount until the filing of an annual report after the
2 unpaid shares are issued. Any additional amount must be paid in increments
3 of ten thousand dollars of ~~its~~ authorized shares.

4 f. The provisions of this subsection do not apply to a building and loan or
5 savings and loan association.

6 28. License fee of eighty-five dollars from each foreign corporation at the time of filing
7 an application for a certificate of authority to transact business in this state.

8 Thereafter, the secretary of state shall fix the license fee for each foreign
9 corporation as follows:

10 a. The secretary of state shall first ascertain the license fee which a newly
11 organized corporation would be required to pay if it had authorized shares of
12 the same kind and amount as the issued or allotted shares of the reporting
13 foreign corporation shown by its filed annual report.

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

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

28 The secretary of state shall enter the amount of any additional license fee in the
29 records of the foreign corporation in the secretary of state's office and shall mail a
30 notice of the amount of additional license fee due to the foreign corporation at ~~its~~
31 the foreign corporation's principal office. The additional license fee must be paid

1 by the foreign corporation before the annual report may be filed by the secretary of
2 state. Amounts less than five dollars are not collected.

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

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

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

8 **10-30-05. Business Corporation Act to apply.** The provisions of ~~chapters~~ chapter
9 10-19.1, 10-22, and 10-23 apply to state development corporations as ~~they may be~~ applicable
10 and not inconsistent with this chapter.

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

13 **10-30.1-04. Venture capital corporation - Incorporation.**

- 14 1. To carry out the purposes of this chapter, a ~~venture capital corporations~~
15 organization may be formed under ~~chapters~~ chapter 10-19.1 ~~through 10-23~~ if a
16 corporation, or under chapter 10-32 if a limited liability company. The articles of
17 incorporation or articles of organization of a ~~venture capital corporation~~
18 organization must comply with subsections 2 through 9.
- 19 2. The purpose of a venture capital corporation or limited liability company must be
20 solely to raise funds to be used to make investments in, and provide financing to,
21 qualified entities in a manner that will encourage capital investment in the state,
22 encourage the establishment or expansion of business and industry, provide
23 additional jobs within the state, and encourage research and development
24 activities in the state.
- 25 3. Each director ~~or governor~~ of a venture capital corporation or each governor of a
26 venture capital limited liability company must be a North Dakota resident, and must
27 have a minimum investment in the venture capital corporation or limited liability
28 company of one thousand dollars.
- 29 4. A venture capital corporation ~~will~~ or limited liability company shall provide financing
30 to qualified entities to be used solely for the purpose of enhancing the production
31 capacity of the qualified entity or the ability of the qualified entity to do business in

1 this state. The venture capital corporation or limited liability company may
2 establish and regulate terms and conditions, consistent with this chapter, with
3 respect to the financing. The financing may include any combination of equity
4 investments, loans, guarantees, and commitments for financing, but no more than
5 twenty percent of the stated capital of a venture capital corporation or limited
6 liability company may be invested in any one qualified entity. For purposes of this
7 chapter, "one qualified entity" means a single entity or a group of affiliated entities
8 that are engaged in a unitary business.

9 5. ~~No business~~ Business may not be transacted or indebtedness incurred by the
10 venture capital corporation or limited liability company, except such as is incidental
11 to the venture capital corporation's or limited liability company's organization or to
12 obtaining subscriptions to or payment for ~~its~~ the venture capital corporation's or
13 limited liability company's shares or membership interests, until the venture capital
14 corporation or limited liability company receives consideration for such shares or
15 membership interests equal to at least five hundred thousand dollars, which
16 amount ~~will be~~ is the initial stated capital of the venture capital corporation or
17 limited liability company.

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

24 7. If at any time within one year of the issuance of the certificate of incorporation ~~or~~
25 ~~certificate of organization~~ of the venture capital corporation ~~its~~ or certificate of
26 organization of the limited liability company, the venture capital corporation's or
27 limited liability company's stated capital equals at least five hundred thousand
28 dollars, or such greater amount established by the articles of incorporation ~~or~~
29 ~~bylaws or~~ the articles of organization ~~and operating agreement of the venture~~
30 ~~capital corporation~~, or bylaws, the funds held in escrow pursuant to subsection 6
31 must be released to the venture capital corporation or limited liability company for

- 1 use and disposition according to ~~its~~ the venture capital corporation's or limited
2 liability company's articles of incorporation ~~and bylaws or the~~, articles of
3 organization ~~and operating agreement~~, or the bylaws.
- 4 8. If within one year of the issuance of the certificate of incorporation ~~or certificate of~~
5 ~~organization~~ of the venture capital corporation ~~its~~ or the certificate of organization
6 of the venture capital limited liability company, the venture capital corporation's or
7 limited liability company's stated capital has not at any time equaled at least five
8 hundred thousand dollars, or such greater amount established by the articles of
9 incorporation ~~or bylaws or by~~, the articles of organization ~~and operating agreement~~
10 ~~of the venture capital corporation~~, or the bylaws, ~~its~~ the venture capital
11 corporation's or limited liability company's certificate of incorporation or certificate
12 of organization ~~will be terminated~~, ~~the venture capital corporation~~ must be
13 dissolved or terminated, and all funds held in escrow pursuant to subsection 6, and
14 all other remaining funds, must be returned to the investors in proportion to ~~their~~
15 the investor's investments.
- 16 9. ~~Prior to~~ Before any investment in a venture capital corporation or limited liability
17 company, the venture capital corporation ~~must~~ or limited liability company shall
18 make written disclosure of the provisions contained in subsections 5 through 8 to
19 the potential investor.
- 20 10. If a venture capital corporation or limited liability company does not invest or
21 provide financing with eighty percent of the funds received from investors within
22 two years of receiving the funds, the venture capital corporation or limited liability
23 company must be dissolved or terminated and all funds held by the corporation or
24 limited liability company must be returned to the investors in proportion to ~~their~~ the
25 investor's investments.

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

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

- 28 1. ~~Two~~ One or more individuals may organize a professional organization in the form
29 of a limited liability company for the practice of a profession by filing articles of
30 organization with the secretary of state. The articles of organization must meet the
31 requirements of chapter 10-32; and must contain the following:

- 1 a. The profession to be practiced through the professional limited liability
2 company; and
- 3 b. The ~~names~~ name and residence ~~addresses~~ address of ~~all of the~~ each original
4 ~~members~~ member of the professional limited liability company who will
5 practice the profession in this state.

6 **SECTION 47. AMENDMENT.** Subsection 2 of section 10-31-11 of the North Dakota
7 Century Code is amended and reenacted as follows:

- 8 2. With respect to a professional organization in the form of a limited liability
9 company:
- 10 a. The articles of organization may provide for the purchase or redemption of the
11 membership interest of any member upon the death or disqualification of the
12 member, or the same may be provided for in the ~~operating agreement~~
13 bylaws, in the member-control agreement, or by private agreement. In the
14 absence of a provision for the same in the articles of organization, in the
15 ~~operating agreement~~ bylaws, in the member-control agreement, or by private
16 agreement, the limited liability company has an option to purchase the
17 membership interest of a deceased member or a member no longer qualified
18 to own a membership interest in the limited liability company within six
19 months after the death or disqualification of the member.
- 20 b. The option price for such membership interest must be the book value as of
21 the end of the month immediately preceding the death or disqualification of
22 the member unless otherwise specified in the articles of organization, in the
23 ~~operating agreement~~ bylaws, in the member-control agreement, or by private
24 agreement. Book value must be determined from the books and records of
25 the limited liability company in accordance with the regular method of
26 accounting used by the limited liability company.
- 27 c. If the limited liability company fails to exercise the option, the membership
28 interest of the deceased or disqualified member may be sold to any individual
29 licensed or otherwise legally authorized to render the same professional
30 service as that for which the limited liability company was organized.

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

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

8 **10-31-13. Professional organizations - Annual reports - Renewal.**

- 9 1. With respect to a professional organization in the form of a corporation:
- 10 a. Each corporation incorporated under this chapter shall file with the secretary
11 of state an annual report at the time specified for the filing of the report by
12 chapter 10-19.1 giving the name and residence ~~addresses~~ address of ~~all~~
13 ~~officers~~ each officer, ~~directors~~ director, and ~~shareholders~~ shareholder of the
14 corporation ~~as of at the thirtieth day of June next preceding the time of filing~~
15 of the report. With respect to shares, the report ~~shall~~ must include:
- 16 (1) A statement of the aggregate number of shares the corporation has
17 authority to issue, itemized by classes, par value of shares, shares
18 without par value, and series, if any, within a class; and
- 19 (2) A statement of the aggregate number of issued shares, itemized by
20 classes, par value of shares, shares without par value, and series, if
21 any, within a class.
- 22 b. The report must include a statement that all directors and shareholders of
23 voting shares who practice in this state are licensed to render the same
24 specific professional services as those for which the corporation was
25 incorporated. The report must be:
- 26 (1) Made on a form as prescribed and furnished by the secretary of state;
27 (2) Signed by the president or vice president of the corporation; and
28 (3) Accompanied by the filing fee prescribed in chapter 10-19.1.
- 29 c. A copy of the report must be filed at the same time with the regulatory board
30 that licenses the shareholders described in the report. No filing fee may be
31 charged by the regulatory board.

- 1 d. A regulatory board issuing a license under section 10-31-01 shall issue a
2 certificate required in section 10-31-02. The certificate must be on a form
3 prescribed and furnished by the secretary of state. The regulatory board may
4 charge and collect a fee not to exceed twenty dollars per individual certified to
5 be licensed by the regulating board.
- 6 2. With respect to a professional organization in the form of a limited liability
7 company:
- 8 a. Each limited liability company organized under this chapter shall file with the
9 secretary of state an annual report at the time specified for the filing of the
10 report by chapter 10-32 giving the name and residence address of all
11 managers, governors, and members of the organization as of the thirtieth day
12 of June next preceding the filing of the report.
- 13 b. The report must include a statement that all governors and members holding
14 voting membership interests who practice in this state are licensed to render
15 the same specific professional services as those for which the limited liability
16 company was organized. This report must be:
- 17 (1) Made on a form as prescribed and furnished by the secretary of state;
18 (2) Signed by the president or vice president of the limited liability
19 company; and
20 (3) Accompanied by the filing fee prescribed in section 10-32-180.
- 21 c. A copy of the report must be filed at the same time with the regulatory board
22 that licenses the members described in the report. No filing fee may be
23 charged by the regulatory board.
- 24 d. A regulatory board issuing a license under section 10-31-01 shall issue a
25 certificate required in section 10-31-02. The certificate must be on a form
26 prescribed and furnished by the secretary of state. The regulatory board may
27 charge and collect a fee not to exceed twenty dollars per individual certified to
28 be licensed by the regulatory board.
- 29 3. With respect to a professional organization in the form of a limited liability
30 partnership:

- 1 a. The ~~renewal registration~~ annual report filed with the secretary of state
2 ~~pursuant to~~ at the time specified for the filing of the report by chapter 45-22
3 must include the name and residence address of ~~all partners~~ each partner of
4 the organization ~~as of the thirtieth day of June next preceding the~~ at the time
5 of filing of the ~~renewal registration~~ annual report.
- 6 b. The ~~renewal registration~~ annual report must include a statement that ~~all~~
7 ~~partners~~ each partner holding voting partnership interests who ~~practice~~
8 practices in this state ~~are~~ is licensed to render the same specific professional
9 services as those for which the limited liability partnership was registered.
10 The ~~renewal registration~~ shall annual report must be:
- 11 (1) Made on a form prescribed and furnished by the secretary of state;
12 (2) Signed by a managing partner of the limited liability partnership; and
13 (3) Accompanied by the filing fee prescribed in section 45-22-22.
- 14 c. A copy of the ~~renewal registration~~ annual report must be filed at the same
15 time with the regulatory board that licenses the partners described in the
16 ~~renewal registration~~ annual report. ~~No~~ A filing fee may ~~not~~ be charged by the
17 regulatory board.
- 18 d. A regulatory board issuing a license under section 10-31-01 shall issue a
19 certificate required in section 10-31-02. The certificate must be on a form
20 prescribed and furnished by the secretary of state. The regulatory board may
21 charge and collect a fee not ~~to exceed~~ exceeding twenty dollars per individual
22 certified to be licensed by the regulating board.

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

25 **10-32-02. Definitions.** For ~~the~~ purposes of this chapter, unless the ~~language or~~
26 context ~~clearly indicates that a different meaning is intended~~ otherwise requires:

- 27 1. "Acquiring organization" means the foreign or domestic limited liability company or
28 foreign or domestic corporation that acquires in an exchange the shares of a
29 domestic or foreign corporation or the membership interests of a limited liability
30 company.
- 31 2. "Address" means:

- 1 a. In the case of a registered office or principal executive office, the mailing
2 address, including a 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 ~~3. "Agreement to give dissolution avoidance consent" means a member control~~
6 ~~agreement under section 10-32-50, or a part of a member control agreement,~~
7 ~~under which the members agree in advance that if, in the future, the continued~~
8 ~~membership of any member is terminated through an event covered in the~~
9 ~~agreement, then each remaining member shall give dissolution avoidance consent.~~
- 10 ~~4.~~ "Articles" or "articles of organization" means:
- 11 a. In the case of a limited liability company organized under this chapter, articles
12 of organization, articles of amendment, a statement of change of registered
13 office, registered agent, or name of registered agent, a statement establishing
14 or fixing the rights and preferences of a class or series of membership
15 interests, articles of merger, articles of abandonment, and articles of
16 termination.
- 17 b. In the case of a foreign limited liability company, the term includes all
18 documents serving a similar function required to be filed with the secretary of
19 state or other state office of the limited liability company's state of
20 organization.
- 21 ~~5.~~ 4. "Board" or "board of governors" means the board of governors of a limited liability
22 company.
- 23 ~~6.~~ 5. "Board member" means:
- 24 a. An individual serving on the board of governors in the case of a limited liability
25 company; and
- 26 b. An individual serving on the board of directors in the case of a corporation.
- 27 ~~7. "Business continuation agreement" means a member control agreement under~~
28 ~~section 10-32-50, or a part of a member control agreement, made before or after~~
29 ~~the limited liability company has incurred an event of dissolution, under which the~~
30 ~~members:~~

- 1 a. ~~Agree that, despite any dissolution, winding up and termination of the limited~~
2 liability company as a legal entity, its business will be continued in a
3 successor organization through a merger, transfer of assets, transfer of
4 membership interests, or otherwise; and
- 5 b. ~~Specify the terms and conditions under which the business continuation will~~
6 occur.
- 7 6. "Bylaws" means any rule, resolution, or other provision, regardless how
8 designated, that:
- 9 a. Relates to the management of the business or the regulation of the affairs of
10 the limited liability company; and
- 11 b. Was expressly part of the bylaws by the action, taken from time to time under
12 section 10-32-68, by the board of governors or the members.
- 13 ~~8.~~ 7. "Class", when used with reference to membership interests, means a category of
14 membership interests which differs in one or more rights or preferences from
15 another category of membership interests of the limited liability company.
- 16 ~~9.~~ 8. "Closely held limited liability company" means a limited liability company that does
17 not have more than thirty-five members.
- 18 ~~10.~~ 9. "Constituent organization" means a limited liability company or a domestic or
19 foreign corporation that is a party to a merger or an exchange.
- 20 ~~11.~~ 10. "Contribution agreement" means an agreement between a person and a limited
21 liability company under which:
- 22 a. The person agrees to make a contribution in the future; and
- 23 b. The limited liability company agrees that, at the time specified for the
24 contribution in the future, the limited liability company will accept the
25 contribution and reflect the contribution in the required records.
- 26 ~~12.~~ 11. "Contribution allowance agreement" means an agreement between a person and a
27 limited liability company under which:
- 28 a. The person has the right, but not the obligation, to make a contribution in the
29 future; and

- 1 b. The limited liability company agrees that, if the person makes the specified
2 contribution at the time specified in the future, the limited liability company will
3 accept the contribution and reflect the contribution in the required records.
- 4 ~~43.~~ 12. "Dissolution" means that the limited liability company ~~has~~ incurred an event under
5 subsection 1 of section 10-32-109, subject only to sections 10-32-116 and
6 10-32-124, that obligates the limited liability company to wind up ~~its~~ the limited
7 liability company's affairs and to terminate ~~its~~ the limited liability company's
8 existence as a legal entity.
- 9 ~~44.~~ 13. "Dissolution avoidance consent" means the consent of all remaining members:
- 10 a. Given, as provided in subdivision e of subsection 1 of section 10-32-109, after
11 the occurrence of any event that terminates the continued membership of a
12 member in the limited liability company; and
- 13 b. That the limited liability company must be continued as a legal entity without
14 dissolution.
- 15 ~~45.~~ 14. "Distribution" means a direct or indirect transfer of money or other property, other
16 than its own membership interests, with or without consideration, or an incurrence
17 or issuance of indebtedness, by a limited liability company to any of ~~its~~ the limited
18 liability company's members in respect of membership interests. A distribution
19 may be in the form of an interim distribution or a termination distribution, or as
20 consideration for the purchase, redemption, or other acquisition of its membership
21 interests, or otherwise.
- 22 ~~46.~~ 15. "Domestic corporation" means a corporation other than a foreign corporation
23 organized for profit and incorporated under or governed by chapter 10-19.1.
- 24 ~~47.~~ 16. "Filed with the secretary of state" means except as otherwise permitted by law or
25 rule:
- 26 a. That either of the following has been delivered to the secretary of state and
27 has been determined by the secretary of state to conform to law:
- 28 (1) A signed original or a legible facsimile ~~copy~~ telecommunication of a
29 signed original of a request for reserved name; or

- 1 (2) A signed original of all other documents, meeting the applicable
2 requirements of this chapter, together with the fees provided in section
3 ~~10-33-144~~ 10-32-150.
- 4 b. That the secretary of state shall then:
- 5 (1) Endorse on the original the word "filed" and the month, day, and year;
6 and
- 7 (2) Record the document in the office of the secretary of state.
- 8 ~~18.~~ 17. "Financial rights" means a member's rights:
- 9 a. To share in profits and losses as provided in section 10-32-36;
10 b. To share in distributions as provided in section 10-32-60;
11 c. To receive interim distributions as provided in section 10-32-61; and
12 d. To receive termination distributions as provided in subdivision c of
13 subsection 1 of section 10-32-131.
- 14 ~~19.~~ 18. "Foreign corporation" means a corporation organized for profit that is incorporated
15 under laws other than the laws of this state for a purpose for which a corporation
16 may be incorporated under chapter 10-19.1.
- 17 ~~20.~~ 19. "Foreign limited liability company" means a limited liability company organized for
18 profit which is organized under laws other than the laws of this state for a purpose
19 for which a limited liability company may be organized under this chapter.
- 20 ~~21.~~ 20. "Good faith" means honesty in fact in the conduct of the act or transaction
21 concerned.
- 22 ~~22.~~ 21. "Governance rights" means all of a member's rights as a member in the limited
23 liability company other than financial rights and the right to assign financial rights.
- 24 ~~23.~~ 22. "Governing board" means:
- 25 a. The board of governors in the case of a limited liability company; and
26 b. The board of directors in the case of a corporation.
- 27 ~~24.~~ 23. "Governor" means an individual serving on the board of governors.
- 28 ~~25.~~ 24. "Intentionally" means that the person referred to either has a purpose to do or fail
29 to do the act or cause the result specified or believes that the act or failure to act, if
30 successful, will cause that result. A person "intentionally" violates a statute:

- 1 a. If the person intentionally does the act or causes the result prohibited by the
2 statute; or
- 3 b. If the person intentionally fails to do the act or cause the result required by the
4 statute, even though the person may not know of the existence or
5 constitutionality of the statute or the scope or meaning of the terms used in
6 the statute.
- 7 ~~26.~~ 25. "Knows" or has "knowledge" means the person has actual knowledge of a fact. A
8 person does not "know" or have "knowledge" of a fact merely because the person
9 has reason to know of the fact.
- 10 ~~27.~~ 26. "Legal representative" means a person empowered to act for another person,
11 including an agent, manager, officer, partner, or associate of an organization; a
12 trustee of a trust; a personal representative; a trustee in bankruptcy; and a
13 receiver, guardian, custodian, or conservator.
- 14 ~~28.~~ 27. "Limited liability company" means a limited liability company, other than a foreign
15 limited liability company, organized under this chapter.
- 16 ~~29.~~ 28. "Manager" means:
- 17 a. An individual who is eighteen years of age or more and who is elected,
18 appointed, or otherwise designated as a manager by the board of governors;
19 and
- 20 b. An individual considered elected as a manager pursuant to section 10-32-92.
- 21 ~~30.~~ 29. "Member" means a person reflected in the required records of a limited liability
22 company as the owner of ~~some governance rights~~ of a membership interest ~~of~~ in
23 the limited liability company.
- 24 ~~34.~~ 30. "Membership interest" means a member's interest in a limited liability company
25 consisting of:
- 26 a. A member's ~~interest in a limited liability company consisting of a member's~~
27 financial rights;
- 28 b. A member's right to assign financial rights as provided in section 10-32-31;
- 29 c. A member's governance rights, if any; and
- 30 d. A member's right to assign any governance rights owned as provided in
31 section 10-32-32.

- 1 ~~32.~~ 31. "Notice" is given by a member of a limited liability company to the limited liability
2 company or a manager of a limited liability company when in writing and mailed or
3 delivered to the limited liability company or the manager at the registered office or
4 principal executive office of the limited liability company.
- 5 a. In all other cases, notice 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 who is
16 residing there.
- 17 b. Notice by mail is given when deposited in the United States mail with
18 sufficient postage affixed.
- 19 c. Notice is considered received when it is given.
- 20 ~~33.~~ "~~Operating agreement~~" means ~~rules, resolutions, or other provisions, regardless~~
21 ~~how designated, that:~~
- 22 a. ~~Relate to the management of the business or the regulation of the affairs of~~
23 ~~the limited liability company; and~~
- 24 b. ~~Have been made expressly part of the operating agreement by the action,~~
25 ~~taken from time to time under section 10-32-69, by the board of governors or~~
26 ~~the members.~~
- 27 ~~34.~~ 32. "Organization" means, whether domestic or foreign, a limited liability company,
28 corporation, partnership, limited partnership, limited liability partnership, joint
29 venture, association, business trust, estate, trust, enterprise, and any other legal or
30 commercial entity.
- 31 ~~35.~~ 33. "Owners" means:

- 1 a. Members in the case of a limited liability company; and
- 2 b. Shareholders in the case of a corporation.
- 3 ~~36.~~ 34. "Ownership interests" means:
- 4 a. Membership interests in the case of a limited liability company; and
- 5 b. Shares in the case of a corporation.
- 6 ~~37.~~ 35. "Parent" of a specified limited liability company means a limited liability company or
- 7 corporation that directly or indirectly owns more than fifty percent of the voting
- 8 power of the membership interests entitled to vote for governors of the specified
- 9 limited liability company.
- 10 ~~38.~~ 36. "Pertains" means a contribution "pertains":
- 11 a. To a particular series when the contribution is made in return for a
- 12 membership interest in that particular series.
- 13 b. To a particular class when the class has no series and the contribution is
- 14 made in return for a membership interest in the class.
- 15 A contribution that pertains to a series does not pertain to the class of which the
- 16 series is a part.
- 17 ~~39.~~ 37. "Principal executive office" means:
- 18 a. If the limited liability company has an elected or appointed president, an office
- 19 where the elected or appointed president of the limited liability company has
- 20 an office; or
- 21 b. If the limited liability company has no elected or appointed president, the
- 22 registered office of the limited liability company.
- 23 ~~40.~~ 38. "Registered office" means the place in this state designated in the articles as the
- 24 registered office of the limited liability company.
- 25 ~~41.~~ 39. "Related organization" means an organization that controls, is controlled by, or is
- 26 under common control with another organization with control existing if an
- 27 organization:
- 28 a. Owns, directly or indirectly, at least fifty percent of the shares, membership
- 29 interests, or other ownership interests of another organization;
- 30 b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or
- 31 more of the voting members of the governing body of another organization; or

- 1 c. Has the power, directly or indirectly, to direct or cause the direction of the
2 management and policies of another organization, whether through the
3 ownership of voting interests, by contract, or otherwise.
- 4 ~~42.~~ 40. "Required records" are those records required to be maintained under section
5 10-32-51.
- 6 ~~43.~~ 41. "Security" has the meaning given it in subsection 13 of section 10-04-02.
- 7 ~~44.~~ 42. "Series" means a category of membership interests, within a class of membership
8 interests, that has some of the same rights and preferences as other membership
9 interests within the same class, but that differ in one or more rights and
10 preferences from another category of membership interests within that class.
- 11 ~~45.~~ 43. "Signed" means ~~that~~ the signature of a person has been placed on a document, as
12 provided in subsection 39 of section 41-01-11, and, with respect to a document:
- 13 a. Required by this chapter to be filed with the secretary of state, means ~~that~~ the
14 document has been signed by a person authorized to do so by this chapter,
15 the articles of organization, a member-control agreement, or ~~operating~~
16 ~~agreement~~ the bylaws or a resolution approved by the ~~affirmative vote of the~~
17 ~~required proportion or number of~~ governors as required by section 10-32-83
18 ~~or the members as required proportion of the voting power of membership~~
19 ~~interests present and entitled to vote~~ by section 10-32-42; and
- 20 b. Not required by this chapter to be filed with the secretary of state, the
21 signature may be a facsimile affixed, engraved, printed, placed, stamped with
22 indelible ink, transmitted by facsimile telecommunication or electronically, or
23 in any other manner reproduced on the document.
- 24 ~~46.~~ 44. "Subsidiary" of a specified limited liability company means:
- 25 a. A limited liability company having more than fifty percent of the voting power
26 of its membership interests entitled to vote for governors owned directly or
27 indirectly by the specified limited liability company; or
- 28 b. A corporation having more than fifty percent of the voting power of its shares
29 entitled to vote for directors owned directly or indirectly by the specified
30 limited liability company.

1 ~~47.~~ 45. "Successor organization" means an organization that, pursuant to a business
2 continuation agreement or an order of the court under subsection 6 of section
3 10-32-119, continues the business of the dissolved and terminated limited liability
4 company.

5 ~~48.~~ 46. "Surviving organization" means the foreign or domestic limited liability company or
6 domestic or foreign corporation resulting from a merger.

7 ~~49.~~ 47. "Termination" means the end of a limited liability company's existence as a legal
8 entity and occurs when a notice of termination is:

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

11 b. Is considered filed with the secretary of state under subdivision c of
12 subsection 2 of section 10-32-106 together with the fees provided in section
13 10-32-150.

14 ~~50.~~ 48. "Vote" includes authorization by written action.

15 ~~54.~~ 49. "Winding up" means the period triggered by dissolution during which the limited
16 liability company ceases to carry on ~~its~~ business, except to the extent necessary
17 for concluding ~~its~~ affairs, and ~~disposes~~ disposing of ~~its~~ assets under section
18 10-32-131.

19 ~~52.~~ 50. "Written action" means a written document signed by ~~all of the persons~~ every
20 person required to take the action described. ~~The term also means~~ and the
21 counterparts of a written document signed by any ~~of the persons~~ person taking the
22 action described. Each counterpart constitutes the action of the persons signing it,
23 and all the counterparts, taken together, constitute one written action by all of the
24 persons signing them.

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

27 **10-32-06. ~~Two-member requirement~~ Number of members required.** ~~Unless~~
28 ~~otherwise provided in the articles of organization, a~~ A limited liability company must have ~~two~~
29 one or more members ~~at the time of its formation. Unless a one-member limited liability~~
30 ~~company is authorized in the articles of organization, a limited liability company must be~~
31 ~~dissolved under subdivision c of subsection 1 of section 10-32-109 whenever the limited liability~~

1 ~~company ceases to have at least two members unless the remaining member admits a new~~
2 ~~member within ninety days of the termination of the continued membership of the former~~
3 ~~member.~~

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

6 **10-32-07. Articles of organization.**

7 1. The articles of organization must contain:

- 8 a. The name of the limited liability company;
9 ~~b. The address of the principal executive office;~~
10 e. The address of the registered office of the limited liability company and the
11 name of ~~its~~ the limited liability company's registered agent at that address;

12 ~~e.~~ c. The name and address of each organizer;

13 ~~e.~~ d. The effective date of organization:

- 14 (1) If a later date than that on which the certificate of
15 organization is issued by the secretary of state; and
16 (2) Which may not be later than ninety days after the date on which the
17 certificate of organization is issued; and

18 ~~f.~~ e. A If the articles of organization are filed with the secretary of state:

19 (1) Before July 1, 1999, a statement stating in years that the ~~limited~~ period
20 of existence for the limited liability company must be a period of thirty
21 years ~~or less~~ from the date the articles of organization are filed with the
22 secretary of state, unless the articles of organization expressly
23 authorize a shorter or longer period of duration; ~~which may be~~
24 perpetual.

25 (2) After June 30, 1999, a statement stating in years the period of
26 existence of the limited liability company, if other than perpetual.

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

- 1 h. ~~A statement as to whether the members have the power to enter into a~~
2 ~~business continuation agreement; and~~
- 3 i. ~~A statement as to whether fewer than two members shall be permitted.~~
- 4 2. The following provisions govern a limited liability company unless modified in the
5 articles of organization or a ~~member-central~~ member-control agreement under
6 section 10-32-50:
- 7 a. A limited liability company has general business purposes as provided in
8 section 10-32-04;
- 9 b. A limited liability company has certain powers as provided in section
10 10-32-23;
- 11 c. The power to adopt, amend, or repeal the ~~operating agreement~~ bylaws is
12 vested in the board of governors as provided in section 10-32-68;
- 13 d. A limited liability company must allow cumulative voting for governors as
14 provided in section 10-32-76;
- 15 e. The affirmative vote of the greater of a majority of governors present ~~or a~~
16 majority of the minimum number of governors constituting a quorum is
17 required for an action of the board of governors as provided in section
18 10-32-83;
- 19 f. A written action by the board of governors taken without a meeting must be
20 signed by all governors as provided in section 10-32-84;
- 21 g. The board may accept contributions, make contribution agreements, and
22 make contribution allowance agreements as provided in subsection 1 of
23 section 10-32-56 and sections 10-32-58 and 10-32-59;
- 24 h. All membership interests are ordinary membership interests entitled to vote
25 and are of one class with no series as provided in subdivisions a and b of
26 subsection 5 of section 10-32-56;
- 27 i. All membership interests have equal rights and preferences in all matters not
28 otherwise provided for by the board of governors as provided in subdivision b
29 of subsection 5 of section 10-32-56;

- 1 j. The ~~restatement of~~ value of previous contributions ~~is to~~ must be determined
2 according to a specified process restated when a new contribution is
3 accepted as provided in subsections 3 and 4 of section 10-32-57;
- 4 k. A member has certain preemptive rights, unless otherwise provided by the
5 board of governors as provided in section 10-32-37;
- 6 l. The affirmative vote of the greater of the owners of a majority of the voting
7 power of the membership interests present and entitled to vote at a duly held
8 meeting or a majority of the voting power of the membership interests with
9 voting rights constituting the minimum voting power needed for a quorum for
10 the transaction of business is required for an action of the members, except
11 ~~where~~ if this chapter requires the affirmative vote of a majority of the voting
12 power of all membership interests entitled, to vote as provided in subsection 1
13 of section ~~10-32-43~~ 10-32-42;
- 14 m. The voting power of each membership interest is in proportion to the value
15 reflected in the required records of the contributions of the members as
16 provided in section ~~10-32-45~~ 10-32-40.1;
- 17 n. Members share in distributions in proportion to the value reflected in the
18 required records of the contributions of members as provided in section
19 10-32-60;
- 20 o. Members share profits and losses in proportion to the value reflected in the
21 required records of the contributions of members as provided in section
22 10-32-36;
- 23 p. A written action by the members taken without a meeting must be signed by
24 all members as provided in section 10-32-43;
- 25 q. Members have no right to receive distributions in kind and the limited liability
26 company has only limited rights to make distributions in kind as provided in
27 section 10-32-62;
- 28 r. A member is not subject to expulsion as provided in subsection 2 of section
29 10-32-30;

- 1 s. Unanimous consent is required for the transfer of governance rights to a
2 person not already a member as provided in subsection 2 of section
3 10-32-32;
- 4 t. Unanimous consent is required to avoid dissolution as provided in
5 subdivision e of subsection 1 of section 10-32-109; ~~and~~
- 6 u. ~~A limited liability company dissolves upon an occurrence of an event that~~
7 ~~terminates the continued membership of any member as provided in~~
8 ~~subsection 1 of section 10-32-109.~~ The termination of a person's
9 membership interest has specified consequences as provided in section
10 10-32-30; and
- 11 v. Restrictions apply to the assignment of governance rights as provided in
12 section 10-32-32.
- 13 3. The following provisions govern a limited liability company unless modified ~~either~~ in
14 the articles of organization, a ~~member-control~~ member-control agreement under
15 section 10-32-50, or in the ~~operating agreement~~ bylaws:
- 16 a. Governors serve for an indefinite term that expires at the next regular meeting
17 of members as provided in section 10-32-72;
- 18 b. The compensation of governors is fixed by the board of governors as
19 provided in section 10-32-74;
- 20 c. A certain method must be used for removal of governors as provided in
21 section 10-32-78;
- 22 d. A certain method must be used for filling board of governor vacancies as
23 provided in section 10-32-79;
- 24 e. If the board of governors fails to select a place for a board meeting, it must be
25 held at the principal executive office as provided in subsection 1 of section
26 10-32-80;
- 27 f. The notice of a board of governors meeting need not state the purpose of the
28 meeting as provided in subsection 3 of section 10-32-80;
- 29 g. A majority of the board of governors is a quorum for a board meeting as
30 provided in section 10-32-82;

- 1 h. A committee consists of one or more individuals, who need not be governors,
2 appointed by affirmative vote of a majority of the governors present as
3 provided in subsection 2 of section 10-32-85;
- 4 i. The board may establish a special litigation committee as provided in section
5 10-32-85;
- 6 j. The president and treasurer have specified duties, until the board of
7 governors determines otherwise as provided in section 10-32-89;
- 8 k. Managers may delegate some or all of their duties and powers, if not
9 prohibited by the board of governors from doing so as provided in section
10 10-32-95;
- 11 l. Regular meetings of members need not be held, unless demanded by a
12 member under certain conditions as provided in section 10-32-38;
- 13 m. In all instances where a specific minimum notice period has not otherwise
14 been fixed by law, not less than ten days' notice is required for a meeting of
15 members as provided in subsection 2 of section 10-32-40;
- 16 n. For a quorum at a members' meeting there is required a majority of the voting
17 power of the membership interests entitled to vote at the meeting as provided
18 in section 10-32-44;
- 19 o. The board of governors may fix a date up to fifty days before the date of a
20 members' meeting as the date for the determination of the members entitled
21 to notice of and entitled to vote at the meeting as provided in ~~subsection 1 of~~
22 ~~section 10-32-45~~ 10-32-40.1;
- 23 p. Indemnification of certain persons is required as provided in section 10-32-99;
- 24 q. The board of governors may authorize, and the limited liability company may
25 make, distributions not prohibited, limited, or restricted by an agreement as
26 provided in subsection 1 of section 10-32-64; and
- 27 r. Members have no right to interim distributions except as provided through the
28 ~~operating agreement~~ bylaws or an act of the board of governors as provided
29 in section 10-32-61.
- 30 4. The provisions in subdivisions a, g, o, p, and r may be included in the articles of
31 organization or a member-control agreement under section 10-32-50. The

1 following provisions relating to the management of the business or the regulation
2 of the affairs of a limited liability company in subdivisions b to f, h, i, j, k, l, m, n,
3 and q may be included either in the articles of organization, in a member-central
4 member-control agreement under section 10-32-50, or, except for naming persons
5 to serve as the first board of governors, fixing a greater than majority governor or
6 member vote, establishing the rights and priorities for distributions and the rights to
7 share in profits and losses, or giving or prescribing the manner of giving voting
8 rights to persons other than members otherwise than pursuant to the articles of
9 organization, or eliminating or limiting a governor's personal liability, in the
10 operating agreement bylaws:

- 11 a. The persons to serve as the first board of governors may be named in the
12 articles of organization as provided in subsection 1 of section 10-32-69;
- 13 b. A manner for increasing or decreasing the number of governors may be
14 provided as provided in section 10-32-70;
- 15 c. Additional qualifications for governors may be imposed as provided in section
16 10-32-71;
- 17 d. Governors may be classified as provided in section 10-32-75;
- 18 e. The date, time, and place of board of governors meetings may be fixed as
19 provided in subsection 1 of section 10-32-80;
- 20 f. Absent governors may be permitted to give written consent or opposition to a
21 proposal as provided in section 10-32-81;
- 22 g. A larger than majority vote may be required for board of governor action as
23 provided in section 10-32-83;
- 24 h. Authority to sign and deliver certain documents may be delegated to a
25 manager or agent of the limited liability company other than the president as
26 provided in section 10-32-89;
- 27 i. Additional managers may be designated as provided in section 10-32-88;
- 28 j. Additional powers, rights, duties, and responsibilities may be given to
29 managers as provided in section 10-32-89;
- 30 k. A method for filling vacant offices may be specified as provided in
31 subsection 3 of section 10-32-94;

- 1 l. The date, time, and place of regular member meetings may be fixed as
2 provided in subsection 3 of section 10-32-38;
- 3 m. Certain persons may be authorized to call special meetings of members as
4 provided in subsection 1 of section 10-32-39;
- 5 n. Notices of member meetings may be required to contain certain information
6 as provided in subsection 3 of section 10-32-40;
- 7 o. A larger than majority vote may be required for member action as provided in
8 section 10-32-42;
- 9 p. Voting rights may be granted in or pursuant to the articles of organization to
10 persons who are not members as provided in subsection 3 of section
11 ~~40-32-45~~ 10-32-40.1;
- 12 q. Limited liability company actions giving rise to dissenter rights may be
13 designated as provided in subdivision d of subsection 1 of section 10-32-55;
14 and
- 15 r. A governor's personal liability to the limited liability company or ~~its~~ the limited
16 liability company's members for monetary damages for breach of fiduciary
17 duty as a governor may be eliminated or limited in the articles as provided in
18 subsection 4 of section 10-32-86.
- 19 5. Subsection 4 does not limit the right of the board, by resolution, to take an action
20 the bylaws may authorize under this subsection without including the authorization
21 in the bylaws, unless the authorization is required to be included in the bylaws by
22 another provision of this chapter.
- 23 6. The articles of organization may contain other provisions not inconsistent with law
24 relating to the management of the business or the regulation of the affairs of the
25 limited liability company.
- 26 ~~6-~~ 7. It is not necessary to set forth in the articles of organization any of the limited
27 liability company powers granted by this chapter.

28 **SECTION 52. AMENDMENT.** Subsection 1 of section 10-32-10 of the 1997

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

- 30 1. The limited liability company 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 words "limited liability company", or must contain the
4 abbreviation "L.L.C." or the abbreviation "LLC", either of which abbreviation
5 may be used interchangeably for all purposes authorized by this chapter
6 including real estate matters, contracts, and filings with the secretary of state;
- 7 c. May not contain a word or phrase that indicates or implies that it may not be
8 organized under this chapter;
- 9 d. May not contain the word "corporation" ~~or~~, "incorporated" ~~and may not~~
10 ~~contain the~~, "limited partnership", "limited liability partnership", "limited liability
11 limited partnership", or any abbreviation of ~~either or both~~ of these words;
- 12 e. May not contain a word or phrase that indicates or implies that it is organized
13 for a purpose other than a legal business purpose for which a limited liability
14 company may be organized under this chapter; and
- 15 f. May not be the same as, or deceptively similar to:
- 16 (1) The name, whether foreign and authorized to do business in this state;
17 or domestic, unless there is filed with the articles a document which
18 complies with subsection ~~2~~ 3 of this section, of:
- 19 (a) Another limited liability company;
- 20 (b) A corporation;
- 21 (c) A limited partnership; ~~or~~
- 22 (d) A limited liability partnership; or
- 23 (e) A limited liability limited partnership;
- 24 (2) A name, the right of which is, at the time of organization, reserved in
25 the manner provided in section 10-19.1-14, 10-32-11, 10-33-11,
26 45-10.1-03, or 45-22-05;
- 27 (3) A fictitious name registered in the manner provided in chapter 45-11; or
- 28 (4) A trade name registered in the manner provided in chapter 47-25.

29 **SECTION 53. AMENDMENT.** Subsection 5 of section 10-32-11 of the 1997

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

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

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

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

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

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

- 14 1. Effect an exchange, reclassification, or cancellation of all or part of the
15 membership interests of the class or series;
- 16 2. Effect an exchange, or create a right of exchange, of all or any part of the
17 membership interests of another class or series for the membership interests of
18 the class or series;
- 19 3. Change the rights or preferences of the membership interests of the class or
20 series;
- 21 4. Change the membership interests of the class or series into the same or a different
22 number of membership interests of another class or series;
- 23 5. Create a new class or series of membership interests having rights and
24 preferences prior and superior to the membership interests of that class or series,
25 or increase the rights and preferences or the number of membership interests, of a
26 class or series having rights and preferences prior or superior to the membership
27 interests of that class or series;
- 28 6. Divide the membership interests of the class into series and determine the
29 designation of each series and the variations in the relative rights and preferences
30 between the membership interests of each series or authorize the board of
31 governors to do so;

- 1 7. Limit or deny any existing preemptive rights of the membership interests of the
2 class or series; or
- 3 8. Cancel or otherwise affect distributions on the membership interests of the class or
4 series.

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

7 **10-32-22. Amendment of articles of organization in court-supervised**
8 **reorganization.**

- 9 1. Whenever a plan of reorganization of a limited liability company has been
10 confirmed by decree or order of a court of competent jurisdiction in proceedings for
11 the reorganization of the limited liability company, pursuant to the provisions of any
12 applicable statute of the United States relating to reorganization of limited liability
13 companies, the articles may be amended, in the manner provided in this section, in
14 as many respects as may be necessary to carry out the plan and to put it into
15 effect, so long as the articles as amended contain only provisions which might be
16 lawfully contained in original articles of organization at the time of making the
17 amendment. In particular, and without limitation upon any general power of
18 amendment, the articles may be amended to:
- 19 a. Change the limited liability company name, period of duration, or
20 organizational purposes of the limited liability company.
- 21 b. Repeal, alter, or amend the ~~operating agreement~~ bylaws of the limited liability
22 company.
- 23 c. Change the preferences, limitations, relative rights in respect of all or any part
24 of the membership interests of the limited liability company, and classify,
25 reclassify, or cancel all or any part thereof.
- 26 d. Authorize the issuance of bonds, debentures, or other obligations of the
27 limited liability company, whether convertible into membership interests of any
28 class or bearing warrants or other evidence of optional rights to purchase or
29 subscribe for membership interests of any class, and fix the terms and
30 conditions thereof.

- 1 e. Constitute or reconstitute and classify or reclassify the board of governors
2 and appoint governors and managers in place of or in addition to all or any of
3 the governors or managers then in office.
- 4 2. Amendments to the articles pursuant to subsection 1 must be made in the
5 following manner:
- 6 a. Articles of amendment approved by decree or order of the court must be
7 ~~executed~~ signed and verified in duplicate by the person or persons
8 designated or appointed by the court for that purpose and must set forth the
9 name of the limited liability company, the amendments of the articles
10 approved by the court, the date of the decree or order approving the articles
11 of amendment, the title of the proceedings in which the decree or order was
12 entered by a court having jurisdiction of the proceedings for the
13 reorganization of the limited liability company pursuant to the provisions of an
14 applicable statute of the United States.
- 15 b. An original of the articles of amendment must be filed with the secretary of
16 state. If the secretary of state finds that the articles of amendment conform to
17 law, and that all fees have been paid as provided in section 10-32-150, then
18 the articles of amendment must be recorded in the office of the secretary of
19 state.
- 20 3. The articles of amendment become effective upon their acceptance by the
21 secretary of state or at any other time within thirty days after their acceptance if the
22 articles of amendment so provide.
- 23 4. The articles are deemed to be amended accordingly, without any action by the
24 governors or members of the limited liability company and with the same effect as
25 if the amendment had been adopted by the unanimous action of the governors and
26 members.

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

29 **10-32-23. General powers.**

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

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

- 1 the death of the member any or all membership interests in the limited liability
2 company owned by the member.
- 3 15. A limited liability company may have, alter at its pleasure, and use a limited liability
4 company seal as provided in section 10-32-24.
- 5 16. A limited liability company may adopt, amend, and repeal ~~an operating agreement~~
6 the bylaws relating to the management of the business or the regulation of the
7 affairs of the limited liability company as provided in section 10-32-68.
- 8 17. A limited liability company may establish committees of the board of governors,
9 elect or appoint persons to the committees, and define their duties as provided in
10 section 10-32-85 and fix their compensation.
- 11 18. A limited liability company may elect or appoint managers, employees, and agents
12 of the limited liability company and define their duties and fix their compensation.
- 13 19. A limited liability company may accept contributions under section 10-32-56 and
14 may enter into contribution agreements under section 10-32-58 and contribution
15 allowance agreements under section 10-32-59.
- 16 20. A limited liability company may lend money to, guarantee an obligation of, become
17 a surety for, or otherwise financially assist persons as provided in section
18 10-32-97.
- 19 21. A limited liability company may make advances as provided in section 10-32-98.
- 20 22. A limited liability company shall indemnify those persons against certain expenses
21 and liabilities only as provided in section 10-32-99.
- 22 23. A limited liability company may conduct all or part of its business under one or
23 more trade names.
- 24 24. A limited liability company may acquire an ownership interest in another
25 organization.
- 26 25. A limited liability company may have and exercise all other powers necessary or
27 convenient to effect any or all of the business purposes for which the limited
28 liability company is organized.

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

31 **10-32-28. Nature of a membership interest and statement of interest owned.**

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

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

24 **10-32-30. Termination of a membership interest.**

- 25 1. The continued membership of a member in a limited liability company is terminated
26 by:
- 27 a. The member's death;
- 28 b. The member's retirement;
- 29 c. The member's resignation;
- 30 d. The redemption of the member's complete membership interest;

- 1 e. An assignment of the member's governance rights under section 10-32-32
2 which leaves the assignor with no governance rights;
- 3 f. A buyout of a member's membership interest under section 10-32-119 which
4 leaves that member with no governance rights;
- 5 g. The member's expulsion;
- 6 h. The member's bankruptcy;
- 7 i. The dissolution of a member that is an organization; or
- 8 j. The occurrence of any other event terminating the continued membership of a
9 member in the limited liability company.
- 10 2. A member always has the power, though not necessarily the right, to terminate ~~its~~
11 ~~the member's~~ membership by resigning or retiring at any time. ~~A member's~~
12 ~~resignation or retirement, whether rightful or wrongful, causes dissolution under~~
13 ~~subdivision e of subsection 1 of section 10-32-109 unless dissolution is avoided~~
14 ~~under that subdivision. A member has no power to transfer all or part of the~~
15 ~~member's membership interest, except as provided in sections 10-32-31 and~~
16 ~~10-32-32.~~
- 17 ~~2.~~ 3. Unless otherwise provided in the articles of organization or in a member-control
18 agreement, a member may not be expelled.
- 19 ~~3.~~ 4. If for any reason the continued membership of a member is terminated and:
20 a. ~~If dissolution under subdivision e of subsection 1 of section 10-32-109 is~~
21 ~~avoided under that subdivision~~ the termination does not result in the
22 dissolution of the limited liability company, then subject to the articles of
23 organization and any member-control agreement, the member whose
24 membership has terminated loses all governance rights and will be
25 considered merely an assignee of the financial rights owned before the
26 termination of membership; or
- 27 b. ~~If dissolution under subdivision e of subsection 1 of section 10-32-109 is not~~
28 ~~avoided under that subdivision~~ the termination does result in the dissolution of
29 the limited liability company, subject to the articles of organization and any
30 member-control agreement, the member whose continued membership has
31 terminated retains all governance rights and financial rights owned before the

1 termination of the membership and may exercise those rights through the
2 winding up and termination of the limited liability company.

3 ~~4.~~ 5. If a member resigns or retires in contravention of the articles of organization or a
4 member-control agreement, ~~then:~~

5 a. ~~If dissolution avoidance consent is obtained,~~ the member who has wrongfully
6 resigned or retired is liable to the limited liability company to the extent
7 damaged by the wrongful resignation or retirement; ~~and~~

8 b. ~~If dissolution avoidance consent is not obtained, section 10-32-131 applies.~~

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

11 **10-32-31. Assignment of financial rights.**

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

14 2. An assignment of a member's financial rights entitles the assignee to receive, to
15 the extent assigned, only the share of profits and losses and the distributions to
16 which the assignor would otherwise be entitled.

17 a. An assignment of a member's financial rights does not dissolve the limited
18 liability company and does not entitle or empower the assignee to become a
19 member, to exercise any governance rights, to receive any notices from the
20 limited liability company, or to cause dissolution.

21 b. The assignment may not allow the assignee to control the member's exercise
22 of governance rights.

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

30 4. Subject to subsection 5, a written restriction on the assignment of financial rights
31 that is not manifestly unreasonable under the circumstances and is noted

1 conspicuously in the required records may be enforced against the owner of the
2 restricted financial rights or a successor or transferee of the owner, including a
3 pledgee or a legal representative. Unless noted conspicuously in the required
4 records, a restriction, even though permitted by this section, is ineffective against a
5 person without knowledge of the restriction.

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

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

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

21 **10-32-32. Assignment of governance rights.**

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

24 2. Subject to subsection 6, a member may, without the consent of any other member,
25 assign governance rights, in whole or in part, to another person already a member
26 at the time of the assignment.

27 a. Except as otherwise provided in the articles of organization or a
28 member-control agreement, any other assignment of any governance rights is
29 effective only if all the members, other than the member seeking to make the
30 assignment, approve the assignment by unanimous written consent.

- 1 b. ~~Subject to subsection 6, a member may grant a security interest in a complete~~
2 ~~membership interest or governance rights without obtaining the consent~~
3 ~~required by this subsection.~~
- 4 (1) ~~However, a secured party may not take or assign ownership of~~
5 ~~governance rights without first obtaining the consent required by this~~
6 ~~subsection.~~
- 7 (2) ~~If a secured party has a security interest in both a member's financial~~
8 ~~rights and governance rights, including a security interest in a complete~~
9 ~~membership interest, this subsection's requirement that the secured~~
10 ~~party obtain consent applies only to taking or assigning ownership of~~
11 ~~the governance rights and does not apply to taking or assigning~~
12 ~~ownership of the financial rights.~~
- 13 3. When an assignment of governance rights is effective under subsection 2:
- 14 a. If the assignment is not a security interest, the assignee becomes a member,
15 if not already a member; and
- 16 b. If the assignor does not retain any governance rights, the assignor ceases to
17 be a member, ~~and the written consent required under subsection 2, also~~
18 ~~constitutes the dissolution avoidance consent necessary to avoid dissolution~~
19 ~~that would otherwise ensue under subdivision e of subsection 1 of section~~
20 ~~10-32-109 on account of the assignor ceasing to be a member if the consent~~
21 ~~required to avoid dissolution is not greater than the consent required under~~
22 ~~subsection 2.~~
- 23 4. When an assignment other than a security interest is effective under subsection 2,
24 unless the written consent under subsection 2 otherwise provides:
- 25 a. The assignee is liable in proportion to the interest assigned for the obligations
26 of the assignor under section 10-32-56, including liability for unperformed
27 promises that have been reflected as contributions in the required records,
28 and section 10-32-65 existing at the time of transfer, except to the extent that,
29 at the time the assignee became a member, the liability was unknown to the
30 assignee, and could not be ascertained from the required records; and

- 1 b. The assignor is not released from liability to the limited liability company for
2 obligations of the assignor existing at the time of transfer under sections
3 10-32-56 and 10-32-65.
- 4 5. If any purported or attempted assignment of governance rights is ineffective for
5 failure to obtain the consent required in subsection 2:
- 6 a. The purported or attempted assignment is ineffective in its entirety; and
7 b. Any assignment of financial rights that accompanied the purported or
8 attempted assignment of governance rights is void.
- 9 6. Restrictions on the transfer of governance rights may be imposed following the
10 same procedures and under the same conditions as stated in subsections 3 and 4
11 of section 10-32-31 for restricting the transfer of financial rights.
- 12 7. Subject to subsection 6, a member may grant a security interest in a complete
13 membership interest or governance rights without obtaining the consent required
14 by this subsection. However, a secured party may not take or assign ownership of
15 governance rights without first obtaining the consent required by this subsection. If
16 a secured party has a security interest in a member's financial rights and
17 governance rights, including a security interest in a complete membership interest,
18 this subsection's requirement that the secured party obtain consent applies only to
19 taking or assigning ownership of the governance rights and does not apply to
20 taking or assigning ownership of the financial rights.
- 21 8. Notwithstanding any provision of law, articles of organization, member-control
22 agreement, ~~operating agreement~~ bylaws, other agreement, resolution, or action to
23 the contrary, a security interest in a member's full membership interest or
24 governance rights may be foreclosed and otherwise enforced, and a secured party
25 may assign a member's complete membership interest or governance rights in
26 accordance with title 41, all without the consent or approval of the member whose
27 full membership interest or governance rights are the subject of the security
28 interest.

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

- 1 2. If an event referred to in subsection 1 causes the termination of a member's
2 membership interest and the termination does not result in dissolution is avoided
3 ~~under subdivision c of subsection 1 of section 10-32-109, then subject to the~~
4 articles of organization and any member-control agreement:
- 5 a. As provided in subsection 3 of section 10-32-30, the terminated member's
6 interest will be considered to be merely that of an assignee of the financial
7 rights owned before the termination of membership; and
- 8 b. The rights to be exercised by the legal representative of the terminated
9 member will be limited accordingly.

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

12 **10-32-36. Sharing of profits and losses.** Unless otherwise provided in the articles of
13 organization, in a member-control agreement, or by the board of governors under subsections
14 5 and 6 of section 10-32-56, the profits and losses of a limited liability company ~~are to~~ must be
15 allocated among the members, and among classes and series of members, in proportion to the
16 value of the contributions of the members reflected in the required records.

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

19 **10-32-37. Preemptive rights.**

- 20 1. To the extent allowed by section 9 of article XII of the Constitution of North Dakota,
21 a member of a limited liability company has the preemptive rights provided in this
22 section, unless denied or limited in the articles of organization, in a member-control
23 agreement, or by the board of governors pursuant to subdivision b of subsection 5
24 of section 10-32-56.
- 25 2. A preemptive right is the right of a member to make contributions of a certain
26 amount or to make a contribution allowance agreement specifying future
27 contributions of a certain amount before the limited liability company may accept
28 new contributions from other persons or to make contribution allowance
29 agreements with other persons.
- 30 3. A member has a preemptive right whenever the limited liability company proposes
31 to accept contributions from other persons, or to make contribution allowance

- 1 agreements with other persons, pertaining to membership interests of the same
2 series or class as the series or class owned by the member.
- 3 4. Unless otherwise provided in the articles of organization or a member-control
4 agreement, no preemptive rights pursuant to this section arise as to contributions
5 to be accepted from others or as to contribution allowance agreements to be made
6 with others when the contribution is:
- 7 a. To be made in a form other than money;
- 8 b. To be made or reflected pursuant to a plan of merger;
- 9 c. To be made or reflected pursuant to an employee or incentive benefit plan
10 approved at a meeting by the affirmative vote of the owners of a majority of
11 the voting power of all membership interests entitled to vote;
- 12 d. To be made pursuant to a previously made contribution allowance
13 agreement; or
- 14 e. To be made or reflected pursuant to a plan of reorganization approved by a
15 court of competent jurisdiction pursuant to a statute of this state or of the
16 United States.
- 17 5. The extent to which each member may make a new contribution, or obtain the right
18 to make a new contribution under a contribution allowance agreement, by exercise
19 of a preemptive right as to any class or series is the ratio that the value of that
20 member's contributions, as reflected in the required records as pertaining to that
21 class or series before the contribution, bears to the total value of all members'
22 contributions reflected in the required records as pertaining to that class or series
23 before the new contribution.
- 24 6. A member may waive a preemptive right in writing. The waiver is binding upon the
25 member whether or not consideration has been given for the waiver. Unless
26 otherwise provided in the waiver, a waiver of preemptive rights is effective only for
27 the proposed contribution or contribution allowance agreement described in the
28 waiver.
- 29 7. When proposing to accept new contributions, or to make contribution allowance
30 agreements, with respect to which members have preemptive rights under this
31 section, the board of governors shall cause notice to be given to each member

- 1 entitled to preemptive rights. The notice must be given at least ten days before the
2 date by which the member must exercise a preemptive right and must contain:
- 3 a. The extent of the member's preemptive right, being:
- 4 (1) In the case of a preemptive right to make a contribution, the amount of
5 the contribution to be made; and
- 6 (2) In the case of a preemptive right to make a contribution allowance
7 agreement, the amount of the contribution to be allowed under that
8 contribution allowance agreement;
- 9 b. The method used to determine the extent of the member's preemptive right;
- 10 c. The terms and conditions upon which the member may make a contribution
11 or make a contribution allowance agreement; and
- 12 d. The time within which and the method by which the member must exercise
13 the right.
- 14 8. If a member does not exercise preemptive rights to make a contribution or to make
15 a contribution allowance agreement, then for a period not exceeding one year after
16 the date fixed by the board of governors for the exercise of those preemptive rights
17 and to the extent of the preemptive rights not exercised, the board of governors
18 may accept contributions or make contribution allowance agreements on terms no
19 less favorable to the limited liability company than those offered to the member.
- 20 9. If the members of a limited liability company are entitled to cumulative voting in the
21 election of governors, no amendment to the articles of organization ~~that~~ or a
22 member-control agreement which has the effect of denying, limiting, or modifying
23 the preemptive rights provided in this section may be adopted if the votes of a
24 proportion of the voting power sufficient to elect a governor at an election of the
25 entire board of governors under cumulative voting are cast against the
26 amendment.
- 27 10. A denial or limitation of preemptive rights otherwise provided in this section does
28 not limit the power of a limited liability company to grant first refusal rights,
29 contribution allowance rights, or other rights to make contributions to the limited
30 liability company, to members, to persons who have entered into contribution

1 agreements, or to other persons before accepting contributions or before making
2 allowance agreements with any other person.

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

5 **10-32-38. Regular meetings of members.**

- 6 1. Regular meetings of members may be held on an annual or other less frequent
7 periodic basis, but need not be held unless required by the articles of organization
8 or ~~operating agreement~~, a member-control agreement, the bylaws, or by
9 subsection 2.
- 10 2. If a regular meeting of members has not been held within the earlier of six months
11 after the fiscal yearend of the corporation or fifteen months after its last meeting:
- 12 a. A member or members owning five percent or more of the voting power of all
13 members entitled to vote may demand a regular meeting of members by
14 written notice of demand given to the president or the secretary of the limited
15 liability company.
- 16 b. Within thirty days after receipt of the demand by one of those managers, the
17 board of governors shall cause a regular meeting of members to be called
18 and held on notice no later than ninety days after receipt of the demand.
- 19 c. If the board of governors fails to cause a regular meeting to be called and
20 held as required by this subsection, the member or members making the
21 demand may call the regular meeting by giving notice as required by section
22 10-32-40.
- 23 d. All necessary expenses of the notice and the meeting must be paid by the
24 limited liability company.
- 25 3. A regular meeting, if any, must be held on the date and at the time and place fixed
26 by, or in a manner authorized by, the articles, a member-control agreement, or
27 ~~operating agreement~~ the bylaws, except ~~that~~ a meeting called by or at the demand
28 of a member pursuant to subsection 2 must be held in the county where the
29 principal executive office of the limited liability company is located.
- 30 4. At each regular meeting of members:

- 1 a. There must be an election of qualified successors for governors who serve for
- 2 an indefinite term or whose terms have expired or are due to expire within six
- 3 months after the date of the meeting.
- 4 b. No other particular business is required to be transacted at a regular meeting.
- 5 c. Any business appropriate for action by the members may be transacted at a
- 6 regular meeting.

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

9 **10-32-39. Special meetings of members.**

- 10 1. Special meetings of the members may be called for any purpose or purposes at
- 11 any time, by:
- 12 a. The president;
- 13 b. Two or more governors;
- 14 c. A person authorized in the articles, a member-control agreement, or
- 15 ~~operating agreement~~ the bylaws to call special meetings; or
- 16 d. A member or members owning ten percent or more of the voting power of all
- 17 membership interests entitled to vote.
- 18 2. A member or members owning ten percent or more of the voting power of all
- 19 membership interests entitled to vote, may demand a special meeting of members
- 20 by written notice of demand given to the president or secretary of the limited
- 21 liability company and containing the purposes of the meeting.
- 22 a. Within thirty days after receipt of the demand by one of those managers, the
- 23 board of governors shall cause a special meeting of members to be called
- 24 and held on notice no later than ninety days after receipt of the demand, all at
- 25 the expense of the limited liability company.
- 26 b. If the board of governors fails to cause a special meeting to be called and
- 27 held as required by this subsection, the member or members making the
- 28 demand may call the meeting by giving notice as required by section
- 29 10-32-40.
- 30 c. All necessary expenses of the notice and the meeting must be paid by the
- 31 limited liability company.

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

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

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

14 3. The notice:

15 a. In all instances where a specific minimum notice period has not otherwise
16 been fixed by law, must be given at least ten days before the date of the
17 meeting, or a shorter time provided in the articles of organization, a
18 member-control agreement, or ~~operating agreement~~ the bylaws, and not
19 more than fifty days before the date of the meeting;

20 b. ~~The notice must~~ Must contain the date, time, and place of the meeting;

21 c. Must contain the information with respect to ~~dissenter's~~ dissenters' rights
22 required by subsection 2 of section 10-32-55, if applicable;

23 d. Must inform members if proxies are permitted at the meeting and, if so, state
24 the procedure for appointing proxies;

25 e. Must contain a statement of the purpose of the meeting, in the case of a
26 special meeting;

27 f. Must contain any other information:

28 (1) Required by the articles of organization, ~~operating agreement~~ any
29 member-control agreement, the bylaws, or this chapter;

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

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

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

5 **10-32-40.1. Voting rights.**

- 6 1. The board of governors may fix or authorize a manager to fix a date not more than
7 fifty days, or a shorter time period provided in the articles of organization, a
8 member-control agreement, or ~~operating agreement~~ the bylaws, before the date of
9 a meeting of members as the date for the determination of the owners of
10 membership interests entitled to notice of and entitled to vote at the meeting.
11 When a date is so fixed, only members on that date are entitled to notice of and
12 permitted to vote at that meeting of members.
- 13 2. A determination of the owners of membership interests entitled to notice and to
14 vote at a meeting of members is effective for an adjournment of the meeting unless
15 the board of governors fixes a new date for determining the right to notice and to
16 vote, which it must do if the meeting is adjourned to a date more than fifty days
17 after the record date for determining members entitled to notice of the original
18 meeting.
- 19 3. If a court orders a meeting adjourned to a date more than one hundred twenty
20 days after the date fixed for the original meeting:
- 21 a. It must provide the original record date for notice and voting continues in
22 effect; or
- 23 b. It may fix a new record date for notice and voting.
- 24 4. A resolution approved by the affirmative vote of a majority of the governors present
25 may establish a procedure whereby a member may certify in writing to the limited
26 liability company that all or a portion of the membership interest registered in the
27 name of the member are held for the account of one or more beneficial owners.
28 Upon receipt by the limited liability company of the writing, the persons specified
29 as beneficial owners, rather than the actual member, are deemed the members for
30 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
7 under 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.

- 1 2. In any case where a class or series of membership interests is entitled by this
2 chapter, the articles of organization, ~~the operating a member-control~~ agreement, or
3 the terms of the membership interests to vote as a class or series, the matter being
4 voted upon must also receive the affirmative vote of the owners of the same
5 proportion of the membership interests as is required pursuant to subsection 1,
6 unless the articles of organization or a member-control agreement requires a
7 larger proportion.
- 8 3. Unless otherwise provided in the ~~article~~ articles of organization, a member-control
9 agreement, or operating agreement ~~the bylaws~~, members may take action at a
10 meeting by voice or ballot, action without a meeting pursuant to section 10-32-43,
11 written ballot pursuant to section 10-32-43.1, or by electronic communication
12 pursuant to section 10-32-43.2.

13 **SECTION 70. AMENDMENT.** Subsection 1 of section 10-32-43 of the 1997

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

- 15 1. An action required or permitted to be taken at a meeting of the members may be
16 taken without a meeting by written action signed by all of the members entitled to
17 vote on that action. If the articles or a member-control agreement ~~so provide~~
18 provides, any action may be taken by written action signed by the members who
19 own voting power equal to the voting power that would be required to take the
20 same action at a meeting of the members at which all members were present.

21 **SECTION 71. AMENDMENT.** Section 10-32-43.1 of the 1997 Supplement to the North

22 Dakota Century Code is amended and reenacted as follows:

23 **10-32-43.1. Action by written ballot.**

- 24 1. Except as provided in subsection 5, and unless prohibited or limited by the articles
25 or ~~operating agreement~~ the bylaws, an action that may be taken at a regular or
26 special meeting of members may be taken without a meeting if the limited liability
27 company mails or delivers a written ballot to every member entitled to vote on the
28 matter.
- 29 2. A written ballot must set forth each proposed action and provide an opportunity to
30 vote for or against each proposed action.
- 31 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
3 writing or transmission for any purpose for which the original transmission
4 could be used, if the copy, facsimile telecommunication, or other reproduction
5 is a complete and legible reproduction of the entire original writing or
6 transmission.
- 7 c. An appointment of a proxy for membership interests owned jointly by two or
8 more members is valid if signed or otherwise authorized by any one of them,
9 unless the limited liability company receives from any one of those members
10 written notice either denying the authority of that person to appoint a proxy or
11 appointing a different proxy.
- 12 2. The appointment of a proxy is valid for eleven months, unless a longer period is
13 expressly provided in the appointment. No appointment is irrevocable ~~and any~~
14 ~~agreement purporting to grant an irrevocable proxy is void~~ unless the appointment
15 is coupled with an interest in the membership interests of the limited liability
16 company. A member who revokes a proxy is not liable in any way for damages,
17 ~~restitution, or other claim.~~
- 18 3. An appointment may be revoked at will unless the appointment is coupled with an
19 interest, in which case the appointment may not be terminated except in
20 accordance with the terms of an agreement, if any, between the parties to the
21 appointment. Appointment of a proxy is revoked by the person appointing the
22 proxy by attending a meeting and voting in person or signing and delivering to the
23 manager or agent authorized to tabulate proxy votes either a writing stating that
24 the appointment of the proxy is revoked or a later appointment. Revocation in
25 either manner revokes all prior proxy appointments and is effective when filed with
26 a manager of the limited liability company.
- 27 4. The death or incapacity of a person appointing a proxy does not revoke or affect
28 the right of the limited liability company to accept the authority of the proxy, unless
29 written notice of the death or incapacity is received by a manager authorized to
30 tabulate votes before the proxy exercises the authority under that appointment.

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

25 **SECTION 74. AMENDMENT.** Subsection 2 of section 10-32-48.1 of the 1997

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

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

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

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

23 **10-32-49. Member voting agreements.**

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

1 ~~subsection 5 of section 10-32-58, subsection 3 of section 10-32-59, or~~
2 ~~subdivision e of subsection 1 of section 10-32-109.~~

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

5 **10-32-50. Member-control agreements.**

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

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

20 subsection 2 may relate to, without limitation, the:

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

- 1 b. ~~A member control agreement may waive, in whole or in part, a member's~~
2 ~~dissenting rights under sections 10-32-54 and 10-32-55, but may not waive~~
3 ~~dissenters' rights under subdivision a of subsection 2 of section 10-32-131. If~~
4 ~~this chapter provides that a particular result may or must be obtained through~~
5 ~~a provision in the articles of organization, other than a provision required by~~
6 ~~subsection 1 of section 10-32-07 to be contained in the articles; in the bylaws;~~
7 ~~or by an act of the board, the same result may be accomplished through a~~
8 ~~member-control agreement valid under this section or through a procedure~~
9 ~~established by a member-control agreement valid under this section.~~
- 10 c. ~~A member-control agreement may not include an agreement to give transfer~~
11 ~~consent:~~
- 12 (1) ~~Allocate to the members authority ordinarily exercised by the board of~~
13 ~~governors;~~
- 14 (2) ~~Allocate to the board of governors authority ordinarily exercised by the~~
15 ~~members; or~~
- 16 (3) ~~Structure the governance of the limited liability company in any agreed~~
17 ~~fashion and may waive, in whole or in part, a member's dissenting~~
18 ~~rights under sections 10-32-54 and 10-32-55.~~
- 19 d. ~~A member control agreement may include a business continuation agreement~~
20 ~~only if the articles of organization grant the members the power to enter into~~
21 ~~business continuation agreements.~~
- 22 2. ~~A written agreement among persons described in subsection 1 that relates to the~~
23 ~~control of or the liquidation, dissolution, and termination of the limited liability~~
24 ~~company, the relations among them, or any phase of the business and affairs of~~
25 ~~the limited liability company, including, without limitation, the management of its~~
26 ~~business, the declaration and payment of distributions, the sharing of profits and~~
27 ~~losses, the election of governors or managers, the employment of members by the~~
28 ~~limited liability company, or the arbitration of disputes, is valid, if the agreement is~~
29 ~~signed by all persons who are then the members of the limited liability company,~~
30 ~~whether or not the members all have voting power, and all those who have signed~~
31 ~~contribution agreements, regardless of whether those signatories will, when~~

1 ~~members, have voting power. An agreement authorized under this section may~~
2 ~~allocate to the members authority ordinarily exercised by the board of governors,~~
3 ~~allocate to the board of governors authority ordinarily exercised by the members,~~
4 ~~or structure the governance of the limited liability company in any agreed fashion.~~

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

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

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

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

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

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

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

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

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

- 1 4. A member-control agreement valid under subsections 1 and 2 is specifically
2 enforceable.
- 3 5. ~~A member-control agreement may waive dissenters' rights, subject to subsection 3~~
4 ~~of section 10-32-131.~~
- 5 6. A member or any assignee of financial rights has the right upon written demand to
6 obtain a copy of any member-control agreement from the limited liability company
7 at the company's expense.
- 8 7. ~~6.~~ If ~~an~~ a member-control agreement authorized under this section takes away from
9 any person any of the authority and responsibility ~~which~~ that the person would
10 otherwise possess under this chapter, the effect of the member-control agreement
11 is also to relieve that person of liability imposed by law for acts and omissions in
12 the possession or exercise of that authority and responsibility and to impose that
13 liability on the person or persons possessing the authority and responsibility under
14 the agreement.
- 15 8. ~~7.~~ This section does not apply to, limit, or restrict agreements otherwise valid, ~~nor is~~
16 and the procedure set forth in this section is not the exclusive method of
17 agreement among members or between the members and the limited liability
18 company with respect to any of the matters described.

19 **SECTION 77. AMENDMENT.** Subdivision d of subsection 1 of section 10-32-51 of the
20 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

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

24 **10-32-54. Rights of dissenting members.**

- 25 1. Subject to a member-control agreement under section 10-32-50, a member of a
26 limited liability company may dissent from, and obtain payment for the fair value of
27 the member's membership interests in the event of, any of the following limited
28 liability company actions:
- 29 a. An amendment of the articles of organization ~~that~~, but not an amendment to a
30 member-control agreement, which materially and adversely affects the rights

- 1 or preferences of the membership interests of the dissenting member in that
2 it:
- 3 (1) Alters or abolishes a preferential right of the membership interests;
 - 4 (2) Creates, alters, or abolishes a right in respect of the redemption of the
5 membership interests, including a provision respecting a sinking fund
6 for the redemption or repurchase of the membership interests;
 - 7 (3) Alters or abolishes a preemptive right of the owner of the membership
8 interests to make a contribution;
 - 9 (4) Excludes or limits the right of a member to vote on a matter, or to
10 cumulate votes, except as the right may be excluded or limited through
11 the acceptance of contributions or the making of contribution
12 agreements pertaining to membership interests with similar or different
13 voting rights;
 - 14 (5) Changes a member's right to resign or retire; or
 - 15 (6) Establishes or changes the conditions for or consequences of
16 expulsion;
 - 17 ~~(7) Changes the statement required under subdivision f of subsection 1 of~~
18 ~~section 10-32-07; or~~
 - 19 ~~(8) Changes the statement required under subdivision g of subsection 1 of~~
20 ~~section 10-32-07;~~
- 21 b. A sale, lease, transfer, or other disposition of all or substantially all of the
22 property and assets of the limited liability company, but not including a
23 transaction permitted without member approval under section 10-32-108, a
24 disposition in dissolution described in subsection 4 of section 10-32-113, a
25 disposition pursuant to an order of a court, or a disposition for cash on terms
26 requiring that all or substantially all of the net proceeds of disposition be
27 distributed to the members in accordance with their respective membership
28 interests within one year after the date of disposition;
- 29 c. A plan of merger to which the limited liability company is a party, ~~except as~~
30 ~~provided in paragraph 1 of subdivision a of subsection 2 of section 10-32-131~~
31 ~~and subject to subsection 3 of section 10-32-131;~~

- 1 d. A plan of exchange to which the limited liability company is a party as the
2 organization whose ownership interests will be acquired by the acquiring
3 organization, if the membership interests being acquired are entitled to be
4 voted on the plan; or
- 5 e. Any other limited liability company action taken pursuant to a member vote
6 with respect to which the articles of organization, a member-control
7 agreement, the ~~operating agreement~~ bylaws, or a resolution approved by the
8 board of governors directs that dissenting members may obtain payment for
9 ~~their~~ the dissenting members' membership interests; ~~or~~
- 10 f. ~~A resolution of the board of governors under subsection 2 of section~~
11 ~~10-32-131 to implement a business continuation agreement.~~
- 12 2. The members of a limited liability company who have a right under this section to
13 obtain payment for their membership interests do not have a right at law or in
14 equity to have a limited liability company action described in subsection 1 set aside
15 or rescinded, except when the limited liability company action is fraudulent with
16 regard to the complaining member or the limited liability company.
- 17 3. If a date is fixed according to subsection 1 of section 10-32-40.1 for the
18 determination of members entitled to receive notice of and to vote on an action
19 described in subsection 1, only members as of the date fixed may exercise
20 dissenters' rights.

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

23 **10-32-55. Procedures for asserting dissenters' rights.**

- 24 1. For purposes of this section:
- 25 a. ~~"Limited liability company" means a limited liability company whose members~~
26 ~~have obtained rights to dissent under subsection 1 of section 10-32-54 and~~
27 ~~includes any successor by merger.~~
- 28 b. "Fair value of the membership interests" means the value of the membership
29 interests of a limited liability company immediately before the effective date of
30 the limited liability company action referred to in subsection 1 of section
31 10-32-54.

- 1 e. b. "Interest" means interest beginning five days after the effective date of the
2 limited liability company action referred to in subsection 1 of section 10-32-54,
3 up to and including the date of payment, calculated at the rate provided in
4 section 28-20-34 for interest on verdicts and judgments.
- 5 c. "Limited liability company" means a limited liability company whose members
6 have obtained rights to dissent under subsection 1 of section 10-32-54 and
7 includes any successor by merger.
- 8 d. "Member" includes a former member when dissenters' rights exist because:
9 (1) The membership of that former member ~~has~~ terminated causing
10 dissolution; and
11 (2) The dissolved limited liability company ~~has~~ then ~~either~~ entered into a
12 winding-up merger under subsection 3 of section 10-32-112 ~~or has~~
13 ~~disposed of its assets pursuant to a business continuation agreement~~
14 ~~under subsection 2 of section 10-32-131.~~
- 15 2. If a limited liability company calls a member meeting at which any action described
16 in subsection 1 of section 10-32-54 is to be voted upon, the notice of the meeting
17 must inform each member of the right to dissent and must include a copy of
18 section 10-32-54 and this section ~~and, if applicable, subsections 2 and 3 of section~~
19 ~~10-32-134.~~ For members who have assigned some or all of their financial rights,
20 the description must also include the procedures under subsection 8.
- 21 3. If the proposed action must be approved by the members, a member who is
22 entitled to dissent under section 10-32-54 and who wishes to exercise dissenters'
23 rights ~~must~~ shall file with the limited liability company before the vote on the
24 proposed action a written notice of intent to demand the fair value of the
25 membership interests owned by the member and ~~must~~ may not vote the
26 membership interests in favor of the proposed action.
- 27 4. After the proposed action ~~has been~~ is approved by the board of governors and, if
28 necessary, the members, the limited liability company shall send to all members
29 who ~~have~~ complied with subsection 3 and to all members entitled to dissent if no
30 member vote was required, a notice that contains:

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

1 dissenter may decline the offer and demand payment under subsection 8. Failure
2 to do so entitles the dissenter only to the amount offered. If the dissenter makes
3 demand, subsections 9 and 10 apply.

4 8. If a dissenter believes that the amount remitted under subsections 5, 6, and 7 is
5 less than the fair value of the membership interests plus interest, the dissenter
6 may give written notice to the limited liability company of the dissenter's own
7 estimate of the fair value of the membership interests, plus interest, within thirty
8 days after the limited liability company mails the remittance under subsections 5, 6,
9 and 7, and demand payment of the difference. Otherwise, a dissenter is entitled
10 only to the amount remitted by the limited liability company.

11 9. If the limited liability company receives a demand under subsection 8, it shall,
12 within sixty days after receiving the demand, either pay to the dissenter the amount
13 demanded or agreed to by the dissenter after discussion with the limited liability
14 company or file in court a petition requesting that the court determine the fair value
15 of the membership interests, plus interest. The petition must be filed in the county
16 in which the registered office of the limited liability company is located, except that
17 a surviving foreign corporation that receives a demand relating to the membership
18 interests of a constituent limited liability company shall file the petition in the county
19 in this state in which the last registered office of the constituent limited liability
20 company was located. The petition must name as parties all dissenters who have
21 demanded payment under subsection 8 and who have not reached agreement
22 with the limited liability company. The limited liability company shall, after filing the
23 petition, serve all parties with a summons and copy of the petition under the rules
24 of civil procedure. Nonresidents of this state may be served by registered or
25 certified mail or by publication as provided by law. Except as otherwise provided,
26 the rules of civil procedure apply to this proceeding. The jurisdiction of the court is
27 plenary and exclusive. The court may appoint appraisers, with powers and
28 authorities the court considers proper, to receive evidence on and recommend the
29 amount of the fair value of the membership interests. The court shall determine
30 whether the member or members in question have fully complied with the
31 requirements of this section and shall determine the fair value of the membership

- 1 interests, taking into account any and all factors the court finds relevant, computed
2 by any method or combination of methods that the court, in its discretion, sees fit
3 to use, whether or not used by the limited liability company or by a dissenter. The
4 fair value of the membership interests as determined by the court is binding on all
5 members, wherever located. A dissenter is entitled to judgment for the amount by
6 which the fair value of the membership interests as determined by the court, plus
7 interest, exceeds the amount, if any, remitted under subsections 5, 6, and 7, but is
8 not liable to the limited liability company for the amount, if any, by which the
9 amount, if any, remitted to the dissenter under subsection 5 exceeds the fair value
10 of the membership interests as determined by the court, plus interest.
- 11 10. The court shall determine the costs and expenses of a proceeding under
12 subsection 9, including the reasonable expenses and compensation of any
13 appraisers appointed by the court, and shall assess those costs and expenses
14 against the limited liability company, except that the court may assess part or all of
15 those costs and expenses against a dissenter whose action in demanding
16 payment is found to be arbitrary, vexatious, or not in good faith.
- 17 11. If the court finds that the limited liability company has failed to comply substantially
18 with this section, the court may assess all fees and expenses of any experts or
19 attorneys as the court considers equitable. These fees and expenses may also be
20 assessed against a person who has acted arbitrarily, vexatiously, or not in good
21 faith in bringing the proceeding, and may be awarded to a party injured by those
22 actions.
- 23 12. The court may award, in its discretion, fees and expenses to an attorney for the
24 dissenters out of the amount awarded to the dissenters, if any.
- 25 13. When an assignment of some or all of the financial rights of a membership interest
26 is in effect, then as to that membership interest the provisions of subsections 1
27 through 12 must be followed subject to the following revisions:
- 28 a. All rights to be exercised and actions to be taken by a member under
29 subsection 2 must be taken by the member and not by any assignee of the
30 member's financial rights. As between the limited liability company and the
31 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

- 1 case of knowing participation in a deliberate fraud, is entitled to contribution on an
2 equitable basis from other governors who are liable under this subsection.
- 3 5. All the membership interests of a limited liability company must:
- 4 a. Be of one class, without series, unless a member-control agreement or the
5 articles of organization establish, or authorize the board of governors to
6 establish, more than one class or series within classes;
- 7 b. Be ordinary membership interests entitled to vote as provided in section
8 ~~10-32-45~~ 10-32-40.1, and have equal rights and preferences in all matters not
9 otherwise provided for by the board of governors unless and to the extent ~~that~~
10 the articles of organization ~~have fixed~~ or a member-control agreement fixes
11 the relative rights and preferences of different classes and series; and
- 12 c. Share profits and losses as provided in section 10-32-36 and be entitled to
13 distributions as provided in sections 10-32-60 and 10-32-61 and subdivision c
14 of subsection 1 of section 10-32-131.
- 15 6. Subject to any restrictions in the articles of organization or a member-control
16 agreement, the power granted in subsection 5 may be exercised by a resolution
17 approved by the affirmative vote of a majority of the directors present establishing
18 a class or series, setting forth the designation of the class or series, and fixing the
19 relative rights and preferences of the class or series established in the articles of
20 organization, in a member-control agreement, or by resolution of the board of
21 governors.
- 22 7. A statement ~~executed~~ signed by a manager setting forth the name of the limited
23 liability company and the text of the resolution and certifying the adoption of the
24 resolution and the date of adoption must be filed with the secretary of state
25 together with the fees provided in section 10-32-150 before the acceptance of any
26 contributions for which the resolution creates rights or preferences not set forth in
27 the articles of organization or a member-control agreement. The resolution is
28 effective when the statement has been filed with the secretary of state unless the
29 statement specifies a later effective date within thirty days of filing the statement
30 with the secretary of state.

- 1 8. Without limiting the authority granted in this section, a limited liability company may
2 have membership interests of a class or series:
- 3 a. Subject to the right of the limited liability company to redeem any of those
4 membership interests at the price fixed for their redemption by the articles of
5 organization or by the board of governors;
- 6 b. Entitling the members to cumulative, partially cumulative, or noncumulative
7 distributions;
- 8 c. Having preference over any class or series of membership interests for the
9 payment of distributions of any or all kinds;
- 10 d. Convertible into membership interests of any other class or any series of the
11 same or another class; or
- 12 e. Having full, partial, or no voting rights, except as provided in section 10-32-17.

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

15 **10-32-57. Restatement of value of previous contributions.**

- 16 1. As used in this section, an "old" contribution is a contribution reflected in the
17 required records of a limited liability company before the time the limited liability
18 company accepts a new contribution.
- 19 2. Whenever a limited liability company accepts a new contribution, the board of
20 governors shall restate, as required by this section, the value of all old
21 contributions.
- 22 3. Unless otherwise provided in the articles of organization or a member-control
23 agreement, this subsection states the method of restating the value of old
24 contributions that pertain to the same series or class to which the new contribution
25 pertains:
- 26 a. State the value the limited liability company has accorded to the new
27 contribution under subdivision a of subsection 3 of section 10-32-56;
- 28 b. Determine what percentage the value stated under subdivision a will
29 constitute, after the restatement required by this subsection, of the total value
30 of all contributions that pertain to the particular series or class to which the
31 new contribution pertains;

- 1 c. Divide the value stated under subdivision a by the percentage determined
2 under subdivision b, yielding the total value, after the restatement required by
3 this subsection, of all contributions pertaining to the particular series or class;
4 d. Subtract the value stated under subdivision a from the value determined
5 under subdivision c, yielding the total value, after the restatement required by
6 this subsection, of all the old contributions pertaining to the particular series or
7 class;
8 e. Subtract the value, as reflected in the required records before the restatement
9 required by this subsection, of the old contributions from the value determined
10 under subdivision d, yielding the value to be allocated among and added to
11 the old contributions pertaining to the particular series or class; and
12 f. Allocate the value determined under subdivision e proportionally among the
13 old contributions pertaining to the particular series or class, add the allocated
14 values to those old contributions, and change the required records
15 accordingly.

16 The values determined under subdivision e and allocated and added under
17 subdivision f may be positive, negative, or zero.

- 18 4. Unless otherwise provided in the articles of organization or a member-control
19 agreement, this subsection states the method of restating the value of old
20 contributions that do not pertain to the same series or class to which the new
21 contribution pertains:
22 a. Determine the percentage by which the restatement under subsection 3 has
23 changed the total contribution value reflected in the required records for the
24 series or class to which the new contribution pertains; and
25 b. As to each old contribution that does not pertain to the same series or class to
26 which the new contribution pertains, change the value reflected in the
27 required records by the percentage determined under subdivision a. The
28 percentage determined under subdivision a may be positive, negative, or
29 zero.
30 5. If a limited liability company accepts more than one contribution pertaining to the
31 same series or class at the same time, then for the purpose of the restatement

1 required by this section the limited liability company may consider all those new
2 contributions as if they were a single contribution.

3 **SECTION 82. AMENDMENT.** Subsection 7 of section 10-32-58 of the 1997

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

5 7. A Unless otherwise provided in the articles of organization or a member-control
6 agreement, a would-be contributor's rights under a contribution agreement may not
7 be assigned, in whole or in part, to a person who was not a member at the time of
8 the assignment, unless all the members approve the assignment by unanimous
9 written consent.

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

12 **10-32-59. Contribution allowance agreements.**

- 13 1. Subject to any restrictions in the articles of organization or a member-control
14 agreement, a limited liability company may enter into contribution allowance
15 agreements under the terms, provisions, and conditions fixed by the board of
16 governors.
- 17 2. Any contribution allowance agreement must be in writing, and the writing must
18 state in full, summarize, or incorporate by reference all of the agreement's terms,
19 provisions, and conditions.
- 20 3. A Unless otherwise provided in the articles of organization or a member-control
21 agreement, a would-be contributor's rights under a contribution allowance
22 agreement may not be assigned in whole or in part to a person who was not a
23 member at the time of the assignment, unless all of the members approve the
24 assignment by unanimous written consent.

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

27 **10-32-60. Sharing of distributions.** Unless otherwise provided in the articles of
28 organization, in a member-control agreement, or by the board of governors under
29 subsections 5 through 7 of section 10-32-56, distributions of cash or other assets of a limited
30 liability company, including distributions on termination of the limited liability company, must be

1 allocated in proportion to the value of the contributions of the members reflected in the required
2 records.

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

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

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

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

19 **SECTION 87. AMENDMENT.** Subdivision c of subsection 1 of section 10-32-64 of the
20 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

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

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

1 in section 10-32-86, is liable to the limited liability company, ~~its~~ the limited liability
2 company's receiver, or any other person winding up ~~its~~ the limited liability
3 company's affairs, jointly and severally with all other governors so liable and to
4 other governors under subsection 3, but only to the extent that the distribution
5 exceeded the amount that properly could have been paid under section 10-32-64.

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

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

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

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

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

26 **SECTION 90. AMENDMENT.** Section 10-32-68 of the 1997 Supplement to the North
27 Dakota Century Code is amended and reenacted as follows:

28 **10-32-68. ~~Operating agreement~~ Bylaws.**

29 1. A limited liability company may, ~~but need not,~~ have bylaws, which may be known
30 as an operating agreement. The ~~operating agreement~~ bylaws may contain any
31 provision relating to the management of the business or the regulation of the

- 1 affairs of the limited liability company not inconsistent with law or the articles of
2 organization. An act of the board under subsection 2 and of the members under
3 subsection 3 will be considered part of the ~~operating agreement~~ bylaws only if the
4 act expressly states that it is intended to constitute or revise the ~~operating~~
5 ~~agreement~~ bylaws.
- 6 2. ~~An initial operating agreement~~ Initial bylaws may be adopted pursuant to section
7 10-32-67 by the organizers or by the first board of governors. Unless reserved by
8 the articles of organization or a member-control agreement to the members, the
9 power to adopt, amend, or repeal the ~~operating agreement~~ bylaws is vested in the
10 board of governors. The power of the board of governors is subject to the power
11 of the members, exercisable in the manner provided in subsection 3, to adopt,
12 amend, or repeal the ~~operating agreement~~ bylaws adopted, amended, or repealed
13 by the board of governors. After the adoption of the initial ~~operating agreement~~
14 bylaws, the board of governors may not adopt, amend, or repeal ~~an operating~~
15 ~~agreement~~ a bylaw provision fixing a quorum for meetings of members, prescribing
16 procedures for removing governors or filling vacancies in the board of governors,
17 or fixing the number of governors or ~~their~~ the governors' classifications,
18 qualifications, or terms of office, but may adopt or amend ~~an operating agreement~~
19 a bylaw provision to increase the number of governors.
- 20 3. Unless the articles or ~~operating agreement~~ provides bylaws provide otherwise,
21 members owning five percent or more of the voting power of the members entitled
22 to vote may propose a resolution for action by the members to adopt, amend, or
23 repeal ~~operating agreement provisions~~ the bylaws adopted, amended, or repealed
24 by the board of governors and the resolution must set forth the provision or
25 provisions proposed for adoption, amendment, or repeal, the limitations and
26 procedures for submitting, considering, and adopting the resolution are the same
27 as provided in subsections 2 through 4 of section 10-32-16, for amendment of the
28 articles of organization. The articles or ~~operating agreement~~ bylaws may impose
29 different or additional requirements for the members to adopt, amend, or repeal the
30 ~~operating agreement~~ bylaws.

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

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

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

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

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

15 **10-32-72. Terms.**

16 1. With respect to length of terms:

17 a. Unless fixed terms are provided for in the articles, a member-control
18 agreement, or ~~operating agreement~~ the bylaws, a governor serves for an
19 indefinite term that expires at the next regular meeting of the members.

20 (1) A fixed term of a governor, other than an ex officio governor, must not
21 exceed five years.

22 (2) An ex officio governor serves as long as the governor holds the office
23 or position designated in the articles or ~~operating agreement~~ bylaws.

24 b. Unless the articles, the bylaws, or ~~operating agreement~~ a member-control
25 agreement provides otherwise, a governor holds office until expiration of the
26 term for which the governor was elected or appointed and until a successor is
27 elected and has qualified or until the earlier death, resignation, removal, or
28 disqualification of the governor.

29 c. A decrease in the number of governors or term of office does not shorten an
30 incumbent ~~director's~~ governor's term.

1 d. Except as provided in the articles, a member-control agreement, or ~~operating~~
2 ~~agreement~~ the bylaws, the term of a governor filling a vacancy expires at the
3 end of the unexpired term that the ~~director~~ governor is filling.

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

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

9 **10-32-74. Compensation.** Subject to any limitations in the articles, a member-control
10 agreement, or ~~operating agreement~~ the bylaws, the board of governors may fix the
11 compensation of governors.

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

14 **10-32-75. Classification of governors.** Governors may be divided into classes as
15 provided in the articles, a member-control agreement, or ~~operating agreement~~ the bylaws.

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

18 **10-32-76. Cumulative voting for governors.**

19 1. ~~Each~~ Unless the articles of organization or a member-control agreement provides
20 that there is no cumulative voting, ~~each~~ member entitled to vote for governors has
21 the right to cumulate voting power in the election of governors by giving written
22 notice of intent to cumulate voting power to any manager of the limited liability
23 company before the meeting, or to the presiding manager at the meeting at which
24 the election is to occur at any time before the election of governors at the meeting,
25 in which case:

26 a. The presiding manager at the meeting shall announce, before the election of
27 governors, that members shall cumulate their voting power; and

28 b. Each member shall cumulate that voting power either by casting for one
29 candidate the amount of voting power equal to the number of governors to be
30 elected multiplied by the voting power represented by the membership

1 interests owned by that member, or by distributing all of that voting power on
2 the same principle among any number of candidates.

3 2. ~~No~~ An amendment to the articles, a member-control agreement, or ~~operating~~
4 ~~agreement that~~ the bylaws which has the effect of denying, limiting, or modifying
5 the right to cumulative voting for members provided in this section may not be
6 adopted if the votes of a proportion of the voting power sufficient to elect a
7 governor at an election of the entire board of governors under cumulative voting
8 are cast against the amendment.

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

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

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

15 a. The governor engaged in fraudulent, dishonest conduct, ~~or~~ gross abuse of
16 authority; ~~or~~ discretion with respect to the limited liability company or a final
17 judgment has been entered finding ~~that~~ the governor ~~has~~ violated section
18 ~~10-33-86~~ 10-32-86; and

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

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

23 a. Vacancies on the board of governors resulting from the death, resignation,
24 removal, or disqualification of a governor may be filled by the affirmative vote
25 of a majority of the remaining governors, even though less than a quorum;
26 and

27 b. Vacancies on the board of governors resulting from newly created
28 governorships may be filled by the affirmative vote of a majority of the
29 governors serving at the time of the increase.

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

1 **10-32-80. Board of governors meetings.**

- 2 1. Meetings of the board of governors may be held from time to time as provided in
3 the articles of organization, a member-control agreement, or ~~operating agreement~~
4 the bylaws at any place within or without the state that the board of governors may
5 select or by any means described in subsection 2. If the articles, ~~operating~~
6 ~~agreement~~ bylaws, or board of governors fails to select a place for a meeting, the
7 meeting must be held at the principal executive office, unless the articles, a
8 member-control agreement, or ~~operating agreement~~ the bylaws provide otherwise.
- 9 2. A board of governors meeting may be conducted by:
- 10 a. A conference among governors using any means of communication through
11 which the governors may simultaneously hear each other during the
12 conference constitutes a board of governors meeting, if the same notice is
13 given of the conference as would be required by subsection 3 for a meeting,
14 and if the number of governors participating in the conference is a quorum.
15 Participation in a meeting by this means constitutes personal presence at the
16 meeting; or
- 17 b. By any means of communication through which the governor, other governors
18 so participating, and all governors physically present at the meeting may
19 simultaneously hear each other during the meeting. Participation in a
20 meeting by this means constitutes personal presence at the meeting.
- 21 3. Unless the articles of organization, a member-control agreement, or ~~operating~~
22 ~~agreement~~ the bylaws provide for a different time period, a governor may call a
23 board meeting by giving at least ten days' notice or, in the case of organizational
24 meetings under subsection 2 of section 10-32-67, at least three days' notice to all
25 governors of the date, time, and place of the meeting. The notice need not state
26 the purpose of the meeting unless the articles, a member-control agreement, or
27 ~~operating agreement~~ the bylaws otherwise require it.
- 28 4. If the date, time, and place of a board of governors meeting ~~have been~~ are
29 provided in the articles or ~~operating agreement~~ bylaws, or announced at a
30 previous meeting of the board of governors, ~~no~~ notice is not required. Notice of an

1 adjourned meeting need not be given other than by announcement at the meeting
2 at which adjournment is taken.

3 5. A governor may waive notice of a meeting of the board of governors. A waiver of
4 notice by a governor entitled to notice is effective whether given before, at, or after
5 the meeting, and whether given in writing, or by attendance. Attendance by a
6 governor at a meeting is a waiver of notice of that meeting, except where the
7 governor objects at the beginning of the meeting to the transaction of business
8 because the meeting is not lawfully called or convened and does not participate in
9 the meeting after the objection.

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

12 **10-32-81. Absent governors.** If the articles of organization, a member-control
13 agreement, or ~~operating agreement~~ the bylaws so provide, a governor may give advance
14 written consent or opposition to a proposal to be acted on at a board of governors meeting. If
15 the governor is not present at the meeting, consent or opposition to a proposal does not
16 constitute presence for purposes of determining the existence of a quorum, but consent or
17 opposition must be counted as the vote of a governor present at the meeting in favor of or
18 against the proposal and must be entered in the minutes or other record of action at the
19 meeting, if the proposal acted on at the meeting is substantially the same or has substantially
20 the same effect as the proposal to which the governor has consented or objected.

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

23 **10-32-82. Quorum.** A majority, or a larger or smaller proportion or number provided in
24 the articles of organization, a member-control agreement, or ~~operating agreement~~ the bylaws,
25 of the governors currently holding office is a quorum for the transaction of business. In the
26 absence of a quorum, a majority of the governors present may adjourn a meeting from time to
27 time until a quorum is present. If a quorum is present when a duly called or held meeting is
28 convened, the governors present may continue to transact business until adjournment, even
29 though the withdrawal of a number of governors originally present leaves less than the
30 proportion or number otherwise required for a quorum.

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

3 **10-32-83. Act of the board of governors.** The board of governors shall take action by
4 the affirmative vote of the greater of a majority of governors present at a duly held meeting at
5 the time the action is taken or a majority of the minimum proportion or number of governors that
6 would constitute a quorum for the transaction of business at a meeting, except ~~where~~ if this
7 chapter, a member-control agreement, or the articles require the affirmative vote of a larger
8 proportion or number. If a member-control agreement or the articles require a larger proportion
9 or number than is required by this chapter for a particular action, the member-control
10 agreement or the articles control.

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

13 1. An action required or permitted to be taken at a board of governors meeting may
14 be taken by written action signed by all of the governors. If the articles or a
15 member-control agreement so provide, any action, other than an action requiring
16 member approval, may be taken by written action signed by the number of
17 governors ~~that~~ which would be required to take the same action at a meeting of the
18 board of governors at which all governors were present.

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

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

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

27 **10-32-86. Standard of conduct for governors.**

28 1. A governor shall discharge the duties of the position of governor in good faith, in a
29 manner the governor reasonably believes to be in the best interests of the limited
30 liability company, and with the care an ordinarily prudent person in a like position
31 would exercise under similar circumstances. A person who so performs those

- 1 duties is not liable by reason of being or having been a governor of the limited
2 liability company.
- 3 2. A governor is entitled to rely on information, opinions, reports, or statements,
4 including financial statements and other financial data, in each case prepared or
5 presented by:
- 6 a. One or more managers or employees of the limited liability company whom
7 the governor reasonably believes to be reliable and competent in the matters
8 presented;
- 9 b. Counsel, public accountants, or other persons as to matters that the governor
10 reasonably believes are within the person's professional or expert
11 competence; or
- 12 c. A committee of the board of governors upon which the governor does not
13 serve, duly established in accordance with section 10-32-85, as to matters
14 within its designated authority, if the governor reasonably believes the
15 committee to merit confidence.
- 16 3. Subsection 2 does not apply to a governor who has knowledge concerning the
17 matter in question that makes the reliance otherwise permitted by subsection 2
18 unwarranted.
- 19 4. A governor who is present at a meeting of the board of governors when an action
20 is approved by the affirmative vote of a majority of the governors present is
21 presumed to have assented to the action approved, unless the governor:
- 22 a. Objects at the beginning of the meeting to the transaction of business
23 because the meeting is not lawfully called or convened and does not
24 participate in the meeting after the objection, in which case the governor is
25 not considered to be present at the meeting for any purpose of this chapter;
- 26 b. Votes against the action at the meeting; or
- 27 c. Is prohibited from voting on the action by the articles; by the ~~operating~~
28 ~~agreement~~ bylaws; as the result of the decision to approve, ratify, or authorize
29 a transaction pursuant to section 10-32-87; or by a conflict of interest policy
30 adopted by the board.

- 1 5. A governor's personal liability to the limited liability company or its members for
2 monetary damages for breach of fiduciary duty as a governor may be eliminated or
3 limited in the articles of organization or a member-control agreement. ~~The~~ Neither
4 the articles nor a member-control agreement may ~~not~~ eliminate or limit the liability
5 of a governor:
- 6 a. For any breach of the governor's duty of loyalty to the limited liability company
7 or its members;
- 8 b. For acts or omissions not in good faith or that involve intentional misconduct
9 or a knowing violation of law;
- 10 c. Under section 10-32-66;
- 11 d. For any transaction from which the governor derived an improper personal
12 benefit; or
- 13 e. For any act or omission occurring before the date when the provision in the
14 articles of organization eliminating or limiting liability becomes effective.
- 15 6. In discharging the duties of the position of governor, a governor may, in
16 considering the best interests of the limited liability company, consider the interests
17 of the limited liability company's employees, customers, suppliers, and creditors,
18 the economy of the state and nation, community and societal considerations, and
19 the long-term as well as short-term interests of the limited liability company and its
20 members including the possibility that these interests may be best served by the
21 continued independence of the limited liability company.

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

- 24 b. The material facts as to the contract or transaction and as to the ~~manager's~~
25 governor's interest are fully disclosed or known to the members and the
26 contract or transaction is approved in good faith by:
- 27 (1) The owners of two-thirds of the voting power of membership interests
28 entitled to vote ~~that~~ which are owned by persons other than the
29 interested governor; or
- 30 (2) The unanimous affirmative vote of all members, whether or not entitled
31 to vote;

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

3 **10-32-88. Managers.** A limited liability company must consist of one or more
4 individuals eighteen years of age or more, ~~and~~ exercising the functions of the offices, however
5 designated, of president and treasurer and may have one or more vice presidents and a
6 secretary, as may be provided in the ~~operating agreement~~ bylaws. Any other managers,
7 assistant managers, and agents, as necessary, may be elected or appointed by the board of
8 governors or chosen in such other manner as may be provided in the ~~operating agreement~~
9 bylaws.

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

12 **10-32-89. Duties of managers and agents.** Unless otherwise provided by the articles
13 of organization, a member-control agreement, ~~operating agreement~~ the bylaws, or a resolution
14 adopted by the board of governors ~~and~~ which is not inconsistent with the articles, a
15 member-control agreement, or ~~operating agreement, provides otherwise~~ the bylaws, the
16 managers ~~shall~~ have the following duties:

- 17 1. The president shall:
- 18 a. Have general active management for the business of the limited liability
19 company;
- 20 b. When present, preside at all meetings of the board of governors and of the
21 members;
- 22 c. See that all orders and resolutions of the board of governors are carried into
23 effect;
- 24 d. Sign and deliver in the name of the limited liability company any deeds,
25 mortgages, bonds, contracts, or other instruments pertaining to the business
26 of the limited liability company, ~~except in cases in which~~ if the authority to sign
27 and deliver is required by law to be exercised by another person or is
28 expressly delegated by the articles ~~or operating agreement~~, the bylaws, or the
29 board of governors to some other manager or agent of the limited liability
30 company;

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

1 5. Any other managers and agents of the limited liability company, as between
2 ~~themselves~~ the managers and agents and the limited liability company, ~~have the~~
3 ~~authority and~~ shall perform the duties in the management of the limited liability
4 company as may be provided in the articles, a member-control agreement, or the
5 ~~operating agreement~~ bylaws, or as may be determined by resolution of the board
6 not inconsistent with the articles, a member control agreement, or the ~~operating~~
7 ~~agreement~~ bylaws.

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

10 **10-32-94. Resignation, removal, and vacancy.**

- 11 1. A manager may resign at any time by giving written notice to the limited liability
12 company. The resignation is effective without acceptance when the notice is given
13 to the limited liability company, unless a later effective date is specified in the
14 notice.
- 15 2. Except as otherwise provided in the articles or ~~operating agreement~~ bylaws, a
16 manager may be removed at any time, with or without cause, by a resolution
17 approved by the affirmative vote of a majority of the governors present, subject to
18 the provisions of a member-control agreement. The removal is without prejudice
19 to any contractual rights of the officer.
- 20 3. A vacancy in an office because of death, resignation, removal, disqualification, or
21 other cause, may, or in the case of the president or treasurer, must be filled for the
22 unexpired portion of the term in the manner provided in the articles, a
23 member-control agreement, or ~~operating agreement~~, or the bylaws; in the manner
24 determined by the board of governors; or pursuant to section 10-32-92.

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

27 **10-32-95. Delegation.** Unless prohibited by the articles ~~or operating agreement~~, a
28 member-control agreement, the bylaws, or by a resolution adopted by the board of governors, a
29 manager elected or appointed by the board of governors may, without the approval of the
30 board, delegate some or all of the duties and powers of an office to other individuals. A

1 manager who delegates the duties or powers of an office remains subject to the standard of
2 conduct for a manager with respect to the discharge of all duties and powers so delegated.

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

5 **10-32-99. Indemnification.**

6 1. For purposes of this section:

7 a. "Limited liability company" includes a domestic or foreign limited liability
8 company that was the predecessor of the limited liability company referred to
9 in this section in a merger or other transaction in which the predecessor's
10 existence ceased upon consummation of the transaction.

11 b. "Official capacity" means:

12 (1) With respect to a governor, the position of governor in a limited liability
13 company;

14 (2) With respect to a person other than a governor, the elective or
15 appointive office or position held by a manager, member of a
16 committee of the board of governors, the employment relationship
17 undertaken by an employee, agent of the limited liability company, or
18 the scope of the services provided by members of the limited liability
19 company who provide services to the limited liability company; and

20 (3) With respect to a governor, manager, member, employee, or agent of
21 the limited liability company who, while a governor, manager, member,
22 or employee of the limited liability company, is or was serving at the
23 request of the limited liability company or whose duties in that position
24 involve or involved service as a governor, director, manager, officer,
25 member, partner, trustee, employee, or agent of another organization
26 or employee benefit plan, the position of that person as a governor,
27 director, manager, officer, member, partner, trustee, employee, or
28 agent, as the case may be, of the other organization or employee
29 benefit plan.

- 1 c. "Proceeding" means a threatened, pending, or completed civil, criminal,
2 administrative, arbitration, or investigative proceeding, including a proceeding
3 by or in the right of the limited liability company.
- 4 d. "Special legal counsel" means counsel who has not represented the limited
5 liability company or a related organization, or a governor, manager, member
6 of a committee of the board of governors, employee, or agent whose
7 indemnification is in issue.
- 8 2. Subject to the provisions of subsection 5, a limited liability company shall indemnify
9 a person made or threatened to be made a party to a proceeding by reason of the
10 former or present official capacity of the person against judgments, penalties,
11 fines, including, without limitation, excise taxes assessed against the person with
12 respect to an employee benefit plan, settlements, and reasonable expenses,
13 including attorney's fees and disbursements, incurred by the person in connection
14 with the proceeding, if, with respect to the acts or omissions of the person
15 complained of in the proceeding, the person:
- 16 a. Has not been indemnified by another organization or employee benefit plan
17 for the same judgments, penalties, fines, including, without limitation, excise
18 taxes assessed against the person with respect to an employee benefit plan,
19 settlements, and reasonable expenses, including attorney's fees and
20 disbursements, incurred by the person in connection with the proceeding with
21 respect to the same acts or omissions;
- 22 b. Acted in good faith;
- 23 c. Received no improper personal benefit and section 10-32-87, if applicable,
24 has been satisfied;
- 25 d. In the case of a criminal proceeding, had no reasonable cause to believe the
26 conduct was unlawful; and
- 27 e. In the case of acts or omissions occurring in the official capacity described in
28 paragraph 1 or 2 of subdivision b of subsection 1, reasonably believed that
29 the conduct was in the best interests of the limited liability company, or in the
30 case of acts or omissions occurring in the official capacity described in
31 paragraph 3 of subdivision b of subsection 1, reasonably believed that the

1 conduct was not opposed to the best interests of the limited liability company.
2 If the person's acts or omissions complained of in the proceeding relate to
3 conduct as a director, officer, trustee, employee, or agent of an employee
4 benefit plan, the conduct is not considered to be opposed to the best interests
5 of the limited liability company if the person reasonably believed that the
6 conduct was in the best interests of the participants or beneficiaries of the
7 employee benefit plan.

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

11 4. Subject to the provisions of subsection 5, if a person is made or threatened to be
12 made a party to a proceeding, the person is entitled, upon written request to the
13 limited liability company, to payment or reimbursement by the limited liability
14 company of reasonable expenses, including attorney's fees and disbursements,
15 incurred by the person in advance of the final disposition of the proceeding:

16 a. Upon receipt by the limited liability company of a written affirmation by the
17 person of a good faith belief that the criteria for indemnification set forth in
18 subsection 2 have been satisfied and a written undertaking by the person to
19 repay all amounts so paid or reimbursed by the limited liability company, if it is
20 ultimately determined that the criteria for indemnification have not been
21 satisfied; and

22 b. After a determination that the facts then known to those making the
23 determination would not preclude indemnification under this section.

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

27 5. The articles of organization, a member-control agreement, or ~~operating agreement~~
28 ~~either~~ the bylaws may prohibit indemnification or advances of expenses otherwise
29 required by this section or may impose conditions on indemnification or advances
30 of expenses in addition to the conditions contained in subsections 2 through 4
31 including, without limitation, monetary limits on indemnification or advances of

1 expenses, if the conditions apply equally to all persons or to all persons within a
2 given class. A prohibition or limit on indemnification or advances may not apply to
3 or affect the right of a person to indemnification or advances of expenses with
4 respect to any acts or omissions of the person occurring before the effective date
5 of a provision in the articles of organization, or a member-control agreement, or the
6 date of adoption of a provision in the ~~operating agreement~~ bylaws establishing the
7 prohibition or limit on indemnification or advances.

8 6. This section does not require, or limit the ability of, a limited liability company to
9 reimburse expenses, including attorney's fees and disbursements, incurred by a
10 person in connection with an appearance as a witness in a proceeding at a time
11 when the person has not been made or threatened to be made a party to a
12 proceeding.

13 7. All indemnification determinations must be made:

14 a. By the board of governors by a majority of a quorum. Governors who are, at
15 the time, parties to the proceeding are not counted for determining either a
16 majority or the presence of a quorum;

17 b. If a quorum under subdivision a cannot be obtained, by a majority of a
18 committee of the board of governors, consisting solely of two or more
19 governors not at the time parties to the proceeding, duly designated to act in
20 the matter by a majority of the full board of governors including governors
21 who are parties;

22 c. If a determination is not made under subdivision a or b, by special legal
23 counsel, selected either by a majority of the board of governors or a
24 committee by vote pursuant to subdivision a or b or, if the requisite quorum of
25 the full board of governors cannot be obtained and the committee cannot be
26 established, by a majority of the full board of governors including governors
27 who are parties;

28 d. If a determination is not made under subdivisions a through c, by the
29 members, other than the members who are a party to the proceeding; or

30 e. If an adverse determination is made under subdivisions a through d or under
31 subsection 8, or if no determination is made under subdivisions a through d or

- 1 under subsection 8 within sixty days after the later to occur of the termination
2 of a proceeding; or a written request for indemnification to the limited liability
3 company; or a written request for an advance of expenses, as the case may
4 be, by a court in this state, which may be the same court in which the
5 proceeding involving the person's liability took place, upon application of the
6 person and any notice the court requires. The person seeking indemnification
7 or payment or reimbursement of expenses pursuant to this clause has the
8 burden of establishing that the person is entitled to indemnification or
9 payment or reimbursement of expenses.
- 10 8. With respect to a person who is not, and was not at the time of the acts or
11 omissions complained of in the proceedings, a governor, manager, or person
12 possessing, directly or indirectly, the power to direct or cause the direction of the
13 management or policies of the limited liability company, the determination whether
14 indemnification of this person is required because the criteria set forth in
15 subsections 2 and 3 have been satisfied and whether this person is entitled to
16 payment or reimbursement of expenses in advance of the final disposition of a
17 proceeding as provided in subsection 4 may be made by an annually appointed
18 committee of the board of governors, having at least one member who is a
19 governor. The committee shall report at least annually to the board of governors
20 concerning its actions.
- 21 9. A limited liability company may purchase and maintain insurance on behalf of a
22 person in that person's official capacity against any liability asserted against and
23 incurred by the person in or arising from that capacity, whether or not the limited
24 liability company would have been required to indemnify the person against the
25 liability under the provisions of this section.
- 26 10. A limited liability company that indemnifies or advances expenses to a person in
27 accordance with this section in connection with a proceeding by or on behalf of the
28 limited liability company shall report to the members in writing the amount of the
29 indemnification or advance and to whom and on whose behalf it was paid not later
30 than the next meeting of members as part of the annual financial statements
31 furnished to members pursuant to section 10-32-52 covering the period when the

1 indemnification or advance was paid or accrued under the accounting method of
2 the limited liability company reflected in the financial statements.

3 11. ~~Nothing in this~~ This section may be construed to does not limit the power of the
4 limited liability company to indemnify ~~other~~ persons other than a governor, a
5 manager, a member, an employee, or a member of a committee of the board, by
6 contract or otherwise.

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

9 **10-32-100. Merger - Exchange - Transfer.**

- 10 1. With or without a business purpose, a limited liability company may merge:
- 11 a. With another limited liability company ~~or a domestic corporation~~ pursuant to a
12 plan of merger approved in the manner provided in sections 10-32-101
13 through 10-32-106; ~~and~~.
- 14 b. With a domestic corporation under a plan of merger approved in the manner
15 provided in sections 10-32-101 through 10-32-107 and in chapter 10-19.1.
- 16 c. With any foreign corporation or foreign limited liability company pursuant to a
17 plan of merger approved in the manner provided in section 10-32-107.
- 18 2. With respect to an exchange:
- 19 a. A limited liability company may acquire all of the ownership interests of one or
20 more classes or series of another limited liability company ~~or domestic~~
21 ~~corporation~~ pursuant to a plan of exchange approved in the manner provided
22 in sections 10-32-101 through 10-32-106.
- 23 b. A limited liability company may acquire all of the ownership interests of one or
24 more classes or series of a domestic corporation pursuant to a plan of
25 exchange approved in the manner provided in sections 10-32-101 through
26 10-32-107 and in chapter 10-19.1.
- 27 c. A domestic corporation may acquire all of the ownership interests of one or
28 more classes or series of a limited liability company pursuant to a plan of
29 exchange approved in the manner provided in sections 10-32-101 through
30 10-32-106 and in chapter 10-19.1.

1 e. d. A foreign corporation or foreign limited liability company may acquire all of
2 the ownership interests of one or more classes or series of a limited liability
3 company pursuant to a plan of exchange approved in the manner provided in
4 section 10-32-107.

5 3. A limited liability company may sell, lease, transfer, or otherwise dispose of all or
6 substantially all of ~~its~~ the limited liability company's property and assets in the
7 manner provided in section 10-32-108.

8 4. A limited liability company may participate in a merger only as permitted by this
9 section.

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

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

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

15 **10-32-102. Plan approval.**

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

- 1 consider the proposed plan of merger or exchange. A copy or short description of
2 the plan of merger or exchange must be included in or enclosed with the notice.
- 3 2. At the meeting a vote of the owners must be taken on the proposed plan. The plan
4 of merger is adopted when approved by the affirmative vote of the owners ~~of a~~
5 ~~majority of the voting power of all ownership interests entitled to vote~~ as required
6 by section 10-19.1-74 or 10-32-42. Except as provided in subsection 3, a class or
7 series of ownership interests of the constituent organization is entitled to vote as a
8 class or series if any provision of the plan would, if contained in a proposed
9 amendment to the articles of organization or ~~articles of incorporation, as the case~~
10 ~~may be~~ a member-control agreement, entitle the class or series of ownership
11 interests to vote as a class or series and, in the case of an exchange, if the class
12 or series is included in the exchange.
- 13 3. A class or series of ownership interests of the constituent organization is not
14 entitled to vote as a class or series solely because the plan of merger effects a
15 cancellation of the ownership interests of the class or series if the plan of merger
16 effects a cancellation of all ownership interests of the constituent organization of all
17 classes and series that are existing immediately before the merger and owners of
18 ownership interests of that class or series are entitled to obtain payment for the fair
19 value of their ownership interests under section 10-19.1-87 or 10-32-55, as the
20 case may be, in the event of the merger.
- 21 4. Notwithstanding subsections 1 and 2, submission of a plan of merger to a vote at a
22 meeting of ~~shareholders~~ owners of a surviving ~~corporation~~ constituent organization
23 is not required if:
- 24 a. The articles ~~of the corporation~~ will not be amended in the transaction;
- 25 b. Each ~~holder~~ owner of ~~shares of the corporation that~~ ownership interests in the
26 constituent organization which were outstanding immediately before the
27 effective time of the transaction will hold the same number of ~~shares~~
28 ownership interests with identical rights immediately after that time;
- 29 c. The voting power of the outstanding ~~shares~~ ownership interests of the
30 ~~corporation~~ constituent organization entitled to vote immediately after the
31 merger, plus the voting power of the outstanding ~~shares~~ ownership interests

- 1 of the ~~corporation~~ constituent organization entitled to vote issuable on
2 conversion of or on the exercise of rights to purchase securities issued in the
3 transaction, will not exceed by more than twenty percent, the voting power of
4 the outstanding ~~shares~~ ownership interests of the ~~corporation~~ constituent
5 organization entitled to vote immediately before the transaction; and
6 d. The number of participating ~~shares~~ ownership interests of the ~~corporation~~
7 constituent organization immediately after the merger, plus the number of
8 participating ~~shares~~ ownership interests of the ~~corporation~~ constituent
9 organization issuable on conversion, or on the exercise of rights to purchase,
10 securities issued in the transaction, will not exceed by more than twenty
11 percent, the number of participating ~~shares~~ ownership interests of the
12 ~~corporation~~ constituent organization immediately before the transaction.
13 "Participating ~~shares~~ ownership interests" are outstanding ~~shares~~ ownership
14 interests of the ~~corporation~~ constituent organization which entitle ~~their~~
15 ~~holders~~ the ownership interests owners to participate without limitation in
16 distributions by the ~~corporation~~ constituent organization.
17 5. If the merger or exchange is with a domestic corporation, the plan of merger or
18 exchange must also be approved in the manner provided in chapter 10-19.1.

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

- 21 1. Upon receiving the approval required by section 10-32-102, articles of merger
22 must be prepared ~~that~~ which contain:
23 a. The plan of merger; and
24 b. ~~For each constituent organization either:~~
25 (1) A statement that the plan has been approved by ~~a vote of the~~
26 ~~shareholders pursuant to subsection 2 of section 10-19.1-98 or the~~
27 ~~members~~ each constituent organization pursuant to subsection 2 or 3
28 of section 10-32-102; chapter 10-19.1 or this chapter.
29 (2) ~~A statement that a vote of the shareholders is not required by virtue of~~
30 ~~subsection 3 of section 10-19.1-98 or that a vote of the members is not~~
31 ~~required by virtue of subsection 4 of section 10-32-102.~~

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

3 **10-32-104. Merger of subsidiary into parent.**

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

- 1 3. If the parent is a constituent organization but is not the surviving constituent
2 organization in a merger, the resolution is not effective unless ~~the resolution~~ is
3 also approved by the affirmative vote of the holders of a majority of the voting
4 power of all ownership interests of the parent entitled to vote at a regular or special
5 meeting held in accordance with section 10-19.1-98 if the parent is a corporation,
6 section 10-32-102 if the parent is a limited liability company, or in accordance with
7 the laws of the jurisdiction under which ~~the parent~~ is incorporated or organized if
8 the parent is a foreign corporation or foreign limited liability company.
- 9 4. A copy of the plan of merger must be mailed to each owner, other than the parent,
10 of each subsidiary that is a constituent organization to the merger.
- 11 5. Articles of merger must be prepared ~~that~~ which contain:
- 12 a. The plan of merger;
- 13 b. The number of outstanding ownership interests of each class and series of
14 ~~each~~ the subsidiary that is a constituent organization and the number of
15 ownership interests of each class and series owned by the parent directly or
16 indirectly, through related constituent organizations;
- 17 c. The date a copy of the plan of merger was mailed to the owners, other than
18 the parent, of each subsidiary that is a constituent organization in the merger;
19 and
- 20 d. A statement that the plan of merger has been approved by the parent under
21 this section.
- 22 6. Within thirty days after a copy of the plan of merger is mailed to the owners of each
23 subsidiary that is a constituent organization to the merger, or upon waiver of the
24 mailing by the owners of all outstanding ownership interests of each subsidiary that
25 is a constituent organization to the merger, the articles of merger must be signed
26 on behalf of the parent and filed with the secretary of state, together with the fees
27 provided in section 10-32-150.
- 28 7. The secretary of state shall issue a certificate of merger to the ~~parent~~ surviving
29 constituent organization in the merger or ~~its~~ the surviving constituent organization's
30 legal representative. The certificate must contain the effective date of merger.

1 8. If all of the ownership interests of one or more domestic subsidiaries that are a
2 constituent organization to a merger under this section are not owned by the
3 parent directly, or indirectly through related constituent organizations, immediately
4 before the merger, the owners of each domestic subsidiary have dissenter's rights
5 under section 10-19.1-87 or under section 10-32-54, without regard to
6 subsection 3 of section ~~40-19.1-87 and section~~ 10-19.1-88 or to subsection 2 of
7 section 10-32-54 ~~or section 10-22-55~~. If the parent is a constituent organization
8 but is not the surviving constituent organization in the merger, and the articles of
9 incorporation or articles of organization of the surviving constituent organization
10 immediately after the merger differ from the articles of incorporation or articles of
11 organization of the parent immediately before the merger in a manner that would
12 entitle an owner of the parent to dissenter's rights under subsection 1 of section
13 10-19.1-87 or under subdivision a of subsection 1 of section 10-32-54 if the articles
14 of incorporation or articles of organization of the surviving constituent organization
15 constitute an amendment to the articles of incorporation or articles of organization
16 of the parent, that owner of the parent has dissenter's rights as provided under
17 sections section 10-19.1-87 and ~~40-19.1-88~~ or under sections section 10-32-54
18 and ~~10-32-55~~. Except as provided in this subsection, sections 10-19.1-87 and
19 ~~40-19.1-88 and sections~~ 10-32-54 and ~~10-32-55~~ do not apply to any merger
20 affected under this section.

21 9. A merger among a parent and one or more subsidiaries or among two or more
22 subsidiaries of a parent may be accomplished under sections 10-32-101 through
23 10-32-103 instead of this section, in which case this section does not apply.

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

26 **10-32-105. Abandonment of plan of merger.**

27 1. After a plan of merger ~~has been~~ is approved by the owners entitled to vote on the
28 approval of the plan as provided in section 10-32-102, and before the effective
29 date of the plan, ~~it~~ the plan of merger may be abandoned:

30 a. With respect to approval of the abandonment:

- 1 (1) If the owners of ownership interests of each of the constituent
2 organizations entitled to vote on the approval of the plan as provided in
3 section 10-32-102 have approved the abandonment at a meeting by
4 ~~the affirmative vote of the owners of a majority of the voting power of~~
5 ~~the ownership interests entitled to vote and, owners as required by~~
6 section 10-19.1-74 or 10-32-42;
- 7 (2) ~~if~~ If the owners of a constituent organization are not entitled to vote on
8 the approval of the plan under section 10-32-102, the governing board
9 of that constituent organization has approved the abandonment by ~~the~~
10 ~~affirmative vote of a majority of the board members present~~ as required
11 by section 10-19.1-46 or 10-32-83; and
- 12 (3) If the merger or exchange is with a foreign corporation or foreign limited
13 liability company, if abandonment is approved in the manner required
14 by the laws of the jurisdiction under which the corporation is
15 incorporated or the limited liability company is organized;
- 16 b. If the plan itself provides for abandonment and all conditions for abandonment
17 set forth in the plan are met; or
- 18 c. Pursuant to subsection 2.
- 19 2. If articles of merger have not been filed with the secretary of state and the plan is
20 to be abandoned, or if a plan of exchange is to be abandoned before the effective
21 date of the plan, a resolution by the governing board of any constituent
22 organization abandoning the plan of merger or exchange may be approved by the
23 ~~affirmative vote of a majority of the board members present, as required by section~~
24 10-19.1-46 or 10-32-83 subject to the contract rights of any other person under the
25 plan.
- 26 3. If articles of merger have been filed with the secretary of state, but have not yet
27 become effective, the constituent organizations, in the case of abandonment under
28 subdivision a of subsection 1, the constituent organizations or any one ~~of them~~
29 constituent organization, in the case of abandonment under subdivision b of
30 subsection 1, or the abandoning constituent organization in the case of

1 abandonment under subsection 2, shall file with the secretary of state together with
2 the fees provided in section 10-32-150, articles of abandonment that contain:

- 3 a. The names of the constituent organizations;
4 b. The provision of this section under which the plan is abandoned; and
5 c. ~~If the plan is abandoned under subsection 2, the~~ The text of the resolution
6 ~~approved by the affirmative vote of a majority of the board members present~~
7 abandoning the plan.

8 4. If the certificate of merger has been issued, the governing board shall surrender
9 the certificate to the secretary of state upon filing the articles of abandonment.

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

- 12 a. The constituent organizations become a single ~~constituent organization entity,~~
13 the surviving ~~constituent organization~~ corporation, or surviving limited liability
14 company;

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

17 **10-32-107. Merger or exchange with foreign limited liability company or foreign**
18 **corporation.**

19 1. A limited liability company may merge with or participate in an exchange with a
20 foreign corporation or a foreign limited liability company by following the
21 procedures set forth in this section, if:

- 22 a. With respect to a merger, the merger is permitted by the laws of the ~~state~~
23 jurisdiction under which the foreign corporation or foreign limited liability
24 company is incorporated or organized; and
25 b. With respect to an exchange, the constituent organization ~~whose~~ of which the
26 ownership interests will be acquired is ~~either~~ a limited liability company or a
27 domestic corporation, regardless of whether ~~or not~~ the exchange is permitted
28 by the laws of the ~~state~~ jurisdiction under which the foreign corporation or
29 foreign limited liability company is incorporated or organized.

30 2. Each limited liability company shall comply with the provisions of this section and
31 sections 10-32-100 through 10-32-106 with respect to the merger or exchange of

1 ownership interests of organizations and each foreign corporation or foreign limited
2 liability company shall comply with the applicable provisions of the laws of the
3 jurisdiction under which it was the foreign corporation or foreign limited liability
4 company is incorporated or organized or by under which ~~it~~ the foreign corporation
5 or foreign liability company is governed.

6 3. If the surviving organization in a merger will be a domestic limited liability
7 company, ~~it~~ the surviving organization shall comply with all the provisions of this
8 chapter.

9 4. If the surviving organization in a merger will be a foreign corporation or foreign
10 limited liability company and will transact business in this state, ~~it~~ the surviving
11 organization shall comply, as the case may be, with the provisions of chapter
12 ~~10-22~~ 10-19.1 with respect to foreign corporations or with the provisions of this
13 chapter with respect to foreign limited liability companies. In every case the
14 surviving foreign corporation or foreign limited liability company shall file with the
15 secretary of state:

16 a. An agreement that ~~it~~ the surviving organization may be served with process in
17 this state in a proceeding for the enforcement of an obligation of a constituent
18 organization and in a proceeding for the enforcement of the rights of a
19 dissenting owner of an ownership interest of a constituent organization
20 against the surviving foreign corporation or foreign limited liability company;

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

24 c. An agreement that ~~it~~ the surviving organization promptly will ~~promptly~~ pay to
25 the dissenting owners of ownership interests of each constituent domestic
26 limited liability company and constituent domestic corporation the amount, if
27 any, to which ~~they~~ the dissenting owners are entitled under section
28 10-19.1-88 or 10-32-55, ~~as the case may be.~~

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

31 **10-32-109. Methods of dissolution.**

- 1 1. A limited liability company dissolves upon the occurrence of any of the following
2 events:
- 3 a. When the period fixed in the articles of organization for the duration of the
4 limited liability company expires;
- 5 b. By order of a court pursuant to sections 10-32-119 and 10-32-122;
- 6 c. By action of the organizers pursuant to section 10-32-110;
- 7 d. By action of the members pursuant to section 10-32-111;
- 8 e. For a limited liability company with articles of organization filed with the
9 secretary of state:
- 10 (1) ~~Except~~ Before July 1, 1999, except as provided in subsection 2 and
11 except as otherwise provided in the articles of organization or a
12 member-control agreement, upon the occurrence of an event that
13 terminates the continued membership of a member in the limited
14 liability company, including:
- 15 ~~(1)~~ (a) Death of any member;
- 16 ~~(2)~~ (b) Retirement of any member;
- 17 ~~(3)~~ (c) Resignation of any member;
- 18 ~~(4)~~ (d) Redemption of a member's complete membership interest;
- 19 ~~(5)~~ (e) Assignment of a member's governance rights under section
20 10-32-32 which leaves the assignor with no governance rights;
- 21 ~~(6)~~ (f) A buyout of a member's membership interest under section
22 10-32-119 ~~that~~ which leaves that member with no governance
23 rights;
- 24 ~~(7)~~ (g) Expulsion of any member;
- 25 ~~(8)~~ (h) Bankruptcy of any member;
- 26 ~~(9)~~ (i) Dissolution of any member; or
- 27 ~~(10) A merger in which the limited liability company is not the surviving~~
28 ~~organization;~~
- 29 ~~(11) An exchange in which the limited liability company is not the acquiring~~
30 ~~organization; or~~

- 1 ~~(12)~~ (j) The occurrence of any other event that terminates the continued
2 membership of a member in the limited liability company, ~~but the~~
3 ~~limited liability company is not dissolved and is not required to be~~
4 ~~wound up by reason of any event that terminates the continued~~
5 ~~membership of a member if:~~
- 6 ~~(a)~~ ~~Either there are at least two remaining members or a new~~
7 ~~member is admitted as provided in section 10-32-06; and~~
- 8 ~~(b)~~ ~~The existence and business of the limited liability company is~~
9 ~~continued either by the consent of all remaining members under~~
10 ~~a right to consent stated in the articles of organization and the~~
11 ~~consent is obtained no later than ninety days after the~~
12 ~~termination of the continued membership, or under a separate~~
13 ~~right to continue stated in the articles of organization; or~~
- 14 (2) After June 30, 1999, upon the occurrence of an event terminating the
15 continued membership of a member in the limited liability company:
- 16 (a) If the articles of organization or a member-control agreement
17 specifically provide that the termination causes dissolution; or
- 18 (b) If the membership of the last or sole member terminates and the
19 legal representative of that last or sole member does not cause
20 the limited liability company to admit at least one member within
21 one hundred eighty days after the termination;
- 22 f. A merger in which the limited liability company is not the surviving
23 organization; or
- 24 g. When terminated by the secretary of state pursuant to section 10-32-149.
- 25 2. For a limited liability company with articles of organization filed with the secretary
26 of state before July 1, 1999, the limited liability company is not dissolved and is not
27 required to be wound up by reason of any event terminating the continued
28 membership of a member:
- 29 a. If there is at least one remaining member and the existence and business of
30 the limited liability company is continued by the consent of every remaining
31 member obtained no later than ninety days after the termination of the

- 1 continued membership, or under a separate right to continue stated in the
2 articles of organization or a member-control agreement; or
- 3 b. If the membership of the last or sole member terminates and the legal
4 representative of that last or sole member causes the limited liability company
5 to admit at least one member within one hundred eighty days after the
6 termination.
- 7 3. A limited liability company dissolved by one of the dissolution events specified in
8 subsection 1 must be wound up and terminated under the following dissolution
9 provisions:
- 10 a. When a limited liability company is dissolved under subdivision a of
11 subsection 1 by reason of the expiration of ~~its~~ the limited liability company's
12 limited period of duration, the limited liability company must be wound up and
13 terminated under sections 10-32-112 through 10-32-115 and sections
14 10-32-117, 10-32-118, and 10-32-131;
- 15 b. When a limited liability company is dissolved under subdivision b of
16 subsection 1 by reason of a court order, the limited liability company must be
17 wound up and terminated under sections 10-32-119 through 10-32-126;
- 18 c. When a limited liability company is dissolved under subdivision c of
19 subsection 1 by its organizers, the limited liability company must be wound up
20 and terminated under section 10-32-110 and sections 10-32-112 through
21 10-32-118;
- 22 d. When a limited liability company is dissolved under subdivision d of
23 subsection 1 by its members, the limited liability company must be wound up
24 and terminated under sections 10-32-111 through 10-32-118 and section
25 10-32-131; and
- 26 e. When a limited liability company is dissolved under subdivision e of
27 subsection 1 by reason of a termination of the continued membership of a
28 member, the limited liability company must be wound up and terminated
29 under sections 10-32-112 through 10-32-115 and sections 10-32-117,
30 10-32-118, and 10-32-131.

1 ~~3.~~ 4. Notwithstanding any provision of law, articles of organization, member-control
2 agreement, ~~operating agreement~~ bylaws, other agreement, resolution, or action to
3 the contrary, a limited liability company is not dissolved and is not required to be
4 wound up upon the granting of a security interest in a member's membership
5 interest, governance rights, or financial rights, or upon the foreclosure or other
6 enforcement of a security interest in a member's financial rights; or upon the
7 secured party's assignment, acceptance, or retention of a member's financial rights
8 in accordance with title 41.

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

11 (1) Is approved pursuant to subsection 2 of section 10-32-111, the date
12 and place of the meeting at which the dissolution was approved and a
13 statement that the requisite vote of the members was received, or that
14 members validly took action without a meeting; ~~and~~

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

17 b. ~~Subject to any business continuation agreement, to~~ To collect or make
18 provision for the collection of all known debts due or owing to the limited
19 liability company, including unperformed contribution agreements; and

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

22 **10-32-114. Winding-up procedure for limited liability companies that give notice**
23 **to creditors and claimants.** ~~When~~ If a notice of dissolution ~~has been~~ is filed with the
24 secretary of state; and the business of the limited liability company is not to be wound up and
25 terminated by merging the dissolved limited liability company into a successor organization
26 under subsection 3 of section 10-32-112, ~~then~~ the limited liability company may give notice of
27 the filing to each creditor of and claimant against the limited liability company known or
28 unknown, present or future, and contingent or noncontingent.

29 1. If notice to creditors and claimants is given, ~~#~~ the notice must be given by
30 publishing the notice once each week for four successive weeks in an official
31 newspaper as defined in chapter 46-06 in the county or counties where the

1 registered office and the principal executive office of the limited liability company
2 are located and by giving written notice to known creditors and claimants pursuant
3 to subsection ~~32~~ 31 of section 10-32-02.

- 4 2. The notice to creditors and claimants must contain:
- 5 a. A statement that the limited liability company ~~has~~ dissolved and is in the
6 process of winding up ~~its~~ affairs;
 - 7 b. A statement that the limited liability company ~~has~~ filed with the secretary of
8 state a notice of dissolution;
 - 9 c. The date of filing the notice of dissolution;
 - 10 d. The address of the office to which written claims against the limited liability
11 company must be presented; and
 - 12 e. The date by which all claims must be received; which must be the later of
13 ninety days after published notice or, with respect to a particular known
14 creditor or claimant, ninety days after the date on which written notice was
15 given to that creditor or claimant. Published notice is considered given on the
16 date of first publication for the purpose of determining this date.

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

- 20 a. ~~A statement that the business of the dissolved limited liability company is~~
21 ~~being continued by a successor organization;~~
- 22 b. ~~The name and address of the successor organization;~~
- 23 c. ~~An undertaking by the successor organization to assume all the liabilities of~~
24 ~~the dissolved limited liability company; and~~
- 25 d. ~~A statement that creditors of the dissolved limited liability company do not~~
26 ~~need to file claims against the limited liability company in order to preserve~~
27 ~~their rights to enforce these claims against the successor organization.~~

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

- 1 4- With respect to a limited liability company that gives notice to creditors and
2 claimants:
- 3 a. The limited liability company has thirty days from the receipt of each claim
4 filed according to the procedures set forth by the limited liability company on
5 or before the date set forth in the notice to accept or reject the claim by giving
6 written notice to the person submitting ~~it~~ the notice to accept or reject. A
7 claim not expressly rejected in this manner is considered accepted.
- 8 b. A creditor or claimant to whom notice is given and whose claim is rejected by
9 the limited liability company has sixty days from the date of rejection, or one
10 hundred eighty days from the date the limited liability company filed with the
11 secretary of state the notice of dissolution, whichever is longer, to pursue any
12 other remedies with respect to the claim.
- 13 c. A creditor or claimant to whom notice is given who fails to file a claim
14 according to the procedures set forth by the limited liability company on or
15 before the date set forth in the notice is barred from suing the dissolved
16 limited liability company on that claim or otherwise realizing upon or enforcing
17 ~~it~~ that claim against the dissolved limited liability company, except as provided
18 in section 10-32-128. ~~If the dissolved limited liability company gave the~~
19 ~~additional information referred to in subsection 3, nothing in this section bars~~
20 ~~the creditor or claimant from seeking to enforce its rights against the~~
21 ~~successor organization.~~
- 22 d. A creditor or claimant whose claim is rejected by the limited liability company
23 under subdivision b is barred from suing on that claim or otherwise realizing
24 upon or enforcing ~~it~~ that claim whether against the dissolved limited liability
25 company or any successor organization, if the creditor or claimant does not
26 initiate legal, administrative, or arbitration proceedings with respect to the
27 claim within the time provided in subdivision b.
- 28 ~~5-~~ 4. Articles of termination for a limited liability company dissolving under this section
29 ~~that has given~~ which gave notice to creditors and claimants under this section
30 must be filed with the secretary of state along with the fees provided in section
31 10-32-150 after:

- 1 a. The ninety-day period in subdivision e of subsection 2 ~~has expired~~ expires
2 and the payment of claims of all creditors and claimants filing a claim within
3 that period ~~has been~~ are made or provided for; or
- 4 b. The longest of the periods described in subdivision b of subsection 4 ~~has~~
5 ~~expired~~ 3 expires and there are no pending legal, administrative, or arbitration
6 proceedings by or against the limited liability company commenced within the
7 time provided in subdivision b of subsection 4 3.
- 8 ~~6-~~ 5. The articles of termination for a limited liability company that ~~has given~~ gave notice
9 to creditors and claimants under this section must state:
- 10 a. The last date on which the notice was given and that the payment of all
11 creditors and claimants filing a claim within the ninety-day period in
12 subdivision e of subsection 2 ~~has been~~ was made or provided for, or the date
13 on which the longest of the periods described in subdivision b of subsection 4
14 ~~expired~~ 3 expires;
- 15 b. That the remaining property, assets, and claims of the limited liability
16 company ~~have been~~ were distributed in accordance with section 10-32-131,
17 or that adequate provision ~~has been~~ was made for that distribution; and
- 18 c. That there are no pending legal, administrative, or arbitration proceedings by
19 or against the limited liability company commenced within the time provided in
20 subdivision b of subsection 4 3 or that adequate provision has been made for
21 the satisfaction of any judgment, order, or decree that may be entered against
22 ~~it~~ the limited liability company in a pending proceeding.

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

25 **10-32-119. Judicial intervention and equitable remedies, dissolution, and**
26 **termination.**

- 27 1. A court may grant any equitable relief it considers just and reasonable in the
28 circumstances or may dissolve, wind up, and terminate a limited liability company:
- 29 a. In a supervised voluntary winding up and termination pursuant to section
30 10-32-118;
- 31 b. In an action by a member when it is established that:

- 1 (1) The governors or the persons having the authority otherwise vested in
2 the board of governors are deadlocked in the management of the
3 affairs of the limited liability company and the members are unable to
4 break the deadlock;
- 5 (2) The governors or those in control of the limited liability company have
6 acted fraudulently, illegally, or in a manner unfairly prejudicial toward
7 one or more members in their capacities as members or governors of
8 any limited liability company or as managers or employees of a closely
9 held limited liability company;
- 10 (3) The members of the limited liability company are so divided in voting
11 power that, for a period that includes the time when two consecutive
12 regular meetings were held, they have failed to elect successors to
13 governors whose terms have expired or would have expired upon the
14 election and qualification of their successors;
- 15 (4) The limited liability company assets are being misapplied or wasted; or
- 16 (5) An event of dissolution has occurred under subdivision a, d, or e of
17 subsection 1 of section 10-32-109 but the limited liability company is
18 not acting to wind up its affairs;
- 19 c. In an action by a creditor when:
- 20 (1) The claim of the creditor has been reduced to judgment and an
21 execution on the judgment has been returned unsatisfied; or
- 22 (2) The limited liability company has admitted in writing that the claim of
23 the creditor is due and owing and it is established that the limited
24 liability company is unable to pay its debts in the ordinary course of
25 business; or
- 26 d. In an action by the attorney general to dissolve the limited liability company in
27 accordance with section 10-32-122 when it is established that a decree of
28 termination is appropriate.
- 29 2. In determining whether to order relief under this section and in determining what
30 particular relief to order, the court shall take into consideration the financial
31 condition of the limited liability company but may not refuse to order any particular

- 1 form of relief solely on the grounds that the limited liability company has
2 accumulated or current operating profits.
- 3 3. In an action under subdivision b of subsection 1 in which one or more of the
4 circumstances described in that subdivision is established, a court, upon motion of
5 a limited liability company or a member, may order the sale by a plaintiff or a
6 defendant of all membership interests of the limited liability company held by the
7 plaintiff or defendant to the limited liability company or the moving members,
8 whichever is specified in the motion, if the court determines in the court's discretion
9 that an order is fair and equitable to all parties under all of the circumstances of the
10 case.
- 11 a. The purchase price of any membership interest sold under this subsection is
12 the fair value of the membership interest as of the date of the commencement
13 of the action or as of another date found equitable by the court. If the articles
14 of organization, a member-control agreement, or another agreement state a
15 price for the redemption or buyout of membership interests, the court shall
16 order the sale for the price and on the terms set forth, unless the court
17 determines that the price or terms are unreasonable under all the
18 circumstances of the case.
- 19 b. Within five days after entry of the order, the limited liability company shall
20 provide each selling member with the information the limited liability company
21 is required to provide under subsection 6 of section 10-32-55.
- 22 c. If the parties are unable to agree on fair value within forty days of entry of the
23 order, the court shall determine the fair value of the membership interests
24 under the provisions of subsection 9 of section 10-32-55, may allow interest
25 or costs as provided in subsections 1 and 10 of section 10-32-55, and may
26 allocate payment among the member whose membership interest is being
27 sold and any assignees of the financial rights of that member.
- 28 d. The purchase price must be paid in one or more installments as agreed on by
29 the parties or, if no agreement can be reached within forty days of entry of the
30 order, as ordered by the court upon entry of an order for the sale of a
31 membership interest under this subsection and provided the limited liability

1 company or the moving members post a bond in adequate amount with
2 sufficient sureties or otherwise satisfy the court that any full purchase price of
3 the membership interest, plus the additional costs, expenses, and fees
4 awarded by the court, will be paid when due and payable, the selling member
5 no longer has any rights or status as a member, manager, or governor,
6 except the right to receive the fair value of the membership interest plus other
7 amounts as might be awarded.

8 4. In determining whether to order relief under this section and in determining what
9 particular relief to order, the court shall take into consideration the duty that all
10 members in a closely held limited liability company owe one another to act in an
11 honest, fair, and reasonable manner in the operation of the limited liability
12 company and the reasonable expectations of the members as they exist at the
13 inception and develop during the course of the members' relationship with the
14 limited liability company and with each other.

15 4- 5. For purposes of this section, any written agreements, including employment
16 agreements and buy-sell agreements between or among one or more members
17 and the limited liability company are presumed to reflect the parties reasonable
18 expectations concerning matters dealt with in the agreements.

19 5- 6. In determining what relief to order, the court shall take into account that any relief
20 that results in the termination of a member's membership interest ~~will~~ may cause
21 dissolution of the limited liability company. If the court orders relief that results in
22 dissolution of the limited liability company, the court shall make appropriate orders
23 providing for the winding up and termination of the dissolved limited liability
24 company.

25 6- 7. In deciding whether to order winding up through liquidation, the court shall
26 consider whether lesser relief suggested by one or more parties, or provided in a
27 ~~business continuation~~ member-control agreement, such as any form of equitable
28 relief, or a buyout or partial liquidation coupled with the continuation of the
29 business of the dissolved limited liability company through a successor
30 organization, would be adequate to permanently relieve the circumstances
31 established under subdivision b or c of subsection 1. Lesser relief may be ordered

1 in any case where it would be appropriate under all the facts and circumstances of
2 the case.

3 ~~7.~~ 8. If the court finds that a party to a proceeding brought under this section has acted
4 arbitrarily, vexatiously, or otherwise not in good faith, it may in its discretion award
5 reasonable expenses, including attorneys' fees and disbursements, to any of the
6 other parties.

7 ~~8.~~ 9. Proceedings under this section must be brought in a court within the county in
8 which the registered office of the limited liability company is located. It is not
9 necessary to make members parties to the action or proceeding unless relief is
10 sought against them personally.

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

13 2. An action ~~must~~ may not be commenced under this section until thirty days after
14 notice to the limited liability company by the attorney general of the reason for the
15 filing of the action. If the reason for filing the action is an act ~~that~~ the limited liability
16 company has done, or omitted to do, and the act or omission may be corrected by
17 an amendment of the articles of organization, a member-control agreement, or the
18 ~~operating agreement~~ bylaws or by performance of or abstention from the act, the
19 attorney general shall give the limited liability company thirty additional days in
20 which to effect the correction before filing the action.

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

23 **10-32-131. Disposition of assets upon dissolution.**

24 1. Subject to subsection ~~4~~ 2, ~~except when the business of a dissolved limited liability~~
25 ~~company is being continued under subsection 2 or when the dissolved limited~~
26 ~~liability company is being wound up and terminated under subsection 3 of section~~
27 ~~10-32-112~~, the assets of the dissolved limited liability company must be disposed
28 of to satisfy liabilities according to the following priorities:

29 a. To creditors, including members who are creditors, to the extent otherwise
30 permitted by law, in satisfaction of liabilities of the limited liability company

- 1 other than liabilities for interim distributions to members under section
2 10-32-61 or termination distributions under section 10-32-60;
- 3 b. Unless otherwise provided in the articles of organization or a member-control
4 agreement, to members and former members of the limited liability company
5 in satisfaction of liabilities for distributions under section 10-32-60 or
6 10-32-61; and
- 7 c. Unless otherwise provided in the articles of organization or a member-control
8 agreement, to members first for a return of their contributions, as restated
9 from time to time under section 10-32-57, and secondly respecting ~~their~~ the
10 member's membership interests in the proportions in which the members
11 share in distributions.
- 12 2. ~~If a business continuation agreement exists, then after dissolution the board of~~
13 ~~governors shall resolve to implement the business continuation agreement and the~~
14 ~~assets of the dissolved limited liability company must be disposed of according to~~
15 ~~that agreement, except:~~
- 16 a. ~~Members and former members have dissenters' rights as provided in sections~~
17 ~~10-32-54 and 10-32-55, but:~~
- 18 (1) ~~No dissenters' rights exist if the business of the dissolved limited liability~~
19 ~~company is being continued pursuant to a business continuation~~
20 ~~agreement made after the dissolution; and~~
- 21 (2) ~~Any dissenters' rights that do exist are limited by subsections 3 and 4.~~
- 22 b. ~~If the business of the dissolved limited liability company is being continued,~~
23 ~~but not through a merger under subsection 3 of section 10-32-112, the~~
24 ~~dissolved limited liability company shall comply with either section 10-32-114~~
25 ~~or 10-32-115.~~
- 26 3. ~~If a person has agreed in a business continuation agreement to waive dissenters'~~
27 ~~rights and nonetheless asserts dissenters' rights under subsection 2:~~
- 28 a. ~~Those rights must be honored; but~~
- 29 b. ~~Unless the business continuation agreement provides otherwise, including~~
30 ~~providing for installment payments:~~

- 1 (1) ~~In determining the fair value of the membership interest, the value of~~
2 ~~the goodwill of the business of the dissolved limited liability company~~
3 ~~must not be considered; and~~
- 4 (2) ~~The payment due the dissenter is subject to an offset equal to:~~
- 5 ~~(a) Any amount owed to the limited liability company by the member;~~
6 ~~(b) The amount of damages, if any, suffered by the limited liability~~
7 ~~company as a result of the dissenter's breach of the business~~
8 ~~continuation agreement; and~~
- 9 ~~(c) The amount of other damages, if any, provided for in~~
10 ~~subsection 4.~~
- 11 4. A member who wrongfully resigns or retires is liable to the limited liability company
12 for any damages caused by the member's wrongful resignation or retirement. Any
13 member who breaches a member-control agreement is liable to the limited liability
14 company for any damages caused by the breach. Any payment due a member
15 under this section, including payments, if any, to dissenters due to winding up a
16 merger under subsection 3 of section 10-32-112, is subject to offset of these
17 damages.

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

20 **10-32-140. Foreign limited liability company - Amendments to the certificate of**
21 **authority.**

- 22 1. If any statement in the application for a certificate of authority by a foreign limited
23 liability company ~~was~~ is false when made or ~~any arrangements or other facts~~
24 ~~described have changed, making the application inaccurate in any respect~~ the
25 foreign limited liability company changes the foreign limited liability company's
26 name or purposes sought in this state, the foreign limited liability company shall
27 promptly shall file with the secretary of state an application for an amended
28 certificate of authority executed by an authorized person correcting the statement
29 and in the case of a change in ~~its~~ the foreign limited liability company's name, a
30 certificate to that effect authenticated by the proper officer of the state or country
31 under the laws of which the foreign limited liability company is organized.

1 2. In the case of a termination or merger, a foreign limited liability company that is not
2 the surviving organization need not file an application for an amended certificate of
3 authority but shall promptly file with the secretary of state a certificate to that effect
4 authenticated by the proper officer of the state or country under the laws of which
5 the foreign limited liability company is organized.

6 3. A foreign limited liability company that changes the foreign limited liability
7 company's name and applies for an amended certificate of authority and that is the
8 owner of a trademark or trade name, a general partner named in a fictitious name
9 certificate, a general partner in a limited partnership or a limited liability limited
10 partnership, or a managing partner in a limited liability partnership that is on file
11 with the secretary of state shall change the foreign limited liability company's name
12 in each of the foregoing registrations which is applicable when the foreign limited
13 liability company files an application for an amended certificate of authority.

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

16 **10-32-142. Foreign limited liability company - Merger of foreign limited liability**
17 **company authorized to transact business in this state.** ~~Whenever~~ If a foreign limited
18 liability company authorized to transact business in this state is a party to a statutory merger
19 permitted by the laws of the state or country under which ~~it~~ the foreign limited liability company
20 is organized, and the limited liability company is not the surviving organization, the surviving
21 organization shall, within thirty days after the merger becomes effective, file with the secretary
22 of state a certified statement of merger duly authenticated by the proper officer of the state or
23 country where the statutory merger was effected. Any foreign organization, which is the
24 surviving organization in a merger and which will continue to transact business in this state,
25 shall procure ~~either a new or amended~~ certificate of authority if not previously authorized to
26 transact business in this state.

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

29 2. The annual report must be submitted on forms prescribed by the secretary of state.
30 The information provided must be given as of the date of the execution of the
31 report. The annual report must be signed as prescribed in subsection 46 of

1 section 10-32-02, the articles, ~~operating agreement~~ the bylaws, or a resolution
2 approved by the affirmative vote of the required proportion or number of the
3 governors or members entitled to vote. If the limited liability company or foreign
4 limited liability company is in the hands of a receiver or trustee, ~~it~~ the annual report
5 must be signed on behalf of the limited liability company or foreign limited liability
6 company by the receiver or trustee. The secretary of state may destroy ~~all~~ any
7 annual ~~reports~~ report provided for in this section after ~~they have been~~ the annual
8 report is on file for six years.

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

- 11 1. The secretary of state shall charge and collect for:
- 12 a. Filing articles of organization and issuing a certificate of organization, one
13 hundred twenty-five dollars.
 - 14 b. Filing articles of amendment, fifty dollars.
 - 15 c. Filing restated articles of organization, one hundred twenty-five dollars.
 - 16 d. Filing articles of merger and issuing a certificate of merger, fifty dollars.
 - 17 e. Filing abandonment of merger or exchange, fifty dollars.
 - 18 f. Filing an application to reserve a name, ten dollars.
 - 19 g. Filing a notice of transfer of a reserved name, ten dollars.
 - 20 h. Filing a cancellation of reserved name, ten dollars.
 - 21 i. Filing a consent to use of name, ten dollars.
 - 22 j. Filing a statement of change of address of registered office or change of
23 registered agent or both, ten dollars.
 - 24 k. Filing a statement of change of address of registered office by registered
25 agent, ten dollars for each limited liability company affected by such change.
 - 26 l. Filing a registered agent's consent to serve in such capacity, ten dollars.
 - 27 m. Filing a resignation as registered agent, ten dollars.
 - 28 n. Filing a resolution for the establishment of a class or series of membership
29 interest, fifty dollars.
 - 30 o. Filing a notice of dissolution, ten dollars.

- 1 p. Filing a statement of revocation of voluntary dissolution proceedings, ten
2 dollars.
- 3 q. Filing articles of dissolution and termination, twenty dollars.
- 4 r. Filing an application of a foreign limited liability company for a certificate of
5 authority to transact business in this state and issuing a certificate of
6 authority, one hundred twenty-five dollars.
- 7 s. Filing an amendment to the certificate of authority by a foreign limited liability
8 company, fifty dollars.
- 9 t. Filing a certificate of fact stating a merger of a foreign limited liability company
10 holding a certificate of authority to transact business in this state, twenty
11 dollars.
- 12 u. Filing an application for withdrawal of a foreign limited liability company and
13 issuing a certificate of withdrawal, twenty dollars.
- 14 v. Filing an annual report of a limited liability company or foreign limited liability
15 company, fifty dollars. The secretary of state shall charge and collect
16 additional fees for late filing of the annual report as follows:
- 17 (1) After the date prescribed in subsection 3 of section 10-32-149, fifty
18 dollars; and
- 19 (2) After the termination of the limited liability company, or the revocation of
20 the certificate of authority of a foreign limited liability company, the
21 reinstatement fee of one hundred twenty-five dollars.
- 22 w. Filing any process, notice, or demand for service, twenty-five dollars.
- 23 x. Submitting any document for approval before the actual time of submission
24 for filing, one-half of the fee provided in this section for filing the document.
- 25 y. Filing any other statement or report of a limited liability company or foreign
26 limited liability company, ten dollars.

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

29 **10-33-01. Definitions.** For the purposes of this chapter, unless the context otherwise
30 requires:

- 31 1. "Address" means:

- 1 a. In the case of a registered office or principal executive office, the mailing
2 address, including a zip code, of the actual office location which may not be
3 only a post-office box; and
- 4 b. In any other case, the mailing address, including a zip code.
- 5 2. "Articles" means:
- 6 a. In the case of a corporation incorporated under or governed by this chapter,
7 articles of incorporation, articles of amendment, a resolution of election to
8 become governed by this chapter, a statement of change of registered office,
9 registered agent, or name of registered agent, articles of merger, articles of
10 consolidation, articles of abandonment, articles of dissolution, and any annual
11 report in which a registered office or registered agent has been established or
12 changed.
- 13 b. In the case of a foreign corporation, the term includes all documents serving a
14 similar function required to be filed with the secretary of state or other officer
15 of the corporation's state of incorporation.
- 16 3. "Board" means the board of directors of a corporation.
- 17 4. "Board member" means an individual serving on the board.
- 18 5. "Bylaws" means the code adopted for the regulation or management of the internal
19 affairs of a corporation, regardless of how designated.
- 20 6. "Corporation" means a corporation, other than a foreign corporation, that is
21 incorporated under or governed by this chapter.
- 22 7. "Director" means a member of the board.
- 23 8. "Filed with the secretary of state" means except as otherwise permitted by law or
24 rule:
- 25 a. The following have been delivered to the secretary of state and have been
26 determined by the secretary of state to conform to law:
- 27 (1) A signed original; or a legible facsimile ~~copy~~ telecommunication of a
28 signed original, of a request for reserved name; or a signed original of
29 all other documents, meeting the applicable requirements of this
30 chapter; and
- 31 (2) The fees provided for in section 10-33-140;

- 1 b. And the secretary of state has:
- 2 (1) Endorsed on the original the word "filed", and the month, day, and year;
- 3 and
- 4 (2) Recorded the document in the office of the secretary of state.
- 5 9. "Foreign corporation" means a corporation that is formed under laws other than the
- 6 laws of this state for a purpose for which a corporation may be organized under
- 7 this chapter.
- 8 10. "Good faith" means honesty in fact in the conduct of an act or transaction.
- 9 11. "Intentionally" means the person referred to has a purpose to do or fail to do the
- 10 act or cause the result specified, or believes the act or failure to act, if successful,
- 11 will cause that result. A person intentionally violates a statute:
- 12 a. If the person intentionally does the act or causes the result prohibited by the
- 13 statute; or
- 14 b. If the person intentionally fails to do the act or cause the result required by the
- 15 statute, even though the person may not know of the existence or
- 16 constitutionality of the statute or the scope or meaning of the terms used in
- 17 the statute.
- 18 12. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended
- 19 from time to time, and successive federal revenue acts.
- 20 13. "Knows" or has "knowledge" means the person has actual knowledge of a fact. A
- 21 person does not "know" or have "knowledge" of a fact merely because the person
- 22 has reason to know of the fact.
- 23 14. "Legal representative" means a person empowered to act for another person,
- 24 including an agent, manager, officer, partner, or associate of an organization; a
- 25 trustee of a trust; a personal representative; a trustee in bankruptcy; or a receiver,
- 26 guardian, custodian, or conservator.
- 27 15. "Member" means a person with membership rights in a corporation under its
- 28 articles or bylaws, regardless of how the person is identified.
- 29 16. "Members with voting rights" means members or a class of members that has
- 30 voting rights with respect to the purpose or matter involved.

- 1 17. "Nonprofit purpose" or "nonprofit activity" means a purpose or activity not involving
2 pecuniary gain to any officer, director, or member, other than a member that is a
3 nonprofit organization or subdivision, unit, or agency of the United States or a state
4 or local government.
- 5 18. "Notice":
- 6 a. Is given by a member of a corporation to the corporation or an officer of the
7 corporation when in writing and mailed or delivered to the corporation or the
8 officer at the registered office or principal executive office of the corporation;
9 and
- 10 b. In all other cases, is given to a person:
- 11 (1) When mailed to the person at an address designated by the person or
12 at the ~~last known~~ last-known address of the person;
- 13 (2) When handed to the person; or
- 14 (3) When left at the office of the person with a clerk or other person in
15 charge of the office; or
- 16 (a) If there is no one in charge, when left in a conspicuous place in
17 the office; or
- 18 (b) If the office is closed or the person to be notified has no office,
19 when left at the dwelling house or usual place of abode of the
20 person with some person of suitable age and discretion then
21 residing therein.
- 22 c. Is given by mail when deposited in the United States mail with sufficient
23 postage affixed.
- 24 d. Is deemed received when it is given.
- 25 19. "Officer" means an individual who is more than eighteen years of age and who is:
- 26 a. Elected, appointed, or otherwise designated as an officer by the board or the
27 members; or
- 28 b. Considered elected as an officer pursuant to section 10-33-52.
- 29 20. "Organization" means a corporation, whether domestic or foreign, incorporated in
30 or authorized to do business in this state under another chapter of this code;
31 limited liability company; partnership; limited partnership; limited liability

- 1 partnership; joint venture; association; business trust; estate; trust; enterprise; or
2 any other legal or commercial entity.
- 3 21. "Principal executive office" means:
- 4 a. If the corporation has an elected or appointed president, then an office where
5 the elected or appointed president of the corporation has an office; or
6 b. If the corporation has no elected or appointed president, then the registered
7 office of the corporation.
- 8 22. "Registered office" means the place in this state designated in the articles of a
9 corporation as the registered office of the corporation.
- 10 23. "Related organization" means an organization that controls, is controlled by, or is
11 under common control with another organization with control existing if an
12 organization:
- 13 a. Owns, directly or indirectly, at least fifty percent of the shares, membership
14 interests, or other ownership interests of another organization;
- 15 b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or
16 more of the voting members of the governing body of another organization; or
17 c. Has the power, directly or indirectly, to direct or cause the direction of the
18 management and policies of another organization, whether through the
19 ownership of voting interests, by contract, or otherwise.
- 20 24. "Signed" means ~~that~~ the signature of a person is placed on a document, as
21 provided in subsection 39 of section 41-01-11, and:
- 22 a. With respect to a document required by this chapter to be filed with the
23 secretary of state, means ~~that~~ the document has been signed by a person
24 authorized to ~~do so~~ sign by this chapter, the articles, the bylaws, a resolution
25 approved by the ~~affirmative vote of the required proportion or number of the~~
26 ~~directors as required by section 10-33-42,~~ or the ~~required proportion or~~
27 ~~number of~~ members with voting rights, if any, as required by section
28 10-33-72; and
- 29 b. With respect to a document ~~that is~~ not required by this chapter to be filed with
30 the secretary of state, the signature may be a facsimile affixed, engraved,
31 printed, placed, stamped with indelible ink, transmitted by facsimile

1 telecommunication or electronically, or in any other manner reproduced on
2 the document.

3 25. "Subsidiary" of a specified corporation means:

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

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

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

13 27. "Vote" includes authorization by written action.

14 28. "Written action" means:

15 a. A written document signed by all of the persons required to take the action; or

16 b. The counterparts of a written document signed by any of the persons taking
17 the action. Each counterpart constitutes the action of the persons signing it,
18 and all the counterparts are one written action by all of the persons signing
19 them.

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

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

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

28 1. The corporate name:

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

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

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

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

- 29 4. With respect to fees:

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

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

8 **SECTION 136.** A new subsection to section 10-33-17 of the 1997 Supplement to the
9 North Dakota Century Code is created and enacted as follows:

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

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

14 **10-33-49. Officers.** The officers of a corporation must be individuals who are eighteen
15 years of age or more, and must include a president; and secretary, ~~and treasurer~~. The officers
16 of the corporation may also include a treasurer, one or more vice presidents, and any other
17 officers or agents as may be prescribed by the bylaws. Each officer must be elected by the
18 board at the time and in the manner as may be provided in the bylaws unless the articles or
19 bylaws provide ~~that~~ the members may elect the officers.

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

- 22 3. The treasurer, if any, shall:
- 23 a. Keep accurate financial records for the corporation;
 - 24 b. Deposit all money, drafts, and checks in the name of and to the credit of the
25 corporation in the banks and depositories designated by the board;
 - 26 c. Endorse for deposit all notes, checks, and drafts received by the corporation
27 as ordered by the board, making proper vouchers;
 - 28 d. Disburse corporate funds and issue checks and drafts in the name of the
29 corporation, as ordered by the board;

1 e. Give to the president and the board, ~~whenever~~ when requested, an account
2 of all transactions by the treasurer and of the financial condition of the
3 corporation; and

4 f. Perform other duties prescribed by the board or by the president.

5 **SECTION 139. AMENDMENT.** Subsection 3 of section 10-33-54 of the 1997

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

7 3. A vacancy in an office because of death, resignation, removal, disqualification, or
8 other cause may, or in the case of a vacancy in the office of ~~president or treasurer,~~
9 if any, or president, must, be filled for the unexpired part of the term in the manner
10 provided in the articles or bylaws, ~~or~~ as determined by the board, or under section
11 10-33-52.

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

14 **10-33-84. Indemnification.**

15 1. For purposes of this section:

16 a. "Corporation" includes a domestic or foreign corporation that was the
17 predecessor of the corporation referred to in this section in a merger or other
18 transaction in which the predecessor's existence ceased upon consummation
19 of the transaction.

20 b. "Official capacity" means:

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

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

26 (3) With respect to a director, officer, or employee of the corporation who,
27 while a director, officer, or employee of the corporation, is or was
28 serving at the request of the corporation or whose duties in that position
29 involve or involved service as a director, governor, officer, manager,
30 partner, trustee, employee, or agent of another organization or
31 employee benefit plan, the position of that person as a director,

- 1 governor, officer, manager, partner, trustee, employee, or agent, as the
2 case may be, of the other organization or employee benefit plan.
- 3 c. "Proceeding" means a threatened, pending, or completed civil, criminal,
4 administrative, arbitration, or investigative proceeding, including a proceeding
5 by or in the right of the corporation.
- 6 d. "Special legal counsel" means counsel who has not represented the
7 corporation or a related organization, or a director, officer, member of a
8 committee of the board, or employee whose indemnification is in issue.
- 9 2. Subject to subsection 5, a corporation shall indemnify a person made or
10 threatened to be made a party to a proceeding by reason of the former or present
11 official capacity of the person against judgments, penalties, fines including excise
12 taxes assessed against the person with respect to an employee benefit plan,
13 settlements, and reasonable expenses, including attorneys' fees and
14 disbursements, incurred by the person in connection with the proceeding, if, with
15 respect to the acts or omissions of the person complained of in the proceeding, the
16 person:
- 17 a. Has not been indemnified by another organization or employee benefit plan
18 for the same judgments, penalties, fines including excise taxes assessed
19 against the person with respect to an employee benefit plan, settlements, and
20 reasonable expenses, including attorneys' fees and disbursements, incurred
21 by the person in connection with the proceeding with respect to the same acts
22 or omissions;
- 23 b. Acted in good faith;
- 24 c. Received no improper personal benefit and section 10-33-45, if applicable,
25 has been satisfied;
- 26 d. In the case of a criminal proceeding, had no reasonable cause to believe the
27 conduct was unlawful; and
- 28 e. In the case of acts or omissions occurring in the official capacity described in
29 paragraph 1 or 2 of subdivision b of subsection 1, reasonably believed that
30 the conduct was in the best interests of the corporation, or in the case of acts
31 or omissions occurring in the official capacity described in paragraph 3 of

1 subdivision b of subsection 1, reasonably believed that the conduct was not
2 opposed to the best interests of the corporation. If the person's acts or
3 omissions complained of in the proceeding relate to conduct as a director,
4 governor, officer, manager, trustee, employee, or agent of an employee
5 benefit plan, the conduct is not considered to be opposed to the best interests
6 of the corporation if the person reasonably believed that the conduct was in
7 the best interests of the participants or beneficiaries of the employee benefit
8 plan.

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

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

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

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

27 5. The articles or bylaws ~~either~~ may prohibit indemnification or advances of expenses
28 otherwise required by this section or may impose conditions on indemnification or
29 advances of expenses in addition to the conditions contained in subsections 2, 3,
30 and 4 including monetary limits on indemnification or advances for expenses, if the
31 prohibition conditions apply equally to all persons or to all persons within a given

- 1 class. A prohibition or limit on indemnification or advances may not apply to or
2 affect the right of a person to indemnification or advances of expenses with respect
3 to any acts or omissions of the person occurring ~~prior to~~ before the effective date
4 of a provision in the articles or the date of adoption of a provision in the bylaws
5 establishing the prohibition or limit on indemnification or advances.
- 6 6. This section does not require, or limit the ability of, a corporation to reimburse
7 expenses, including attorneys' fees and disbursements, incurred by a person in
8 connection with an appearance as a witness in a proceeding at a time when the
9 person has not been made or threatened to be made a party to a proceeding.
- 10 7. All determinations whether indemnification of a person is required because the
11 criteria provided in subsection 2 have been satisfied and whether a person is
12 entitled to payment or reimbursement of expenses in advance of the final
13 disposition of a proceeding as provided in subsection 4 must be made:
- 14 a. By the board by a majority of a quorum, if the directors who are at the time
15 parties to the proceeding are not counted for determining either a majority or
16 the presence of a quorum;
- 17 b. If a quorum under subdivision a cannot be obtained by a majority of a
18 committee of the board, consisting solely of two or more directors not at the
19 time parties to the proceeding, duly designated to act in the matter by a
20 majority of the full board including directors who are parties;
- 21 c. If a determination is not made under subdivision a or b, by special legal
22 counsel, selected either by a majority of the board or a committee by vote
23 pursuant to subdivision a or b or, if the requisite quorum of the full board
24 cannot be obtained and the committee cannot be established, by a majority of
25 the full board including directors who are parties;
- 26 d. If a determination is not made under subdivisions a, b, and c, by the members
27 with voting rights, other than members who are a party to the proceeding; or
- 28 e. If an adverse determination is made under subdivisions a through d, or under
29 subsection 8, or if no determination is made under subdivisions a through d,
30 or under subsection 8, within sixty days after:

- 1 (1) The later to occur of the termination of a proceeding or a written
2 request for indemnification to the corporation; or
3 (2) A request for an advance of expenses, as the case may be, by a court
4 in this state, which may be the same court in which the proceeding
5 involving the person's liability took place, upon application of the person
6 and any notice the court requires.

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

11 8. With respect to a person who is not, and who was not at the time of the acts or
12 omissions complained of in the proceedings, a director, officer, or person
13 possessing, directly or indirectly, the power to direct or cause the direction of the
14 management or policies of the corporation, the determination whether
15 indemnification of this person is required because the criteria set forth in
16 subsection 2 have been satisfied and whether this person is entitled to payment or
17 reimbursement of expenses in advance of the final disposition of a proceeding as
18 provided in subsection 4 may be made by an annually appointed committee of the
19 board, having at least one member who is a director. The committee shall report
20 at least annually to the board concerning its actions.

21 9. A corporation may purchase and maintain insurance on behalf of a person in that
22 person's official capacity against any liability asserted against and incurred by the
23 person in or arising from that capacity, whether or not the corporation would have
24 been required to indemnify the person against the liability under this section.

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

1 corporation's name, a certificate to that effect authenticated by the proper officer of the
2 jurisdiction under the laws of which the foreign corporation is incorporated. In the case of a
3 dissolution or merger, a foreign corporation that is not the surviving organization need not file
4 an application for an amended certificate of authority but shall promptly file with the secretary of
5 state a certificate to that effect authenticated by the proper officer of the jurisdiction under the
6 laws of which the foreign corporation is incorporated. A foreign nonprofit corporation that
7 changes the foreign nonprofit corporation's name and applies for an amended certificate of
8 authority and that is the owner of a trademark or trade name, a general partner named in a
9 fictional name certificate, a general partner in a limited partnership or a limited liability limited
10 partnership, or a managing partner in a limited liability partnership that is on file with the
11 secretary of state shall change the foreign nonprofit corporation's name in each of the foregoing
12 registrations that apply if the foreign nonprofit corporation files an application for an amended
13 certificate of authority.

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

16 **34-09-06. Contracts between union and employer.** Any contract entered into
17 between the employer and a labor union must be executed on behalf of the employer in ~~his or~~
18 ~~its~~ the employer's true name and signed by the employer, or in case of a corporation by the
19 proper officers authorized by law and the bylaws of ~~such~~ the corporation to execute valid and
20 binding contracts on behalf of the corporation, or in the case of a limited liability company by
21 the proper managers authorized by law and the ~~operating agreement~~ bylaws of ~~such~~ the
22 limited liability company to execute valid and binding contracts on behalf of the limited liability
23 company, and any ~~such~~ contract under this section must be executed on behalf of the labor
24 union in the name of the labor union by the president ~~or,~~ the secretary, or other duly authorized
25 officer of ~~such~~ the labor union. ~~Such~~ A contract under this section is equally binding as to all
26 ~~its~~ of the contract's terms and conditions against both the employer and the labor union.

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

29 **45-10.1-01. (101) Definitions.** As used in this chapter, unless the context otherwise
30 requires:

31 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. "Business" includes every trade, occupation, and profession.
- 6 3. "Certificate of limited partnership" means the certificate referred to in section
7 45-10.1-08, and the certificate as amended or restated.
- 8 ~~3.~~ 4. "Contribution" means any cash, property, services rendered, or a promissory note
9 or other binding obligation to contribute cash or property or to perform services,
10 which a partner contributes to a limited partnership in ~~his~~ that partner's capacity as
11 a partner.
- 12 5. "Distribution" means a transfer of money or other property from a limited
13 partnership to a partner in the partner's capacity as a partner or to the partner's
14 transferee.
- 15 ~~4.~~ 6. "Event of withdrawal of a general partner" means an event that causes a person to
16 cease to be a general partner as provided in section 45-10.1-26.
- 17 ~~5.~~ 7. "Filed with the secretary of state" means except as otherwise permitted by law or
18 rule:
- 19 a. That ~~either:~~
- 20 (1) A a signed original or a legible facsimile ~~copy~~ telecommunication of a
21 signed original of a request for reserved name; or
- 22 (2) A a signed original of all other documents meeting the applicable
23 requirements of this chapter together with the fees provided in section
24 45-10.1-15 ~~has been~~ was delivered to the secretary of state and ~~has~~
25 ~~been~~ was determined by the secretary of state to conform to law.
- 26 b. That the secretary of state shall then:
- 27 (1) Endorse on the original the word "filed" and the month, day, and year;
28 and
- 29 (2) Record the document in the office of the secretary of state.

- 1 ~~6.~~ 8. "Foreign limited partnership" means a partnership formed under the laws of any
2 state other than this state and having as partners one or more general partners
3 and one or more limited partners.
- 4 ~~7.~~ 9. "General partner" means a person who has been admitted to a limited partnership
5 as a general partner in accordance with the partnership agreement and named in
6 the certificate of limited partnership as a general partner.
- 7 10. "Jurisdiction of origin" means the jurisdiction in which the limited partnership status
8 of the foreign limited partnership is created.
- 9 ~~8.~~ 11. "Limited partner" means a person who has been admitted to a limited partnership
10 as a limited partner in accordance with the partnership agreement.
- 11 ~~9.~~ 12. "Limited partnership" and "domestic limited partnership" means a partnership
12 formed by two or more persons under the laws of this state and having one or
13 more general partners and one or more limited partners.
- 14 ~~10.~~ 13. "Notice":
15 a. Is given to a limited partnership or to a partner of the limited partnership when
16 in writing and mailed or delivered to the limited partnership or the partner at
17 the registered office or principal executive office of the limited partnership.
18 b. In all other cases, is given to a person:
19 (1) When mailed to the person at an address designated by the person or
20 at the ~~last known~~ last-known address of the person;
21 (2) When handed to the person; or
22 (3) When left at the office of the person with a clerk or other person in
23 charge of the office; or
24 (a) If there is no one in charge, when left in a conspicuous place in
25 the office; or
26 (b) If the office is closed or the person to be notified has no office,
27 when left at the dwelling house or usual place of abode of the
28 person with some person of suitable age and discretion residing
29 there.
- 30 c. Is given when deposited in the United States mail with sufficient postage
31 affixed.

- 1 d. Is deemed received when it is given.
- 2 44. 14. "Partner" means a general or limited partner.
- 3 42. 15. "Partnership agreement" means any valid agreement, written or oral, of the
4 partners as to the affairs of a limited partnership and the conduct of its business.
- 5 43. 16. "Partnership interest" means a partner's share of the profits and losses of a limited
6 partnership and the right to receive distributions of partnership assets.
- 7 44. 17. "Principal executive office" means:
- 8 a. An office from which the limited partnership conducts business; or
- 9 b. If the limited partnership has no office from which it conducts business, then
10 the registered office of the limited partnership.
- 11 45. 18. "Signed" means that the signature of a person ~~has been~~ is placed on a document,
12 as 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~~ is signed by a person
15 authorized to ~~do so~~ sign the document by this chapter or by a resolution
16 approved by the affirmative vote of the required proportion or number of
17 partners; and
- 18 b. With respect to a document ~~that is~~ not required by this chapter to be filed with
19 the secretary of state, means ~~that~~ the signature may be a facsimile affixed,
20 engraved, printed, placed, stamped with indelible ink, transmitted by facsimile
21 or electronically, or in any other manner reproduced on the document.
- 22 46. 19. "State" means a state, territory, or possession of the United States, the District of
23 Columbia, or the Commonwealth of Puerto Rico.

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

- 26 1. The name of each limited partnership as set forth in ~~its~~ the limited partnership's
27 certificate of limited partnership:
- 28 a. Must be in the English language or in another language expressed in English
29 letters or characters.
- 30 b. Must contain without abbreviation the words "limited partnership" or the
31 abbreviation "L.P." or "LP", either of which abbreviation may be used

- 1 interchangeably for all purposes authorized by this chapter including real
2 estate matters, contracts, and filings with the secretary of state.
- 3 c. May not contain the name of a limited partner unless:
- 4 (1) ~~It~~ Except as limited in subdivision g, the name is also the name of a
5 general partner; or
- 6 (2) The business of the limited partnership ~~had been~~ has carried on under
7 that name before the admission of that limited partner.
- 8 d. May not contain a word or phrase that indicates or implies ~~it~~ the limited
9 partnership may not be organized under this chapter.
- 10 e. May not contain a word or phrase indicating or implying ~~it~~ the limited
11 partnership is organized for a purpose other than a legal business purpose for
12 which a limited partnership may be organized under this chapter.
- 13 f. May not contain a word or phrase indicating or implying ~~it~~ the limited
14 partnership is organized other than for a purpose stated in ~~its~~ the limited
15 partnership's certificate of limited partnership.
- 16 g. May not contain the word "corporation", "company", "incorporated", "limited
17 liability company", "limited liability partnership", "limited liability limited
18 partnership", or any abbreviation of ~~these~~ these words.
- 19 h. May not be the same as; or deceptively similar to:
- 20 (1) The name, whether foreign and authorized to do business in this state;
21 or domestic, unless there is filed with the articles a document in
22 compliance with subsection ~~2 of this section~~ 3, of:
- 23 (a) Another limited partnership;
- 24 (b) A corporation;
- 25 (c) A limited liability company; ~~or~~
- 26 (d) A limited liability partnership; or
- 27 (e) A limited liability limited partnership;
- 28 (2) A name the right to which is, at the time of organization, reserved in the
29 manner provided in section 10-19.1-14, 10-32-11, 10-33-11,
30 45-10.1-03, or 45-22-05;
- 31 (3) A fictitious name registered in the manner provided in chapter 45-11; or

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

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

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

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

9 **45-10.1-04.1. Change of registered office or agent.**

10 1. A limited partnership may change the limited partnership's registered office,
11 change the limited partnership's registered agent, or state a change in the name of
12 the limited partnership's registered agent, by filing with the secretary of state, along
13 with the fees provided in section 45-10.1-15, a statement containing:

- 14 a. The name of the limited partnership;
15 b. The new address of the limited partnership's registered office, if the address
16 of the limited partnership's registered office is to be changed;
17 c. The name of the limited partnership's new registered agent, if the limited
18 partnership's registered agent is to be designated or changed;
19 d. The name of the limited partnership's registered agent as changed, if the
20 name of the limited partnership's registered agent is to be changed;
21 e. A statement that the address of the limited partnership's registered office and
22 the address of the business office of the limited partnership's registered
23 agent, as changed, will be identical; and
24 f. A statement that the change of registered office or registered agent was
25 authorized by resolution approved by the general partners.

26 2. A registered agent of a limited partnership may resign by filing with the secretary of
27 state a signed written notice of resignation, including a statement that a signed
28 copy of the notice was given to the limited partnership at the limited partnership's
29 principal executive office, or to a legal representative of the limited partnership.
30 The appointment of the agent terminates thirty days after the notice is filed with the
31 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 the name of the registered agent, as
3 the case may be, of each limited partnership represented by that agent by filing
4 with the secretary of state a statement for each limited partnership as required in
5 subsection 1, except that the statement need be signed only by the registered
6 agent, need not be responsive to subdivision f of subsection 1, and must state that
7 a copy of the statement was mailed to each of those limited partnerships or to the
8 legal representative of each of those limited partnerships.

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

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

14 **45-10.1-08. (201) Certificate of limited partnership.**

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

1 days after the filing of the certificate of limited partnership with the secretary of
2 state.

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

5 **45-10.1-09. (202) Amendment to certificate.**

- 6 1. A certificate of limited partnership is amended by filing a certificate of amendment
7 ~~thereto~~ in the office of the secretary of state. The certificate must set forth all of
8 the following:
- 9 a. The name of the limited partnership.
 - 10 b. ~~The date of filing the certificate.~~
 - 11 e. The amendment to the certificate.
- 12 2. An amendment to a certificate of limited partnership reflecting the occurrence of
13 the event or events must be filed within thirty days after the happening of any of
14 the following events:
- 15 a. The admission of a new general partner.
 - 16 b. The withdrawal of a general partner.
 - 17 c. The continuation of the business under section 45-10.1-47 after an event of
18 withdrawal of a general partner.
 - 19 d. A change of ~~office or an~~ registered agent or change of address of registered
20 agent.
- 21 3. A general partner who becomes aware that any statement in a certificate of limited
22 partnership was false when made or that any arrangements or other facts
23 described have changed, making the certificate inaccurate in any respect, shall
24 promptly amend the certificate.
- 25 4. A certificate of limited partnership may be amended at any time for any other
26 proper purpose the general partners determine.
- 27 5. No person has any liability because an amendment to a certificate of limited
28 partnership has not been filed to reflect the occurrence of any event referred to in
29 subsection 2 if the amendment is filed within the thirty-day period specified in
30 subsection 2.

- 1 6. A restated certificate of limited partnership may be executed and filed in the same
- 2 manner as a certificate of amendment.
- 3 7. A limited partnership must notify the secretary of state in writing whenever a
- 4 general partner changes the address of its principal place of business. A
- 5 corporate annual report filed by the secretary of state that reflects a change of
- 6 address of a general partner may serve as such notice. This notice is not subject
- 7 to the amendment fee prescribed in 45-10.1-15.
- 8 8. A limited partnership that ~~amends~~ changes its name and that is the owner of a
- 9 trademark, or uses a fictitious name registered with the secretary of state, or is a
- 10 general partner of another limited partnership on file with the secretary of state,
- 11 must effect a change of name in each of such registrations simultaneously with the
- 12 filing of the amendments.
- 13 9. Whenever a general partner that is a corporation files an amendment, or
- 14 application for an amended certificate of authority, to change its corporate name it
- 15 must simultaneously file an amendment to a certificate of limited partnership.

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

18 **45-10.1-10. (203) Cancellation of certificate.** A certificate of limited partnership must
19 be canceled upon the dissolution and the commencement of winding up of the partnership or at
20 any other time there are no limited partners. A certificate of cancellation must be filed in the
21 office of the secretary of state and set forth all of the following:

- 22 1. The name of the limited partnership.
- 23 2. ~~The date of filing of its certificate of limited partnership.~~
- 24 3. ~~The reason for filing the certificate of cancellation.~~
- 25 4. The later effective date, ~~which must be a date certain, of cancellation~~ if it the
26 effective date is not to be effective upon the filing of the certificate. A later effective
27 date may not be later than ninety days after the date on which the certificate is filed
28 with the secretary of state.
- 29 5. 3. Any other information the general partners filing the certificate determine.

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

1 **45-10.1-11. (204) Execution of certificates.**

2 1. Each certificate required by sections 45-10.1-08 through 45-10.1-19 to be filed in
3 the office of the secretary of state must be ~~executed in the following manner:~~

4 signed by at least one general partner.

5 a. ~~An original certificate of limited partnership must be signed by all general~~
6 ~~partners.~~

7 b. ~~A certificate of amendment must be signed by at least one general partner~~
8 ~~and by each other general partner designated in the certificate as a new~~
9 ~~general partner.~~

10 e. ~~A certificate of cancellation must be signed by all general partners.~~

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

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

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

19 **~~45-10.1-14. Renewal of certificate—Filing with secretary~~ Secretary of state -**

20 **~~Cancellation~~ Annual report of limited partnership and foreign limited partnership.** Any
21 ~~certificate of limited partnership or registration of foreign limited partnership filed under this~~
22 ~~chapter must be renewed every five years from the date of the initial filing. Limited partnerships~~
23 ~~existing prior to July 1, 1985, must file the statement of renewal by July 1, 1987, and every five~~
24 ~~years thereafter. The statement of renewal must be executed by the limited partnership or~~
25 ~~foreign limited partnership on forms prescribed and furnished by the secretary of state and sent~~
26 ~~to the address of the registered office at least sixty days prior to the deadline for filing. The~~
27 ~~statement must include the name of the limited partnership or foreign limited partnership, the~~
28 ~~state or country of organization, the address of the registered office and the name of the~~
29 ~~registered agent, and a statement that the limited partnership or foreign limited partnership is~~
30 ~~still in existence and continues to transact business in this state. If the secretary of state finds~~
31 ~~that the statement conforms to the requirements of this section, and the proper filing fee has~~

1 ~~been paid, the secretary of state shall file the statement. If the secretary of state finds that it~~
2 ~~does not conform, the secretary of state shall promptly return the statement to the limited~~
3 ~~partnership or the foreign limited partnership for any necessary corrections, and the certificate~~
4 ~~of limited partnership or registration of foreign limited partnership must be canceled if the~~
5 ~~statement is not returned corrected within thirty days after the statement was returned for~~
6 ~~corrections. If any limited partnership or foreign limited partnership fails to file the statement of~~
7 ~~renewal when due, the secretary of state shall cancel the certificate of limited partnership or~~
8 ~~registration of foreign limited partnership and shall mail notice of cancellation to the address of~~
9 ~~the registered office.~~

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

- 1 receiver or trustee. The secretary of state may destroy any annual reports
2 provided for in this section after the annual report is on file for six years.
- 3 3. The annual report of a limited partnership or foreign limited partnership must be
4 delivered to the secretary of state before April first of each year, except the first
5 annual report of a limited partnership or foreign limited partnership must be
6 delivered before April first of the year following the calendar year in which the
7 registration was filed by the secretary of state. A limited partnership existing
8 before July 1, 1999, or a foreign limited partnership registered before July 1, 1999,
9 shall file the limited partnership's or foreign limited partnership's first annual report
10 before April first in the year of the expiration of the limited partnership's or foreign
11 limited partnership's registration or renewal registration in effect on December 31,
12 1999.
- 13 a. An annual report in a sealed envelope postmarked by the United States
14 postal service on or before April first or an annual report in a sealed packet
15 with a verified shipment date by any other carrier service on or before April
16 first, complies with the delivery requirement under this subsection.
- 17 b. The secretary of state shall file the report if the report conforms to the
18 requirements of subsection 2.
- 19 (1) If the report does not conform, the report must be returned to the
20 limited partnership or foreign limited partnership for any necessary
21 corrections.
- 22 (2) If the report is filed before the deadlines prescribed in this subsection,
23 penalties for the failure to file a report within the time provided do not
24 apply if the report is corrected to conform to the requirements of
25 subsection 2 and returned to the secretary of state within thirty days
26 after the annual report was returned by the secretary of state for
27 correction.
- 28 4. After the date established under subsection 3, the secretary of state shall notify
29 any limited partnership or foreign limited partnership failing to file an annual report
30 that the limited partnership's or foreign limited partnership's certificate or
31 registration is not in good standing and that the limited partnership's certificate or

- 1 foreign limited partnership's registration may be terminated or revoked pursuant to
2 subsection 5.
- 3 a. The secretary of state must mail notice of termination or revocation to the last
4 registered agent at the last registered office of record.
- 5 b. If the limited partnership or foreign limited partnership files an annual report
6 after the notice is mailed, together with the annual report filing fee and late
7 filing penalty fee as prescribed by section 45-10.1-15, the secretary of state
8 will restore the limited partnership's or foreign limited partnership's certificate
9 or registration to good standing.
- 10 5. A limited partnership that does not file an annual report, along with the statutory
11 filing and penalty fees, within six months after the date established in subsection 3,
12 ceases to exist and is considered involuntarily terminated by operation of law.
- 13 a. The secretary of state shall note the termination of the limited partnership's
14 certificate on the records of the secretary of state and shall give notice of the
15 action to the terminated limited partnership.
- 16 b. Notice by the secretary of state must be mailed to the limited partnership's
17 last registered agent at the last registered office of record.
- 18 6. A foreign limited partnership that does not file an annual report, along with the
19 statutory filing and penalty fees, within six months after the date established by
20 subsection 3, forfeits the right to transact business in this state.
- 21 a. The secretary of state shall note the revocation of the foreign limited
22 partnership's registration on the records of the secretary of state and shall
23 give notice of the action to the foreign limited partnership.
- 24 b. Notice by the secretary of state must be mailed to the foreign limited
25 partnership's last registered agent at the last registered office of record.
- 26 7. A limited partnership that is terminated for failure to file an annual report, or a
27 foreign limited partnership registration that is forfeited for failure to file an annual
28 report, may be reinstated by filing a past-due report, together with the statutory
29 filing and penalty fees for an annual report and a reinstatement fee as prescribed
30 in section 45-10.1-15. The fees must be paid and the report filed within one year
31 following the involuntary dissolution or revocation. Reinstatement under this

1 subsection does not affect the rights or liability for the time from the termination or
2 revocation to the reinstatement.

3 8. A limited partnership or foreign limited partnership registration expiring between
4 July 1, 1999, and December 31, 1999, may be renewed or canceled in the manner
5 provided by this section before July 1, 1999.

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

8 **45-10.1-15. Fees for filing documents.** The secretary of state shall charge and
9 collect for:

- 10 1. Filing a limited partnership, one hundred dollars.
- 11 2. Filing a limited partnership amendment, forty dollars.
- 12 3. Filing a limited partnership dissolution, twenty-five dollars.
- 13 4. Filing a limited partnership cancellation, twenty-five dollars.
- 14 5. Filing a reservation of name, ten dollars.
- 15 6. Filing a ~~statement notice of renewal~~ transfer of a reserved limited partnership ~~or~~
16 ~~renewal of registration of foreign limited partnership name,~~ forty ten dollars.
- 17 7. Filing a cancellation of a reserved limited partnership name, ten dollars.
- 18 8. Filing a consent to use a deceptively similar name, ten dollars.
- 19 9. Filing a statement of change of address of registered office or change of registered
20 agent, or both, ten dollars.
- 21 10. Filing a statement of change of address of registered office by registered agent,
22 ten dollars for each limited partnership affected by the change.
- 23 11. Filing a registered agent's consent to serve in the capacity of registered agent, ten
24 dollars.
- 25 12. Filing a resignation as registered agent, ten dollars.
- 26 13. Filing a registration of foreign limited partnership, one hundred dollars.
- 27 8- 14. Filing a certified statement of amendment of foreign limited partnership, twenty-five
28 dollars.
- 29 9- 15. Filing a certified statement of dissolution of foreign limited partnership, twenty-five
30 dollars.

- 1 ~~40.~~ 16. Filing a certified statement of cancellation of foreign limited partnership, twenty-five
2 dollars.
- 3 ~~44.~~ 17. Filing a statement of withdrawal of foreign limited partnership, twenty-five dollars.
- 4 ~~42.~~ 18. Filing ~~a consent to use of a deceptively similar name, ten dollars.~~ an annual report
5 of a limited partnership or foreign limited partnership, twenty-five dollars. The
6 secretary of state shall charge and collect additional fees for late filing of an annual
7 report as follows:
- 8 a. After the date prescribed in subsection 3 of section 45-10.1-14, twenty
9 dollars; and
- 10 b. After the termination of the limited partnership or the revocation of the
11 registration of a foreign limited partnership, the reinstatement fee of one
12 hundred dollars.
- 13 19. Any document submitted for approval before the actual time of submission for
14 filing, half of the fee provided in this section for filing the document.

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

17 **45-10.1-36. (603) Withdrawal of limited partner.** A With respect to the withdrawal of
18 a limited partner may withdraw from a limited partnership at the time or upon the happening of
19 events specified in writing in the partnership agreement.:

- 20 1. If the limited partnership is formed before July 1, 1999, and the agreement does
21 not specify in writing the time when or the events upon the happening of which a
22 limited partner may withdraw or a definite time for the dissolution and winding up of
23 the limited partnership, a limited partner may withdraw upon not less than six
24 months' ~~prior~~ advance written notice to each general partner at the general
25 partner's address on the books of the limited partnership at ~~its~~ the limited
26 partnership's office in this state.
- 27 2. If the limited partnership is formed after June 30, 1999, or if the limited partnership
28 is formed before July 1, 1999, and the partnership agreement does specify in
29 writing the time when or the events upon the happening of which a limited partner
30 may withdraw or a definite time for the dissolution and winding up of the limited
31 partnership, a limited partner may not withdraw from a limited partnership except at

1 the time when or upon the happening of events specified in writing in the
2 partnership agreement.

3 **SECTION 156. AMENDMENT.** Section 45-10.1-51 of the 1997 Supplement to the
4 North Dakota Century Code is amended and reenacted as follows:

5 **45-10.1-51. (901) Foreign limited partnership - Law governing.** Subject to the
6 Constitution of North Dakota, the laws of the ~~state~~ jurisdiction under which a foreign limited
7 partnership is organized govern ~~its~~ the organization and internal affairs and the liability of ~~its~~ the
8 limited partners; ~~and a.~~ A foreign limited partnership may not be denied registration by reason
9 of any difference between ~~these~~ the laws of the jurisdiction and the laws of this state.

10 **SECTION 157.** Section 45-10.1-51.1 of the North Dakota Century Code is created and
11 enacted as follows:

12 **45-10.1-51.1. Foreign limited partnership - Name.** A foreign limited partnership may
13 register under any name that would be available to a domestic limited partnership regardless of
14 whether the name is the name under which the foreign limited partnership is authorized in the
15 jurisdiction of origin. A fictitious name certificate must be filed as provided in chapter 45-11 if
16 registering under a name other than the name as authorized in the jurisdiction of origin.

17 **SECTION 158. AMENDMENT.** Section 45-10.1-52 of the 1997 Supplement to the
18 North Dakota Century Code is amended and reenacted as follows:

19 **45-10.1-52. (902) Foreign limited partnership - Registration.** Before transacting
20 business in this state, a foreign limited partnership shall register with the secretary of state.

21 1. In order to register, a foreign limited partnership shall submit to the secretary of
22 state, on forms prescribed and furnished by the secretary of state, an application
23 for registration as a foreign limited partnership, signed and sworn to by a general
24 partner and setting forth all of the following:

25 ~~4-~~ a. The name of the foreign limited partnership and, if different, the name under
26 which ~~it~~ the foreign limited partnership proposes to register and transact
27 business in this state.

28 ~~2-~~ b. The state and date of ~~its~~ the foreign limited partnership's formation.

29 ~~3-~~ c. The general character of the business ~~it~~ the foreign limited partnership
30 proposes to transact in this state.

- 1 4. d. The name and address of any agent for service of process on the foreign
2 limited partnership whom the foreign limited partnership elects to appoint; ~~the~~
3 agent and which must be an individual resident of this state, a domestic
4 corporation, a domestic limited liability company, a foreign corporation, or a
5 foreign limited liability company having a place of business in, and authorized
6 to do business in, this state.
- 7 ~~5.~~ e. A statement that the secretary of state is appointed the agent of the foreign
8 limited partnership for service of process if the agent's authority ~~has been~~ is
9 revoked or if the agent cannot be found or served with the exercise of
10 reasonable diligence.
- 11 ~~6.~~ f. The address of the principal office of the foreign limited partnership.
- 12 ~~7.~~ g. The name and address of the principal place of business of each general
13 partner.
- 14 ~~8.~~ h. The address of the office at which is kept a list of the names and addresses of
15 the limited partners and ~~their~~ the limited partners' capital contributions,
16 together with an undertaking by the foreign limited partnership to keep those
17 records until the foreign limited partnership's registration in this state is
18 canceled or withdrawn.
- 19 2. The application must be accompanied by a certificate of identification, existence,
20 and status of a foreign limited partnership, duly certified by the proper officer of the
21 ~~state or country under the laws of which it is organized~~ foreign limited partnership's
22 jurisdiction of origin, the consent of registered agent, and the fees required under
23 this chapter.
- 24 3. If the secretary of state finds the application for registration conforms to law and
25 the fees required by this chapter have been paid, the secretary of state shall file
26 the application for registration and the consent of the registered agent.

27 **SECTION 159. AMENDMENT.** Section 45-10.1-53 of the 1997 Supplement to the
28 North Dakota Century Code is amended and reenacted as follows:

29 **45-10.1-53. (903) Foreign limited partnership - ~~Filing of registration~~ Registered**
30 **agent and certain reports.** ~~If the secretary of state finds that an application for registration~~

1 ~~conforms to law and all requisite fees have been paid, the secretary of~~ A foreign limited
2 partnership registered in this state shall:

- 3 1. ~~Endorse on the application the word "Filed" and the month, day, and year of the~~
4 ~~filing.~~ Appoint and continuously maintain a registered agent and a registered office
5 in the same manner as provided in section 45-10.1-04; and
6 2. ~~File the application in the office of the secretary of state.~~ File a report upon any
7 change in the address of the registered office or upon any change in the name of
8 the foreign limited partnership's registered agent as provided in section
9 45-10.1-04.1.

10 **SECTION 160.** Section 45-10.1-54.1 of the North Dakota Century Code is created and
11 enacted as follows:

12 **45-10.1-54.1. Foreign limited partnership - Admission of foreign limited**
13 **partnership - Transacting business - Obtaining licenses and permits.** A foreign limited
14 partnership may not:

- 15 1. Transact business in this state or obtain any license or permit required by this state
16 until the foreign limited partnership registers with the secretary of state.
17 2. Transact in this state any business that is prohibited to a domestic limited
18 partnership organized under this chapter.
19 3. Be denied registration because the laws of the foreign limited partnership's
20 jurisdiction of origin differ from the laws of this state.

21 **SECTION 161. AMENDMENT.** Section 45-10.1-55 of the 1997 Supplement to the
22 North Dakota Century Code is amended and reenacted as follows:

23 **45-10.1-55. (905) Foreign limited partnership - Changes and amendments.**

- 24 1. If any statement in the application for registration of a foreign limited partnership
25 ~~was is~~ false when made or any arrangements or other facts described ~~have~~
26 ~~changed~~ change, making the application inaccurate in any respect, the foreign
27 limited partnership shall promptly file in the office of the secretary of state a
28 certificate, signed ~~and sworn to~~ by a general partner, correcting the statement.
29 2. A foreign limited partnership that ~~amends its~~ changes the foreign limited
30 partnership's name and files a statement as provided in subsection 1 and is the
31 owner of a trademark, or uses a fictitious name registered with the secretary of

1 state, or is a general partner of another limited partnership or a limited liability
2 limited partnership on file with the secretary of state, ~~must shall~~ effect a change of
3 name in each of ~~such the foregoing~~ registrations ~~simultaneously with the filing of~~
4 which is applicable when the foreign limited partnership files the certificate
5 amending the registration of foreign limited partnership.

6 3. A foreign limited partnership ~~must shall~~ file a certificate of amendment, signed ~~and~~
7 ~~sworn to~~ by a general partner, ~~whenever~~ when a general partner that is a
8 corporation files an amendment changing ~~its the general partner's~~ corporate name,
9 or when ~~it the general partner~~ files an application for an amended certificate of
10 authority. This certificate of amendment must be filed simultaneously with the
11 amendment to the articles of incorporation or application for amended certificate of
12 authority.

13 4. A foreign limited partnership ~~must shall~~ notify the secretary of state in writing
14 ~~whenever~~ when a general partner changes the address of ~~its the general partner's~~
15 principal place of business. A corporate annual report filed by the secretary of
16 state that reflects a change of address of a general partner may serve as ~~such a~~
17 notice under this subsection. This notice is not subject to the amendment fee
18 prescribed in 45-10.1-15.

19 **SECTION 162. AMENDMENT.** Section 45-10.1-58 of the 1997 Supplement to the
20 North Dakota Century Code is amended and reenacted as follows:

21 **45-10.1-58. (908) Foreign limited partnership - Action by secretary of state.**

22 1. The secretary of state may revoke the registration of a foreign limited partnership
23 ~~for transacting upon occurrence of any of the following:~~

24 a. Transacting business in this state in violation of sections 45-10.1-52 through
25 45-10.1-58, ~~or that has failed to file a renewal statement as required by~~
26 ~~section 45-10.1-14. The secretary of state may not revoke the registration of~~
27 ~~a foreign limited partnership;~~

28 b. Failing to:

29 (1) Maintain a registered office as required by this chapter;

30 (2) Appoint and maintain a registered agent as required by this chapter;

- 1 (3) File a report upon any change in the address of the foreign limited
2 partnership's registered office;
3 (4) File a report upon any change in the name or business address of the
4 registered agent; or
5 (5) File in the office of the secretary of state any amendment to the foreign
6 limited partnership's registration as specified in section 45-10.1-55; or
7 c. Misrepresenting any material matter in any registration, certificate, report, or
8 other document submitted by the foreign limited partnership pursuant to this
9 chapter.
10 2. Except for the annual report for which the registration may be revoked as provided
11 in section 45-10.1-14, registration of a foreign limited partnership may not be
12 revoked by the secretary of state unless the:
13 a. The secretary of state ~~has given~~ gave the foreign limited partnership ~~not less~~
14 ~~than~~ at least sixty days' notice by mail addressed to ~~its~~ the foreign limited
15 partnership's registered office in this state ~~and the~~ or, if the foreign limited
16 partnership fails to appoint and maintain a registered agent in this state,
17 addressed to the foreign limited partnership's principal executive office of
18 record, ~~and the foreign limited partnership has failed to remedy the deficiency~~
19 ~~prior to revocation;~~ and
20 b. During the sixty-day period, the foreign limited partnership failed to file the
21 report of change regarding the registered office or the registered agent, to file
22 any amendment, or to correct the misrepresentation.
23 3. Upon the expiration of sixty days after the mailing of the notice, the authority of the
24 foreign limited partnership to transact business in this state ceases and the
25 secretary of state shall issue a notice of revocation and shall mail the notice to the
26 principal executive office of the foreign limited partnership.

27 **SECTION 163.** Section 45-10.1-58.1 of the North Dakota Century Code is created and
28 enacted as follows:

29 **45-10.1-58.1. Foreign limited partnership - Action by attorney general.** The
30 attorney general may bring an action to restrain a foreign limited partnership from transacting
31 business in this state in violation of this chapter.

1 **SECTION 164. AMENDMENT.** Section 45-11-08.2 of the North Dakota Century Code
2 is amended and reenacted as follows:

3 **45-11-08.2. Cancellation.** The secretary of state shall cancel ~~any~~:

- 4 1. Any fictitious name filed before August 1, 1997, by a limited liability partnership
5 upon written request for cancellation, from one or more partners, ~~with the~~ without a
6 filing fee ~~of ten dollars~~.
- 7 2. Any other fictitious name upon written request for cancellation, from one or more
8 partners, with the filing fee of ten dollars.

9 **SECTION 165. AMENDMENT.** Section 45-13-01 of the 1997 Supplement to the North
10 Dakota Century Code is amended and reenacted as follows:

11 **45-13-01. (101) Definitions.** In chapters 45-13 through 45-21 unless the context or
12 subject matter otherwise requires:

- 13 1. "Business" includes every trade, occupation, and profession.
- 14 2. "Chief executive office" means an office from which the partnership conducts
15 business.
- 16 3. "Debtor in bankruptcy" means a person who is the subject of:
17 a. An order for relief under title 11 of the United States Code or a comparable
18 order under a successor statute of general application; or
19 b. A comparable order under federal, state, or foreign law governing insolvency.
- 20 ~~3.~~ 4. "Distribution" means a transfer of money or other property from a partnership to a
21 partner in the partner's capacity as a partner or to the partner's transferee.
- 22 5. "Filed with the secretary of state" means, except as otherwise permitted by law or
23 rule:
24 a. A signed original or a legible facsimile telecommunication of a signed original
25 of a request for reserved name or the signed original of all other documents
26 meeting the applicable requirements of this chapter together with the fees
27 provided in section 45-13-05 was delivered to the secretary of state and was
28 determined by the secretary of state to conform to law.
29 b. The secretary of state shall then endorse on the original the word "filed" and
30 the month, day, and year, and record the document in the office of the
31 secretary of state.

- 1 6. "Foreign limited liability partnership" means a partnership that is formed under laws
2 other than the laws of this state and has the status of a limited liability partnership
3 under those laws.
- 4 7. "Limited liability partnership" means a partnership that filed a registration under
5 chapter 45-22 and does not have a similar statement in effect in any other
6 jurisdiction.
- 7 8. "Notice":
- 8 a. Is given to a partnership or to a partner of a partnership when in writing and
9 mailed or delivered to the partnership or to the partner at the chief executive
10 office of the partnership.
- 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;
- 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, if there is no one in charge, when left in a
17 conspicuous place in the office or, if the office is closed or the person to
18 be notified has no office, when left at the dwelling, house, or other
19 usual place of abode of the person with some person of suitable age
20 and discretion residing there.
- 21 c. Is given when deposited in the United States mail with sufficient postage
22 affixed.
- 23 d. Is deemed received when it is given.
- 24 4. 9. "Partnership" means an association of two or more persons to carry on as
25 coowners a business for profit formed under section 45-14-02, predecessor law, or
26 comparable law of another jurisdiction.
- 27 5. 10. "Partnership agreement" means the agreement, whether written, oral, or implied,
28 among the partners concerning the partnership, including amendments to the
29 partnership agreement.

- 1 ~~6.~~ 11. "Partnership at will" means a partnership in which the partners have not agreed to
2 remain partners until the expiration of a definite term or the completion of a
3 particular undertaking.
- 4 ~~7.~~ 12. "Partnership interest" or "partner's interest in the partnership" means all of a
5 partner's interests in the partnership, including the partner's transferable interest
6 and all management and other rights.
- 7 ~~8.~~ "~~Person~~" ~~includes any legal or commercial entity. The term includes governmental~~
8 ~~subdivision, agency, or instrumentality.~~
- 9 ~~9.~~ 13. "Property" means all property, real, personal, or mixed, tangible or intangible, or
10 any interest therein.
- 11 14. "Signed" means the signature of a person is placed on a document, as provided in
12 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 the document is signed by a person authorized to
15 do so by this chapter or by a resolution approved by the affirmative vote of the
16 required proportion or number of partners; and
- 17 b. With respect to a document not required by this chapter to be filed with the
18 secretary of state, means the signature may be a facsimile affixed, engraved,
19 printed, placed, stamped with indelible ink, transmitted by facsimile
20 telecommunication or electronically, or in any other manner reproduced on
21 the document.
- 22 ~~40.~~ 15. "State" means a state of the United States, the District of Columbia, the
23 Commonwealth of Puerto Rico, or any territory or insular possession subject to the
24 jurisdiction of the United States.
- 25 ~~44.~~ 16. "Statement" means a statement of partnership authority under section 45-15-03, a
26 statement of denial under section 45-15-04, a statement of dissociation under
27 section 45-19-04, a statement of dissolution under section 45-20-05, a statement
28 of merger under section 45-21-07, or an amendment or cancellation of any of the
29 foregoing.
- 30 ~~42.~~ 17. "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and
31 encumbrance.

1 **SECTION 166. AMENDMENT.** Subsection 2 of section 45-13-03 of the 1997
2 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 3 2. The partnership agreement may not:
- 4 a. Vary the rights and duties under section 45-13-05 except to eliminate the duty
5 to provide copies of statements to all of the partners;
 - 6 b. Unreasonably restrict the right of access to books and records under
7 subsection 2 of section 45-16-03;
 - 8 c. Eliminate the duty of loyalty under subsection 2 of section 45-16-04 or
9 subdivision c of subsection 2 of section 45-18-03, but:
 - 10 (1) The partnership agreement may identify specific types or categories of
11 activities that do not violate the duty of loyalty, if not manifestly
12 unreasonable; or
 - 13 (2) All of the partners or a number or percentage specified in the
14 partnership agreement may authorize or ratify, after full disclosure of all
15 material facts, a specific act or transaction that otherwise would violate
16 the duty of loyalty;
 - 17 d. Unreasonably reduce the duty of care under subsection 3 of section 45-16-04
18 or subdivision c of subsection 2 of section 45-18-03;
 - 19 e. Eliminate the obligation of good faith and fair dealing under subsection 4 of
20 section 45-16-04, but the partnership agreement may prescribe the standards
21 by which the performance of the obligation is to be measured, if the standards
22 are not manifestly unreasonable;
 - 23 f. Vary the power to dissociate as a partner under subsection 1 of section
24 45-18-02, except to require the notice under subsection 1 of section 45-18-01
25 to be in writing;
 - 26 g. Vary the right of a court to expel a partner in the events specified in
27 subsection 5 of section 45-18-01;
 - 28 h. Vary the requirement to wind up the partnership business in cases specified
29 in subsection 4, 5, or 6 of section 45-20-01; ~~or~~
 - 30 i. Vary the law applicable to a limited liability partnership under chapter 45-22;
31 or

1 j. Restrict rights of third parties under chapters 45-13 through 45-21.

2 **SECTION 167.** Section 45-13-04.1 of the North Dakota Century Code is created and
3 enacted as follows:

4 **45-13-04.1. Partnership name.**

5 1. A partnership name filed in a statement under section 45-13-05:

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

8 b. May not contain a word or phrase indicating or implying the partnership may
9 not be organized under this chapter;

10 c. May not contain a word or phrase indicating or implying the partnership is
11 organized for a purpose other than a legal business purpose for which a
12 partnership may be organized under this chapter;

13 d. May not contain the word "corporation", "company", "incorporated", "limited
14 liability company", "limited partnership", "limited liability partnership", "limited
15 liability limited partnership", or any abbreviation of these words; and

16 e. May not be the same as, or deceptively similar to:

17 (1) The name, whether foreign and authorized to do business in this state
18 or domestic, unless filed with the statement is a document which
19 complies with subsection 3 of:

20 (a) Another partnership;

21 (b) A limited liability company;

22 (c) A corporation;

23 (d) A limited partnership;

24 (e) A limited liability partnership; or

25 (f) A limited liability limited partnership;

26 (2) A name, the right of which is, at the time of filing, reserved in the
27 manner provided in section 10-19.1-14, 10-32-11, 10-33-11,
28 45-10.1-03, or 45-22-05;

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

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

- 1 2. The secretary of state shall determine whether a partnership name is deceptively
2 similar to another name for purposes of this chapter.
- 3 3. This subsection does not affect the right of a domestic partnership existing on
4 July 1, 1999, or a foreign partnership authorized to do business in this state on
5 July 1, 1999, to continue the use of the foreign partnership's name. If the
6 secretary of state determines a partnership name is deceptively similar to another
7 name for purposes of this chapter, the partnership name may not be used unless
8 there is filed with the statement:
- 9 a. The written consent of the holder of the rights to the name to which the
10 proposed name is determined to be deceptively similar; or
- 11 b. A certified copy of a judgment of a court in this state establishing the earlier
12 right of the applicant to the use of the name in this state.
- 13 4. This section and section 45-13-04.2 do not:
- 14 a. Abrogate or limit the law of unfair competition or unfair practices; chapter
15 47-25; the laws of the United States with respect to the right to acquire and
16 protect copyrights, trade names, trademarks, service names, service marks;
17 or any other rights to the exclusive use of a name or symbol.
- 18 b. Derogate the common law or any principle of equity.
- 19 5. A partnership that is merged with another partnership or domestic or foreign limited
20 partnership, or that is formed by the reorganization of one or more partnerships or
21 domestic or foreign limited partnerships, or that acquires by sale, lease, or other
22 disposition to or exchange with a partnership all or substantially all of the assets of
23 another partnership or domestic or foreign limited partnership including the
24 partnership's or limited partnership's name, may have the same name as that used
25 in this state by any other partnership or domestic or foreign limited partnership if
26 the other partnership or domestic or foreign limited partnership:
- 27 a. Is formed under the laws of this state;
- 28 b. Is authorized to transact business or conduct activities in this state;
- 29 c. Holds a reserved name in the manner provided in section 45-10.1-03;
- 30 d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
- 31 e. Holds a trade name registered in the manner provided in chapter 47-25.

- 1 6. The use of a name by a partnership in violation of this section does not affect or
2 vitate the partnership's partnership existence. However, a court in this state may,
3 upon application of the state or of an interested or affected person, enjoin the
4 partnership from doing business under a name assumed in violation of this section,
5 although a statement may have been filed with the secretary of state.
- 6 7. If a partnership's period of existence is expired or a partnership's statement filed
7 under section 45-13-05 is expired, the partnership may reacquire the right to use
8 that name by refiling a statement pursuant to section 45-13-05, unless the name
9 was adopted for use or reserved by another person, in which case the filing must
10 be rejected unless the filing is accompanied by a written consent or judgment
11 pursuant to subsection 2. A partnership that cannot reacquire the use of the
12 partnership's partnership name shall adopt a new partnership name that complies
13 with this section.

14 **SECTION 168.** Section 45-13-04.2 of the North Dakota Century Code is created and
15 enacted as follows:

16 **45-13-04.2. Reserved name.**

- 17 1. The exclusive right to the use of a partnership name otherwise permitted by
18 section 45-13-04.1 may be reserved by any person.
- 19 2. The reservation is made by filing with the secretary of state a request that the
20 name be reserved together with the fees provided in section 45-13-05.
- 21 a. If the name is available for use by the applicant, the secretary of state shall
22 reserve the name for the exclusive use of the applicant for a period of twelve
23 months.
- 24 b. The reservation may be renewed for successive twelve-month periods.
- 25 3. The right to the exclusive use of a partnership name reserved pursuant to this
26 section may be transferred to another person by or on behalf of the applicant for
27 whom the name was reserved by filing with the secretary of state a notice of the
28 transfer and specifying the name and address of the transferee together with the
29 fees provided in section 45-13-05.
- 30 4. The right to the exclusive use of a partnership name reserved pursuant to this
31 section may be canceled by or on behalf of the applicant for whom the name was

1 reserved by filing with the secretary of state a notice of the cancellation together
2 with the fees provided in section 45-13-05.

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

5 6. The secretary of state may destroy any reserved name request and any index of
6 reserved names one year after expiration.

7 **SECTION 169. AMENDMENT.** Section 45-13-05 of the 1997 Supplement to the North
8 Dakota Century Code is amended and reenacted as follows:

9 **45-13-05. (105) Execution, filing, and recording of statements.**

10 1. A statement may be filed in the office of the secretary of state. A certified copy of
11 a statement that is filed in an office in another state may be filed in the office of the
12 secretary of state. Either filing has the effect provided in chapters 45-13 through
13 45-21 with respect to partnership property located in or transactions that occur in
14 this state.

15 2. A certified copy of a statement that has been filed in the office of the secretary of
16 state and recorded in the office for recording transfers of real property has the
17 effect provided for recorded statements in chapters 45-13 through 45-21. A
18 recorded statement that is not a certified copy of a statement filed in the office of
19 the secretary of state does not have the effect provided for recorded statements in
20 chapters 45-13 through 45-21.

21 3. A statement filed by a partnership must be executed by at least two partners.
22 Other statements must be executed by a partner or other person authorized by
23 chapters 45-13 through 45-21. An individual who executes a statement as, or on
24 behalf of, a partner or other person named as a partner in a statement shall
25 personally declare under penalty of perjury that the contents of the statement are
26 accurate.

27 4. A person authorized by chapters 45-13 through 45-21 to file a statement may
28 amend or cancel the statement by filing an amendment or cancellation that names
29 the partnership, identifies the statement, and states the substance of the
30 amendment or cancellation.

- 1 5. A person who files a statement pursuant to this section shall promptly send a copy
2 of the statement to every nonfiling partner and to any other person named as a
3 partner in the statement. Failure to send a copy of a statement to a partner or
4 other person does not limit the effectiveness of the statement as to a person not a
5 partner.
- 6 ~~6. A partnership name filed in a statement under this section may not be the same as
7 or deceptively similar to the name of any other partnership filed under this section
8 or any corporation, limited liability company, or limited partnership, or a trade name
9 or fictitious name certificate on file with the secretary of state, unless there is filed
10 with the partnership statement a written consent of the holder of the similar name
11 to use the name proposed by the partnership.~~
- 12 ~~7.~~ 7. Any statement filed under this section must be renewed every five years from the
13 date of the initial filing. A statement of renewal must be executed by the
14 partnership on a form furnished by the secretary of state which is sent to the
15 address of the chief executive office at least sixty days before the deadline for
16 filing. If the secretary of state finds that the statement of renewal conforms to the
17 requirements of this section, and the proper filing fee has been paid, the secretary
18 of state shall file the statement of renewal. If the secretary of state finds that the
19 statement of renewal does not so conform, the secretary of state shall return the
20 statement of renewal to the partnership for any necessary corrections. If the
21 statement of renewal is not returned corrected within thirty days after the statement
22 of renewal was returned for correction, the statement of renewal is subject to
23 cancellation. If any partnership fails to file the statement of renewal, the secretary
24 of state shall cancel the initial statement and shall mail notice of the cancellation to
25 the address of the chief executive office.
- 26 ~~8.~~ 7. A partnership shall notify the secretary of state in writing upon a change in address
27 of the partnership's chief executive office. A statement of renewal filed by the
28 secretary of state which reflects a change of address of the chief executive office
29 of the partnership may serve as ~~such~~ a notice under this subsection.
- 30 ~~9.~~ 8. a. The secretary of state shall charge and collect a fee for:
31 (1) Filing a statement under this section, one hundred dollars.

- 1 (2) Filing an amendment under this section, forty dollars.
 - 2 (3) Filing a cancellation under this section, ~~twenty-four~~ twenty-five dollars.
 - 3 (4) Filing a renewal under this section, forty dollars.
 - 4 (5) Filing a request to reserve a partnership name, ten dollars.
 - 5 (6) Filing a notice of transfer of a reserved partnership name, ten dollars.
 - 6 (7) Filing a cancellation of reserved partnership name, ten dollars.
 - 7 (8) Filing a statement of conversion, fifty dollars.
 - 8 (9) Filing a statement of merger, fifty dollars.
 - 9 (10) Any document submitted for approval before the actual time of
 - 10 submission for filing, half of the fee provided in this section for filing the
 - 11 document.
- 12 b. The officer responsible for recording transfers of real property may collect a
- 13 fee for recording a statement.

14 **SECTION 170. AMENDMENT.** Section 45-13-06 of the 1997 Supplement to the North
15 Dakota Century Code is amended and reenacted as follows:

16 **45-13-06. (106) Law governing internal relations.**

- 17 1. ~~The~~ Except as otherwise provided in subsection 2, the law of the jurisdiction in
- 18 which a partnership has ~~its~~ the partnership's chief executive office governs
- 19 relations among the partners and between the partners and the partnership.
- 20 2. The law of this state governs relations among the partners and between the
- 21 partners and the partnership and the liability of partners for an obligation of a
- 22 limited liability partnership.

23 **SECTION 171. AMENDMENT.** Section 45-14-01 of the 1997 Supplement to the North
24 Dakota Century Code is amended and reenacted as follows:

25 **45-14-01. (201) Partnership as entity.**

- 26 1. A partnership is an entity distinct from ~~its~~ the partnership's partners.
- 27 2. A limited liability partnership continues to be the same entity in existence before
- 28 the filing of the registration under chapter 45-22.

29 **SECTION 172. AMENDMENT.** Subsection 1 of section 45-15-03 of the 1997
30 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 31 1. A partnership may file a statement of partnership authority; which:

- 1 a. Must include:
- 2 (1) The name of the partnership;
- 3 (2) The street address of ~~its~~ the partnership's chief executive office and of
- 4 one office in this state, if there is one;
- 5 (3) The ~~names~~ name and mailing ~~addresses~~ address of ~~all of the partners~~
- 6 ~~and of an agent appointed and maintained by the partnership~~ each
- 7 partner;
- 8 (4) The address of the registered office of the partnership and the name of
- 9 the registered agent at that address;
- 10 (5) The ~~names~~ name of ~~the partners~~ each partner authorized to execute
- 11 an instrument transferring real property held in the name of the
- 12 partnership; and
- 13 ~~(5)~~ (6) The nature of business to be transacted; ~~and.~~
- 14 b. May state the authority, or limitations on the authority, of some or all of the
- 15 partners to enter into other transactions on behalf of the partnership and any
- 16 other matter.

17 **SECTION 173.** Section 45-15-03.1 of the North Dakota Century Code is created and

18 enacted as follows:

19 **45-15-03.1. Registered office - Registered agent.**

- 20 1. A partnership that files and maintains a statement of partnership authority shall
- 21 continuously maintain a registered office in this state. A registered office need not
- 22 be the same as the principal place of business or the chief executive office of the
- 23 partnership.
- 24 2. A partnership that files a statement of partnership authority shall appoint and
- 25 continuously maintain a registered agent who may be:
- 26 a. An individual residing in this state;
- 27 b. A domestic corporation;
- 28 c. A domestic limited liability company; or
- 29 d. A foreign corporation or foreign limited liability company authorized to transact
- 30 business in this state.

- 1 3. The registered agent shall maintain a business office identical to the registered
2 agent's registered office.
- 3 4. Proof of the registered agent's consent to serve in the capacity of registered agent
4 must be filed with the secretary of state, together with the fees provided in section
5 45-13-05.

6 **SECTION 174.** Section 45-15-03.2 of the North Dakota Century Code is created and
7 enacted as follows:

8 **45-15-03.2. Change of registered office or agent.**

- 9 1. A partnership that files and maintains a statement of partnership authority may
10 change the partnership's registered office, change the partnership's registered
11 agent, or state a change in the name of the partnership's registered agent, by filing
12 with the secretary of state, along with the fees provided in section 45-13-05, a
13 statement containing:
- 14 a. The name of the partnership;
- 15 b. If the address of the partnership's registered office is changing, the new
16 address of the partnership's registered office;
- 17 c. If the partnership's registered agent is being designated or changing, the
18 name of the partnership's new registered agent;
- 19 d. If the name of the partnership's registered agent is changing, the name of the
20 partnership's registered agent as changed;
- 21 e. A statement that the address of the partnership's registered office and the
22 address of the business office of the partnership's registered agent, as
23 changed, will be identical; and
- 24 f. A statement that the change of registered office or registered agent was
25 authorized by resolution approved by the partners.
- 26 2. A registered agent of a partnership may resign by filing with the secretary of state
27 a signed written notice of resignation, including a statement that a signed copy of
28 the notice was given to the partnership at the partnership's chief executive office,
29 or to a legal representative of the partnership. The appointment of the agent
30 terminates thirty days after notice is 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 the name of the registered agent, as
3 the case may be, of each partnership represented by that agent by filing with the
4 secretary of state a statement for each partnership as required in subsection 1,
5 except the statement need be signed only by the registered agent, need not be
6 responsive to subdivision f of subsection 1, and must state that a copy of the
7 statement was mailed to each of those partnerships or to the legal representative
8 of each of those partnerships.

9 **SECTION 175. AMENDMENT.** Subsection 1 of section 45-15-06 of the 1997
10 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11 1. Except as otherwise provided in subsection 2 and in chapter 45-22, all partners
12 are liable jointly and severally for all obligations of the partnership unless otherwise
13 agreed by the claimant or provided by law.

14 **SECTION 176. AMENDMENT.** Section 45-22-01 of the 1997 Supplement to the North
15 Dakota Century Code is amended and reenacted as follows:

16 **45-22-01. Definitions.** In this chapter, unless the context otherwise requires:

- 17 1. "Address" means:
- 18 a. In the case of a registered office or principal executive office, the mailing
19 address, including the zip code, of the actual office location which may not be
20 only a post-office box; and
- 21 b. In all other cases, the mailing address, including a zip code.
- 22 2. "Domestic limited liability partnership" means a ~~general~~ partnership that is
23 organized under the laws of this state with a registration ~~or a renewal registration~~
24 in effect and which is not a foreign limited liability partnership.
- 25 3. "Filed with the secretary of state" means, except as otherwise permitted by law or
26 rule:
- 27 a. That ~~either:~~
- 28 (1) A a signed original or a legible facsimile ~~copy~~ telecommunication of a
29 signed original of a request for reserved name; or
- 30 (2) A a signed original of all other documents meeting the applicable
31 requirements of this chapter, together with the fees provided in section

- 1 45-22-23, ~~has been~~ was delivered to the secretary of state and ~~has~~
2 ~~been~~ was determined by the secretary of state to conform to law.
- 3 b. That the secretary of state shall then:
- 4 (1) Endorse on the original the word "filed" and the month, day, and year;
5 and
6 (2) Record the document in the office of the secretary of state.
- 7 4. "Foreign limited liability partnership" means a partnership organized as a limited
8 liability partnership:
- 9 a. ~~Which is organized~~ under laws other than the laws of this state ~~for a purpose~~
10 ~~or purposes for which a limited liability partnership may be organized under~~
11 ~~this chapter;~~
- 12 b. ~~With a registration or renewal registration in effect; and~~
- 13 e. ~~In~~ which is in good standing in ~~its~~ the partnership's jurisdiction of origin.
- 14 5. ~~"General partnership" means an association of two or more persons to carry on as~~
15 ~~coowners of a business for profit formed under North Dakota law, predecessor law,~~
16 ~~or comparable law of another jurisdiction.~~
- 17 6. "Jurisdiction of origin" ~~refers to~~ means the jurisdiction in which the limited liability
18 partnership status of the foreign limited liability partnership was created.
- 19 7. 6. "Limited liability partnership" means a domestic limited liability partnership or a
20 foreign limited liability partnership.
- 21 8. 7. "Managing partner" means one of the partners charged with the management in
22 this state of the limited liability partnership or foreign limited liability partnership and
23 if no partners are so specifically designated, then all partners.
- 24 9. 8. "Notice":
- 25 a. Is given to a limited liability partnership or to a partner of the limited liability
26 partnership when in writing and mailed or delivered to the limited liability
27 partnership or the partner at the registered office or principal executive office
28 of the limited liability partnership; ~~and.~~
- 29 b. In all other cases, is given to a person:
- 30 (1) When mailed to the person at an address designated by the person or
31 at the ~~last known~~ last-known address of the person; or

- 1 (2) When handed to the person; or
- 2 (3) When left at the office of the person with a clerk or other person in
- 3 charge of the office; or
- 4 (a) If there is no one in charge, when left in a conspicuous place in
- 5 the office; or
- 6 (b) If the office is closed or the person to be notified has no office,
- 7 when left at the dwelling house or usual place of abode of the
- 8 person with some person of suitable age and discretion then
- 9 residing therein.
- 10 c. Is given when deposited in the United States mail with sufficient postage
- 11 affixed.
- 12 d. Is deemed received when ~~it is~~ given.
- 13 40- 9. "Originally registered" and "original registration" ~~refers to~~ means the document
- 14 establishing the limited liability partnership status of the foreign limited liability
- 15 partnership in ~~its~~ the foreign limited liability partnership's jurisdiction of origin.
- 16 10. "Partnership" means an association of two or more persons to carry on as
- 17 coowners of a business for profit formed under chapters 45-13 through 45-21,
- 18 predecessor law, or comparable law of another jurisdiction.
- 19 11. "Principal executive office" means:
- 20 a. An office from which the limited liability partnership conducts business; or
- 21 b. If the limited liability partnership has no office from which ~~it~~ the limited liability
- 22 partnership conducts business, ~~then~~ the registered office of the limited liability
- 23 partnership.
- 24 12. "Register" means the act of filing with the secretary of state which causes:
- 25 a. A domestic limited liability partnership to be created; or
- 26 b. A foreign limited liability partnership to be authorized to transact business in
- 27 this state.
- 28 13. "Registered office" means the place in this state designated as the registered
- 29 office of the limited liability partnership.
- 30 14. "Registration" means the document which, when filed with the secretary of state,
- 31 causes:

- 1 a. A domestic limited liability partnership to be created; or
- 2 b. A foreign limited liability partnership to be authorized to do business in this
- 3 state.
- 4 15. ~~"Renewal registration" means the document by which the status of a domestic~~
- 5 ~~limited liability partnership or a foreign limited liability partnership is extended for~~
- 6 ~~an additional one-year period.~~
- 7 16. "Signed" means ~~that~~ the signature of a person ~~has been~~ is placed on a document,
- 8 as provided in subsection 39 of section 41-01-11~~;~~.
- 9 a. With respect to a document required by this chapter to be filed with the
- 10 secretary of state, the term means ~~that~~ the document ~~has been~~ is signed by a
- 11 person authorized to do so by this chapter, or by or pursuant to an agreement
- 12 among the partners, or by a resolution approved by the affirmative vote of the
- 13 required proportion or number of partners~~; and~~.
- 14 b. With respect to a document not required by this chapter to be filed with the
- 15 secretary of state, the signature may be a facsimile affixed, engraved, printed,
- 16 placed, stamped with indelible ink, transmitted by telecommunication or
- 17 electronically, or in any other manner reproduced on the document.

18 **SECTION 177. AMENDMENT.** Section 45-22-03 of the 1997 Supplement to the North
19 Dakota Century Code is amended and reenacted as follows:

20 **45-22-03. Registration.**

- 21 1. A partnership may become a limited liability partnership pursuant to this section.
- 22 a. In determining whether the underlying ~~general~~ partnership necessary for
- 23 registration as a domestic limited liability partnership has been formed, the
- 24 rules set forth in section 45-14-02 apply.
- 25 b. The terms and conditions on which a partnership becomes a limited liability
- 26 partnership must be approved by the necessary vote of partners required to
- 27 amend the partnership agreement, unless the partnership agreement
- 28 contains a requirement that the vote of a greater number of partners is
- 29 necessary to amend provisions relating to the partners' obligations to
- 30 contribute to the partnership, in which case by the necessary vote of the
- 31 partners to amend these provisions.

- 1 2. After the approval required by subdivision b of subsection 1, a partnership shall
2 become a limited liability partnership by filing a registration with the secretary of
3 state. A domestic limited liability partnership or foreign limited liability partnership
4 that is transacting business in this state must have in effect and filed with the
5 secretary of state a registration that complies with this section.
- 6 a. ~~For one year from its~~ From the effective date of filing, the registration of:
- 7 (1) a. A domestic limited liability partnership establishes ~~its~~ the status as a domestic
8 limited liability partnership; and
- 9 (2) b. A foreign limited liability partnership authorizes ~~it to transact~~ the transaction of
10 business in this state.
- 11 ~~Unless a renewal registration is properly filed with the secretary of state, the~~
12 ~~registration is subject to revocation by the secretary of state as provided in~~
13 ~~section 45-22-16.~~
- 14 b. ~~The limited liability partnership or foreign limited liability partnership may file a~~
15 ~~renewal registration that complies with this section no earlier than sixty days~~
16 ~~before the expiration of the one year period.~~
- 17 (1) ~~A registration may be renewed for successive one year periods.~~
- 18 (2) ~~A proper renewal registration extends the registration of a limited~~
19 ~~liability partnership or foreign limited liability partnership for another~~
20 ~~one year period, measured from the end of the previous one year~~
21 ~~period.~~
- 22 (3) ~~Unless a renewal registration is properly filed with the secretary of~~
23 ~~state, the registration shall be subject to revocation by the secretary of~~
24 ~~state as provided in section 45-22-16.~~
- 25 3. A registration ~~or renewal registration~~ must contain:
- 26 a. With respect to a domestic limited liability partnership:
- 27 (1) The name of the domestic limited liability partnership.
- 28 (2) The nature of the business to be transacted in this state.
- 29 (3) The address of the principal executive office of the domestic limited
30 liability partnership.

- 1 (4) The address of the registered office of the domestic limited liability
2 partnership and the name of ~~its~~ the registered agent at that address.
- 3 (5) The name and address of each managing partner.
- 4 (6) ~~An acknowledgment that the status of limited liability partnership will~~
5 ~~automatically expire, unless the partnership files a proper renewal~~
6 ~~registration. A statement that the partnership elects to be a limited~~
7 ~~liability partnership.~~ A statement that the partnership elects to be a limited
8 (7) ~~An acknowledgment that other jurisdictions, including other jurisdictions~~
9 ~~that have limited liability partnership statutes, may not provide any~~
10 ~~limited liability shield or may not provide as broad a limited liability~~
11 ~~shield as does this chapter. A deferred effective date, if any.~~
- 12 b. With respect to a foreign limited liability partnership:
- 13 (1) The name of the foreign limited liability partnership and, if different, the
14 name under which ~~it~~ the foreign limited liability partnership proposes to
15 transact business in this state.
- 16 (2) The jurisdiction of ~~its original registration~~ origin.
- 17 (3) The date on which the foreign limited liability partnership expires in the
18 jurisdiction of ~~its~~ origin.
- 19 (4) The nature of the business to be transacted in this state.
- 20 (5) The address of the principal executive office of the foreign limited
21 liability partnership.
- 22 (6) The address of the registered office of the foreign limited liability
23 partnership and the name of ~~its~~ the foreign limited liability partnership's
24 registered agent at that address.
- 25 (7) The name and address of each managing partner.
- 26 (8) An acknowledgment that the status of the foreign limited liability
27 partnership in this state will automatically expire:
- 28 ~~(a) Unless the foreign limited liability partnership files a proper~~
29 ~~renewal registration; and~~

- 1 (b) ~~Unless~~ unless the foreign limited liability partnership continuously
2 maintains ~~its~~ limited liability partnership status in ~~its~~ the
3 jurisdiction of origin.
- 4 c. The registration must be accompanied by payment of the fees provided in
5 section 45-22-22 together with a certificate of good standing or certificate of
6 existence authenticated by the registering officer of the state or country where
7 the foreign limited liability partnership is originally registered and the consent
8 of the designated registered agent for service of process to serve in that
9 capacity.
- 10 4. An original of the registration ~~or renewal registration~~ must be filed with the
11 secretary of state.
- 12 a. If the secretary of state finds ~~that~~ the registration ~~or renewal registration~~
13 conforms to law and ~~that~~ the fees provided in section 45-22-22 ~~have been~~ are
14 paid, the secretary of state shall endorse on the original the word "filed" and
15 the day, month, and year of the filing and shall file the original in the office of
16 the secretary of state.
- 17 b. If any statement in the registration ~~or renewal registration~~ ~~was~~ is false when
18 made or becomes inaccurate after the registration ~~or renewal registration~~ is
19 filed, making the registration ~~or renewal registration~~ false or inaccurate in any
20 respect:
- 21 (1) ~~The,~~ the limited liability partnership ~~or foreign limited liability partnership~~
22 shall file promptly with the secretary of state an amended or corrected
23 registration ~~or renewal registration~~ or reflect the changes on ~~its~~ the
24 limited liability partnership's next renewal registration; and annual
25 report.
- 26 (2) ~~With respect to foreign limited liability partnerships:~~
- 27 (a) c. In the case of a change in ~~its~~ a foreign limited liability partnership's name, a
28 foreign limited liability partnership shall file promptly with the secretary of state
29 a certificate to that effect authenticated by the proper officer of the ~~state or~~
30 ~~country under the laws of which the foreign limited liability partnership is~~
31 ~~originally registered;~~ or jurisdiction of origin.

- 1 **(b)** d. In the case of a termination or merger:
- 2 **{4}** (1) A foreign limited liability partnership that is not the surviving
- 3 organization need not file an amended registration but, within thirty
- 4 days after the merger or termination becomes effective, shall file with
- 5 the secretary of state a certificate to that effect authenticated by the
- 6 proper officer of the ~~state or country under the laws of which the foreign~~
- 7 limited liability ~~partnership is originally registered~~ partnership's
- 8 jurisdiction of origin.
- 9 **{2}** (2) It is not necessary for any foreign limited liability partnership, which is
- 10 the surviving organization in a merger, to procure ~~either~~ a new or
- 11 amended registration unless the name of the foreign limited liability
- 12 partnership is changed or unless the foreign limited liability partnership
- 13 desires to pursue in this state purposes other than those which ~~it~~ the
- 14 foreign limited liability partnership is authorized to transact in this state.
- 15 e. ~~With respect to renewals:~~
- 16 **(1)** ~~A renewal registration received by the secretary of state in a sealed~~
- 17 envelope postmarked by the United States postal service on or before
- 18 the lapse, or a renewal registration in a sealed packet with a verified
- 19 shipment date by any other carrier service on or before the lapse, and
- 20 properly addressed to the secretary of state is deemed to be in
- 21 compliance with the requirement for timely delivery. ~~When a lapse falls~~
- 22 ~~on a Saturday, Sunday, or other holiday as defined in section 1-03-01,~~
- 23 ~~a postmark or verified shipment date on the next business day is in~~
- 24 ~~compliance with this requirement.~~
- 25 **(2)** ~~The secretary of state must file the renewal registration if the renewal~~
- 26 ~~registration conforms to the requirements of this section.~~
- 27 **(3)** ~~If the renewal registration does not conform, the registration must be~~
- 28 ~~returned to the limited liability partnership or foreign limited liability~~
- 29 ~~partnership for any necessary corrections. If the corrected renewal~~
- 30 ~~registration is filed after the lapse date, but within thirty days after it is~~

- 1 ~~returned for correction, the penalties for failure to file the renewal~~
2 ~~registration within the time required do not apply.~~
- 3 (4) ~~Each limited liability partnership or foreign limited liability partnership~~
4 ~~that fails or refuses to file its renewal registration on or before the lapse~~
5 ~~date of a registration must pay an additional late renewal fee as~~
6 ~~provided in section 45-22-22.~~
- 7 ~~e.~~ e. The secretary of state may destroy any ~~registrations and renewal registrations~~
8 ~~which have been~~ registration that is on file for seven years.
- 9 5. A managing partner must be separately registered with the secretary of state at the
10 time of the registration of a domestic limited liability partnership ~~whenever~~ if that
11 managing partner is ~~either~~ a domestic or foreign:
- 12 a. Corporation;
- 13 b. Limited liability company;
- 14 c. Limited partnership;
- 15 d. Limited liability partnership; ~~or~~
- 16 e. Limited liability limited partnership; or
- 17 f. ~~General partnership~~ Partnership using a fictitious name.
- 18 6. With respect to a domestic limited liability partnership:
- 19 a. A ~~general~~ partnership's decision to file a registration is an ordinary matter that
20 may be decided by a majority of the partners.
- 21 b. The decision to withdraw ~~or not renew~~ a registration may be undertaken only
22 with the consent of all ~~of the~~ partners or as otherwise expressly provided in a
23 written partnership agreement.
- 24 7. A ~~general~~ partnership that registers as a limited liability partnership is not deemed
25 to have dissolved as a result of the registration.
- 26 8. If a limited liability partnership or foreign limited liability partnership dissolves
27 without winding up ~~its~~ business or changes ~~its~~ the jurisdiction of origin, a
28 partnership ~~which~~ that is a successor to ~~such~~ the limited liability partnership or
29 foreign limited liability partnership and which intends to be a limited liability
30 partnership or foreign limited liability partnership ~~shall~~ is not be required to file a
31 new registration or renewal and ~~shall be~~ is deemed to have filed any documents

1 required or permitted under this section which were filed by the predecessor
2 partnership.

3 9. The status of a partnership as a limited liability partnership is effective on the later
4 of the filing of the registration or a date specified in the registration which is within
5 ninety days after the filing of the registration.

6 a. The status of a partnership as a domestic limited liability partnership and the
7 authority of a foreign limited liability partnership to transact business in this
8 state remains effective, regardless of changes in the partnership, until the
9 partnership's registration is voluntarily withdrawn pursuant to section 45-22-13
10 or revoked by the secretary of state pursuant to sections 45-22-16 and
11 45-22-21.1.

12 b. The status of a partnership as a limited liability partnership and the liability of
13 the partnership's partners for obligation of the partnership is not affected by
14 errors or later changes in the information required to be contained in the
15 registration under subsection 3.

16 **SECTION 178. AMENDMENT.** Section 45-22-04 of the 1997 Supplement to the North
17 Dakota Century Code is amended and reenacted as follows:

18 **45-22-04. Limited liability partnership - Name.**

19 1. The name of a limited liability partnership:

20 a. Must be in the English language or in any other language, expressed in
21 English letters or characters.

22 b. Must contain ~~the~~:

23 (1) The words "limited liability partnership" or either the abbreviation
24 "L.L.P." or the abbreviation "LLP", either of which abbreviations can
25 may be used interchangeably for all purposes authorized by this
26 chapter, including real estate matters, contracts, and filings with the
27 secretary of state; or

28 (2) In the case of a foreign limited liability partnership, any other words or
29 abbreviations as may be authorized or required under the laws of the
30 jurisdiction of ~~original registration~~ origin.

- 1 c. May not contain a word or phrase ~~that indicates~~ indicating or ~~implies that it~~
2 implying the limited liability partnership may not be formed under this chapter.
- 3 d. May not contain the word "corporation", "company", "incorporated", "limited
4 liability company", "limited partnership", "limited liability limited partnership", or
5 any abbreviation of these words.
- 6 e. May not contain a word or phrase ~~that indicates~~ indicating or ~~implies that it~~
7 implying the limited liability partnership is formed for a purpose other than one
8 or more business purposes for which a partnership may be formed under
9 North Dakota law.
- 10 e. f. May not be the same as, or deceptively similar to:
- 11 (1) The name, whether foreign and authorized to do business in this state,
12 or domestic, unless there is filed with the registration a document ~~which~~
13 that complies with subsection 2 3 of this section, ~~or~~ of:
- 14 (a) Another limited liability partnership;
15 (b) A corporation;
16 (c) A limited liability company; ~~or~~
17 (d) A limited partnership; or
18 (e) A limited liability limited partnership;
- 19 (2) A name, the right to which is at the time of registration reserved in the
20 manner provided in section 10-19.1-14, 10-32-11, 10-33-11,
21 45-10.1-03, or 45-22-05;
- 22 (3) A fictitious name registered in the manner provided in chapter 45-11; or
23 (4) A trade name registered in the manner provided in chapter 47-25.
- 24 f. g. Need not be filed as provided in chapter 45-11 except ~~when~~ if transacting
25 business under a name other than the name as registered under this chapter.
- 26 2. The secretary of state shall determine whether a name is deceptively similar to
27 another name for purposes of this section.
- 28 3. If the secretary of state determines that a limited liability partnership name is
29 deceptively similar to another name for purposes of this chapter, ~~then~~ the limited
30 liability partnership name may not be used unless there is filed with the
31 registration:

- 1 a. The written consent of the holder of the rights to the name to which the
2 proposed name has been determined to be deceptively similar; or
3 b. A certified copy of a judgment of a court in this state establishing the ~~prior~~
4 earlier right of the applicant to the use of the name in this state.
- 5 4. This section and section 45-22-05 do not:
- 6 a. Abrogate or limit:
- 7 (1) The law of unfair competition or unfair practices;
8 (2) Chapter 47-25;
9 (3) The laws of the United States with respect to the right to acquire and
10 protect copyrights, trade names, trademarks, service names, and
11 service marks; or
12 (4) Any other rights to the exclusive use of names or symbols.
- 13 b. Derogate the common law or principles of equity.
- 14 5. A limited liability partnership that is merged with ~~another~~ a domestic or foreign
15 organization, that is registered by the reorganization of one or more domestic or
16 foreign organizations, or that acquires by sale, lease, or other disposition to or
17 exchange with a domestic organization all or substantially all of the assets of
18 another domestic or foreign organization including ~~its~~ the organization's name,
19 may have the same name as that used in this state by any of the other
20 organizations, if the other organization:
- 21 a. ~~Was~~ is incorporated, organized, formed, or registered under the laws of this
22 state;
- 23 b. Is authorized to transact business or conduct activities in this state;
- 24 c. Holds a reserved name in the manner provided in section 10-19.1-14,
25 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
- 26 d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
27 e. Holds a trade name registered in the manner provided in chapter 47-25.
- 28 6. The use of a name by a limited liability partnership in violation of this section does
29 not affect or vitiate ~~its~~ the limited liability partnership's status as a limited liability
30 partnership ~~existence~~. However, a court of this state may, upon application of the
31 state or of an interested or affected person, enjoin the limited liability partnership

1 from doing business under a name assumed in violation of this section, even
2 though ~~its~~ the limited liability partnership's registration may have been filed with the
3 secretary of state.

- 4 7. With respect to foreign limited liability partnerships:
- 5 a. A foreign limited liability partnership may register under any name that would
6 be available to a domestic limited liability partnership, regardless of whether
7 ~~or not~~ the name is the same under which ~~it~~ the foreign limited liability
8 partnership is authorized in ~~its~~ the jurisdiction of original registration.
- 9 b. A fictitious name certificate must be filed as provided in chapter 45-11 only
10 ~~when~~ if registering under a name other than the name as authorized in the
11 jurisdiction of original registration.

12 **SECTION 179. AMENDMENT.** Section 45-22-05 of the 1997 Supplement to the North
13 Dakota Century Code is amended and reenacted as follows:

14 **45-22-05. Reserved name.**

- 15 1. The exclusive right to the use of a limited liability partnership ~~or foreign limited~~
16 ~~liability partnership~~ name otherwise permitted by section 45-22-04 may be
17 reserved by any person.
- 18 2. The reservation is made by filing with the secretary of state a request that the
19 name be reserved together with the fees provided in section 45-22-22.
- 20 a. If the name is available for use by the applicant, the secretary of state shall
21 reserve the name for the exclusive use of the applicant for a period of twelve
22 months.
- 23 b. The reservation may be renewed for successive twelve-month periods.
- 24 3. The right to the exclusive use of a limited liability partnership ~~or foreign limited~~
25 ~~liability partnership~~ name reserved pursuant to this section may be transferred to
26 another person by or on behalf of the applicant for whom the name was reserved
27 by filing with the secretary of state a notice of the transfer and specifying the name
28 and address of the transferee together with the fees provided in section 45-22-22.
- 29 4. The right to the exclusive use of a limited liability partnership ~~or foreign limited~~
30 ~~liability partnership~~ name reserved pursuant to this section may be canceled by or
31 on behalf of the applicant for whom the name was reserved by filing with the

1 secretary of state a notice of cancellation together with the fees provided in section
2 45-22-22.

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

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

7 **SECTION 180. AMENDMENT.** Section 45-22-06 of the 1997 Supplement to the North
8 Dakota Century Code is amended and reenacted as follows:

9 **45-22-06. Failure to use required name.** If a person purports to enter into a contract
10 or other undertaking on behalf of a limited liability partnership and with intent to defraud does
11 not disclose to the other party that part of the limited liability partnership's name that complies
12 with subsection 1 of section 45-22-04, ~~then~~ that person is personally liable on the contract or
13 undertaking; unless that person can show in making the contract or accepting the undertaking
14 that the other party had knowledge or notice that the partnership was a limited liability
15 partnership, or did not rely on the partnership being an ordinary ~~general~~ partnership. Any
16 partner of a limited liability partnership who with intent to defraud consents to a person not
17 making the disclosure described in this section is also personally liable on the contract or
18 undertaking, unless that partner can make the showing described in this section.

19 **SECTION 181. AMENDMENT.** Section 45-22-07 of the 1997 Supplement to the North
20 Dakota Century Code is amended and reenacted as follows:

21 **45-22-07. Unauthorized assumption of limited liability partnership powers -**
22 **Liability.** A person who assumes to act as a limited liability partnership knowing that ~~he~~ a
23 registration ~~or renewal registration~~ is not in effect is jointly and severally liable for all debts and
24 liabilities incurred or arising as a result.

25 **SECTION 182.** Section 45-22-08.1 of the North Dakota Century Code is created and
26 enacted as follows:

27 **45-22-08.1. Partner liability.**

28 1. An obligation of a partnership incurred while the partnership is a domestic limited
29 liability partnership, whether arising in contract, tort, or otherwise, is solely the
30 obligation of the domestic limited liability partnership.

- 1 2. A partner is not personally liable, directly or indirectly, including by way of
2 indemnification, contribution, or otherwise under section 45-19-03, 45-20-06,
3 45-20-07, 45-21-03, or 45-21-06 or any other basis of law, for an obligation under
4 this section solely by reason of being a partner or acting as a partner.
- 5 3. This section applies notwithstanding any inconsistent provision in the partnership
6 agreement.
- 7 4. This section does not limit or impair the right of a domestic limited liability
8 partnership or the domestic limited liability partnership's partners to make claims
9 against any particular partner on the grounds that the particular partner has, in the
10 partner's capacity as a partner, breached a duty to a domestic limited liability
11 partnership.

12 **SECTION 183. AMENDMENT.** Section 45-22-10 of the 1997 Supplement to the North
13 Dakota Century Code is amended and reenacted as follows:

14 **45-22-10. Liability of partners for illegal distributions.** With respect to the liability of
15 partners for illegal distributions:

- 16 1. A Except as provided in subsection 3, a partner who receives a distribution from a
17 domestic limited liability partnership ~~that~~ which would have been in violation of
18 section 10-19.1-92 had the limited liability partnership been a corporation with a
19 board of directors is liable to the domestic limited liability partnership, ~~its~~ the
20 domestic limited liability partnership's receiver, or other person winding up ~~its~~ the
21 domestic limited liability partnership's affairs, but only to the extent that the
22 distribution received by the partner exceeded the amount that properly could have
23 been paid under section 10-19.1-92.
- 24 2. An action may not be commenced under this section more than two years from the
25 date of the distribution.
- 26 3. A partner actively engaged in the partnership business is not liable to the domestic
27 limited liability partnership for any distribution that is or was regularly paid to the
28 partner on account of engagement in the partnership business to the extent the
29 distribution is reasonable compensation for the partner's services to or on behalf of
30 the partnership.

1 **SECTION 184. AMENDMENT.** Section 45-22-11 of the 1997 Supplement to the North
2 Dakota Century Code is amended and reenacted as follows:

3 **45-22-11. Registered office and agent.**

- 4 1. A limited liability partnership ~~or foreign limited liability partnership~~ 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 principal executive office of
7 the limited liability partnership ~~or foreign limited liability partnership~~.
- 8 2. A limited liability partnership ~~or foreign limited liability partnership~~ shall appoint and
9 continuously maintain a registered agent in ~~its~~ the registration who may be:
- 10 a. An individual residing in this state;
- 11 b. A domestic corporation, a domestic limited liability company, or a domestic
12 limited liability partnership; or
- 13 c. A foreign corporation, foreign limited liability company, or foreign limited
14 liability partnership authorized to transact business in this state.
- 15 3. Proof of the registered agent's consent to serve in ~~that~~ the capacity of registered
16 agent must be filed with the secretary of state, together with the fees provided in
17 section 45-22-22.

18 **SECTION 185. AMENDMENT.** Section 45-22-12 of the 1997 Supplement to the North
19 Dakota Century Code is amended and reenacted as follows:

20 **45-22-12. Change of registered office or agent.**

- 21 1. A limited liability partnership ~~or foreign limited liability partnership~~ may change ~~its~~
22 the limited liability partnership's registered office, change ~~its~~ the limited liability
23 partnership's registered agent, or state a change in the name of ~~its~~ the limited
24 liability partnership's registered agent, by filing with the secretary of state, along
25 with the fees provided in section 45-22-22, a statement containing:
- 26 a. The name of the limited liability partnership ~~or foreign limited liability~~
27 ~~partnership~~.
- 28 b. If the address of ~~its~~ the limited liability partnership's registered office is ~~to be~~
29 ~~changed~~ changing, the new address of ~~its~~ the limited liability partnership's
30 registered office.

- 1 c. If ~~its~~ the limited liability partnership's registered agent is to be designated or
2 ~~changed~~ is changing, the name of ~~its~~ the limited liability partnership's new
3 registered agent.
- 4 d. If the name of ~~its~~ the limited liability partnership's registered agent is ~~to be~~
5 ~~changed~~ changing, the name of ~~its~~ the limited liability partnership's registered
6 agent as changed.
- 7 e. A statement that the address of ~~its~~ the limited liability partnership's registered
8 office and the address of the business office of ~~its~~ the limited liability
9 partnership's registered agent, as changed, will be identical.
- 10 f. A statement that the change of registered office or registered agent was
11 authorized by resolution of the partnership.
- 12 2. A registered agent may resign by filing with the secretary of state a written notice
13 of resignation, including a statement that a signed copy of the notice ~~has been~~ was
14 given to the limited liability partnership ~~or foreign limited liability partnership~~ at ~~its~~
15 the limited liability partnership's principal executive office, or to a legal
16 representative of the limited liability partnership ~~or foreign limited liability~~
17 ~~partnership~~. The appointment of the agent terminates thirty days after the notice is
18 filed with the secretary of state.
- 19 3. If the business address or name of a registered agent changes, the agent shall
20 change the address of the registered office or name of the registered agent of
21 each limited liability partnership ~~or foreign limited liability partnership~~ represented
22 by that agent by filing with the secretary of state a statement for each limited
23 liability partnership ~~or foreign limited liability partnership~~ as required in
24 subsection 1, except ~~that it~~ the statement need be signed only by the registered
25 agent, need not be responsive to subdivision c or f of subsection 1, and must state
26 that a copy of the statement ~~has been~~ was mailed to each of those limited liability
27 partnerships ~~or foreign limited liability partnerships~~ or to the legal representative of
28 each of those limited liability partnerships ~~or foreign limited liability partnerships~~.
- 29 4. The fee prescribed in section 45-22-22 for the change of registered office must be
30 refunded ~~when~~ if, in the opinion of the secretary of state, the change of address of
31 registered office results from rezoning or postal reassignment.

1 **SECTION 186. AMENDMENT.** Section 45-22-13 of the 1997 Supplement to the North
2 Dakota Century Code is amended and reenacted as follows:

3 **45-22-13. Voluntary withdrawal of status.**

4 1. A partnership may end ~~its~~ the partnership's status as a limited liability partnership
5 ~~or foreign limited liability partnership~~ at any time by filing a withdrawal statement
6 with the secretary of state.

7 2. The withdrawal statement must contain:

8 a. With respect to a domestic limited liability partnership:

9 (1) The name of the domestic limited liability partnership.

10 (2) A statement that the domestic limited liability partnership is withdrawing
11 ~~its~~ the current registration.

12 (3) An acknowledgment by the domestic limited liability partnership that the
13 withdrawal ends ~~its~~ the domestic limited liability partnership's status as
14 a limited liability partnership status with respect to periods after the
15 effective date of the withdrawal.

16 b. With respect to a foreign limited liability partnership:

17 (1) The name of the foreign limited liability partnership.

18 (2) The jurisdiction of origin.

19 (3) A statement that the foreign limited liability partnership is not
20 transacting business in this state as a foreign limited liability
21 partnership.

22 (4) A statement that the foreign limited liability partnership surrenders ~~its~~
23 authority to transact business in this state as a foreign limited liability
24 partnership and is withdrawing ~~its~~ the foreign limited liability
25 partnership's current registration.

26 (5) An acknowledgment by the foreign limited liability partnership that the
27 withdrawal ends ~~its~~ the foreign limited liability partnership's
28 authorization to transact business in this state as a foreign limited
29 liability partnership status in this state with respect to periods after the
30 effective date of the withdrawal.

1 (6) A statement that the foreign limited liability partnership revokes the
2 authority of ~~its~~ the foreign limited liability partnership's registered agent
3 in this state to accept service of process and consents that service of
4 process based upon any cause of action arising in this state during the
5 time the foreign limited liability partnership was authorized to transact
6 business in this state may be made on the foreign limited liability
7 partnership by service upon the secretary of state.

8 (7) A post-office address to which a person may mail a copy of any
9 process against the foreign limited liability partnership.

10 3. The withdrawal statement may state a delayed withdrawal date, ~~if that date is~~
11 ~~before the expiration date of the current registration.~~ If the withdrawal statement
12 does not state an effective date, ~~then~~ the statement is effective when filed.

13 4. If the foreign limited liability partnership is not the surviving organization in a
14 merger or termination, ~~then~~ the filing with the secretary of state of a certificate to
15 that effect authenticated by the proper officer of the state or country under the laws
16 of which the foreign limited liability partnership is originally registered constitutes a
17 valid withdrawal statement.

18 **SECTION 187. AMENDMENT.** Section 45-22-14 of the 1997 Supplement to the North
19 Dakota Century Code is amended and reenacted as follows:

20 **45-22-14. Filing after dissolution.**

21 1. A dissolved limited liability partnership ~~or a foreign limited liability partnership~~ that
22 is winding up ~~its~~ affairs may continue ~~its~~ the limited liability partnership's status as
23 a limited liability partnership ~~or foreign limited liability partnership~~ through
24 termination ~~either~~ by:

25 a. ~~Continuing~~ continuing to file an annual renewal registrations report until
26 termination; ~~or,~~

27 b. ~~Filing a final renewal registration that, in addition to providing the information~~
28 ~~required by subsection 3 of section 45-22-03:~~

29 (1) ~~States the partnership is dissolved and is winding up its affairs.~~

30 (2) ~~Identifies the cause of the dissolution.~~

- 1 (3) ~~States the renewal registration is the final renewal registration and will~~
2 ~~remain in effect until termination.~~
- 3 2. ~~A final renewal registration that complies with subdivision b of subsection 1 must~~
4 ~~not contain the statement required in:~~
- 5 a. ~~Paragraph 6 of subdivision a of subsection 3 of section 45-22-03 in the case~~
6 ~~of a domestic limited liability partnership; or~~
- 7 b. ~~Paragraph 8 of subdivision b of subsection 3 of section 45-22-03 in the case~~
8 ~~of a foreign limited liability partnership.~~
- 9 3. ~~When the dissolved limited liability partnership or foreign limited liability~~
10 ~~partnership has wound~~ winds up its affairs, it the limited liability partnership shall
11 file with the secretary of state a termination notice, together with the fees provided
12 in section 45-22-22. The termination notice must:
- 13 a. Contain:
- 14 (1) The name of the limited liability partnership ~~or foreign limited liability~~
15 ~~partnership.~~
- 16 (2) A statement the limited liability partnership ~~or foreign limited liability~~
17 ~~partnership has dissolved and wound up its affairs.~~
- 18 (3) A statement the limited liability partnership ~~or foreign limited liability~~
19 ~~partnership is terminated.~~
- 20 b. Be signed by one former managing partner who ~~has~~ did not wrongfully
21 ~~dissolved~~ dissolve the partnership or, in the case of a foreign limited liability
22 partnership, by ~~a managing~~ an authorized partner.

23 **SECTION 188. AMENDMENT.** Section 45-22-15 of the 1997 Supplement to the North
24 Dakota Century Code is amended and reenacted as follows:

25 **45-22-15. Limited liability after dissolution.** With respect to limited liability after
26 dissolution:

- 27 1. Subject to section 45-22-14, the limited liability shield described in sections
28 45-22-08 and 45-22-09 continues in full force for the dissolved domestic limited
29 liability partnership regardless of any dissolution, winding up, and termination.
- 30 2. If a domestic limited liability partnership dissolves and ~~its~~ the domestic limited
31 liability partnership's business is continued by a successor general partnership

1 under section 45-20-02, ~~then~~ the limited liability described in ~~sections~~ section
2 45-22-08 ~~and 45-22-09~~ also applies to that successor domestic limited liability
3 partnership until the ~~expiration~~ withdrawal of the registration that the dissolved
4 domestic limited liability partnership had in effect under section 45-22-03 at the
5 moment of dissolution. The successor ~~general~~ partnership may at any time file ~~its~~
6 the partnership's own registration under section 45-22-03.

7 **SECTION 189. AMENDMENT.** Section 45-22-16 of the 1997 Supplement to the North
8 Dakota Century Code is amended and reenacted as follows:

9 **45-22-16. Revocation of registration.**

- 10 1. The registration of a limited liability partnership ~~or foreign limited liability~~
11 ~~partnership~~ may be revoked by the secretary of state upon the occurrence of any
12 of these events:
- 13 a. The limited liability partnership ~~or foreign limited liability partnership has failed~~
14 fails:
- 15 (1) To appoint and maintain a registered agent as required by this chapter;
16 (2) To file a report upon any change in the name or business address of
17 the registered agent; or
18 (3) To file any ~~required~~ amendment to ~~its~~ the limited liability partnership's
19 registration; or required to be filed pursuant to subdivision b or c of
20 subsection 4 of section 45-22-03.
21 ~~(4) To file a renewal registration as provided in subsection 2 of section~~
22 ~~45-22-03.~~
- 23 b. An intentional misrepresentation ~~has been~~ is made in any material matter in
24 any registration, report, affidavit, or other document submitted by the limited
25 liability partnership ~~or foreign limited liability partnership~~ pursuant to this
26 chapter.
- 27 2. The secretary of state may not revoke the registration of a limited liability
28 partnership ~~or foreign limited liability partnership~~ unless:
- 29 a. The secretary of state ~~has given~~ gave the limited liability partnership ~~or~~
30 ~~foreign limited liability partnership~~ at least sixty days' notice of the reason for
31 the pending revocation by mail addressed to ~~its~~ the limited liability

- 1 ~~partnership's~~ registered office or, if the limited liability partnership ~~or foreign~~
2 ~~limited liability partnership~~ fails to appoint and maintain a registered agent in
3 this state, ~~then~~ by mail addressed to ~~its~~ the limited liability partnership's
4 principal executive office; and
- 5 b. During the sixty-day period, the limited liability partnership ~~or foreign limited~~
6 ~~liability partnership has failed~~ fails:
- 7 (1) To appoint and maintain a registered agent as required by this chapter;
- 8 (2) To file the report of change regarding the name or business address of
9 the registered agent;
- 10 (3) To file ~~the required~~ any amendment to ~~its~~ the limited liability
11 partnership's registration required to be filed pursuant to subdivision b
12 or c of subsection 4 of section 45-22-03; or
- 13 (4) ~~To file a renewal registration as provided in subsection 2 of section~~
14 ~~45-22-03; or~~
- 15 (5) To correct the misrepresentation.
- 16 3. Upon the expiration of the sixty-day period without the limited liability partnership
17 ~~or foreign limited liability partnership having cured~~ curing the reason for the
18 pending revocation set forth in the notice, the registration is revoked. The
19 secretary of state shall note the revocation in the records of the secretary of state
20 and shall give notice of the revocation to the limited liability partnership ~~or foreign~~
21 ~~limited liability partnership~~. Notice by the secretary of state must be mailed to the
22 last registered agent at the last registered office of record. If the limited liability
23 partnership ~~or foreign limited liability partnership failed~~ fails to appoint and
24 maintain a registered office in this state, ~~then~~ the notice must be mailed to its the
25 limited liability partnership's principal executive office.

26 **SECTION 190. AMENDMENT.** Section 45-22-17 of the 1997 Supplement to the North
27 Dakota Century Code is amended and reenacted as follows:

28 **45-22-17. Service of process on a limited liability partnership ~~or foreign limited~~**
29 **~~liability partnership.~~**

- 30 1. A process, notice, or demand required or permitted by law to be served on a
31 limited liability partnership ~~or foreign limited liability partnership~~ may be served

- 1 ~~either~~ on the registered agent or on any responsible person found at the registered
2 office or on the secretary of state as provided in this section.
- 3 2. If neither the registered agent nor a responsible person can be found at the
4 registered office and if a responsible person affiliated with the limited liability
5 partnership ~~or foreign limited liability partnership~~ cannot be found at the principal
6 place of business in this state, the secretary of state is the agent of the limited
7 liability partnership ~~or foreign limited liability partnership~~ on whom the process,
8 notice, or demand may be served.
- 9 a. The return of the sheriff, or affidavit of a person not a party, that ~~ne a~~
10 registered agent or responsible person ~~may~~ cannot be found at ~~either~~ the
11 registered office or at the principal place of business in this state is conclusive
12 evidence ~~that~~ the limited liability partnership ~~or foreign limited liability~~
13 ~~partnership~~ has no registered agent or responsible person at ~~its~~ the limited
14 liability partnership's registered office or at ~~its~~ the limited liability partnership's
15 principal place of business in this state.
- 16 b. Service on the secretary of state of any process, notice, or demand is
17 deemed personal service on the limited liability partnership ~~or foreign limited~~
18 ~~liability partnership~~ and may be made by filing with the secretary of state one
19 original and two copies of the process, notice, or demand together with the
20 fees provided in section 45-22-22.
- 21 c. The secretary of state immediately shall forward, by certified mail addressed
22 to the limited liability partnership ~~or foreign limited liability partnership~~ at ~~its~~
23 the limited liability partnership's registered office or ~~at its~~ principal place of
24 business in this state, a copy of the process, notice, or demand.
- 25 d. Service on the secretary of state is returnable in not less than thirty days,
26 notwithstanding a shorter period specified in the process, notice, or demand.
- 27 3. The secretary of state shall maintain a record of every process, notice, and
28 demand served on the secretary of state under this section, including the date of
29 service and the action taken with reference to ~~it~~ the process, notice, or demand.

- 1 4. This section does not limit the right of a person to serve process, notice, or
2 demand required or permitted by law to be served on a limited liability partnership
3 or ~~foreign limited liability partnership~~ in any other manner permitted by law.

4 **SECTION 191. AMENDMENT.** Section 45-22-18 of the 1997 Supplement to the North
5 Dakota Century Code is amended and reenacted as follows:

6 **45-22-18. Foreign limited liability partnership governing law.**

- 7 1. The laws of the foreign limited liability partnership's jurisdiction ~~under which a~~
8 ~~foreign limited liability partnership is originally registered~~ of origin govern its
9 organization, internal affairs, and the liability of partners for the debts, obligations,
10 and liabilities of or chargeable to the partnership or another partner or partners.:
- 11 a. The relations among the partners of a foreign limited liability partnership, or
12 the relations between any partner or partners of a foreign limited liability
13 partnership and the foreign limited liability partnership; and
- 14 b. The liability of partners for obligations of a foreign limited liability partnership.
- 15 2. A foreign limited liability partnership may not be denied registration to transact
16 business in this state by reason of any difference between ~~these~~ the laws of the
17 foreign limited liability partnership's jurisdiction of origin and the laws of this state.
- 18 3. A foreign limited liability partnership holding a valid registration in this state has the
19 same, but no greater, rights and privileges as a domestic limited liability
20 partnership. The registration does not authorize the foreign limited liability
21 partnership to engage in any business or exercise any ~~of its powers for purposes~~
22 power that a domestic limited liability partnership ~~is forbidden by law to exercise in~~
23 ~~this state~~ may not engage in or exercise as a limited liability partnership.

24 **SECTION 192. AMENDMENT.** Section 45-22-20 of the 1997 Supplement to the North
25 Dakota Century Code is amended and reenacted as follows:

26 **45-22-20. Transaction of business by a foreign limited liability partnership**
27 **without registration.**

- 28 1. A foreign limited liability partnership transacting business in this state may not
29 maintain any cause of action in any court of this state until the partnership ~~has~~
30 ~~registered~~ registers with the secretary of state.

- 1 2. The failure of a foreign limited liability partnership to register with the secretary of
2 state does not impair the validity of any contract or act of the foreign limited liability
3 partnership or prevent the foreign limited liability partnership from defending any
4 claim for relief in any court of this state.
- 5 3. A limitation on the personal liability of a partner is not waived solely by the foreign
6 limited liability partnership transacting business in this state without having filed a
7 registration with the secretary of state.
- 8 4. A foreign limited liability partnership, by transacting business in this state without
9 ~~having registered~~ registering with the secretary of state, appoints the secretary of
10 state as ~~its~~ the agent upon whom any notice, process, or demand may be served.

11 **SECTION 193. AMENDMENT.** Subsection 1 of section 45-22-21 of the 1997

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

- 13 1. The following activities of a foreign limited liability partnership, among others, do
14 not constitute transacting business within the meaning of this chapter:
- 15 a. Maintaining, defending, or settling any proceeding.
- 16 b. Holding meetings of ~~its~~ partners or carrying on any other activities concerning
17 ~~its~~ internal affairs.
- 18 c. Maintaining bank accounts.
- 19 d. Maintaining offices or agencies for the transfer, exchange, and registration of
20 the foreign limited liability partnership's own partnership interests or
21 maintaining trustees or depositories with respect to those partnership
22 interests.
- 23 e. Selling through independent contractors.
- 24 f. Soliciting or obtaining orders, whether by mail or through employees or
25 agents or otherwise, if the orders require acceptance outside this state before
26 ~~they~~ the orders become contracts.
- 27 g. Creating or acquiring indebtedness, ~~mortgages~~ with or without a mortgage,
28 ~~and or other~~ security interests in real or personal property.
- 29 h. ~~Securing or collecting~~ Collecting debts or enforcing, including foreclosing
30 mortgages; and security interests in property securing the debts canceling
31 contracts for deed; enforcing other security interests on property; securing

1 debts; accepting deeds or other instruments of title from debtors in lieu of
2 foreclosure; canceling or other enforcement; and holding, protecting, and
3 maintaining property acquired under this subdivision.

4 i. ~~Holding, protecting, renting, maintaining, and operating real or personal~~
5 ~~property in this state so acquired.~~

6 j. Selling or transferring title to property in this state to any person.

7 ~~k.~~ j. Conducting an isolated transaction that is completed within thirty days and
8 that is not one in the course of repeated transactions of a like manner.

9 k. Transacting business in interstate commerce.

10 **SECTION 194.** Section 45-22-21.1 of the North Dakota Century Code is created and
11 enacted as follows:

12 **45-22-21.1. Secretary of state - Annual report of domestic limited liability**
13 **partnership and foreign limited liability partnership.**

14 1. Each domestic limited liability partnership and each foreign limited liability
15 partnership authorized to transact business in this state, shall file, within the time
16 prescribed by subsection 3, an annual report setting forth:

17 a. The name of the limited liability partnership and the jurisdiction of origin.

18 b. The address of the registered office of the limited liability partnership in this
19 state, and the name of the limited liability partnership's registered agent in this
20 state at that address.

21 c. The address of the limited liability partnership's chief executive office.

22 d. A brief statement of the character of the business in which the limited liability
23 partnership is actually engaged in this state.

24 e. The name and respective address of each managing partner of the domestic
25 limited liability partnership or foreign limited liability partnership.

26 2. The annual report must be submitted on forms prescribed by the secretary of state.

27 The information provided must be given as of the date of the execution of the

28 report. The annual report must be signed as prescribed in subsection 16 of

29 section 45-22-01, the partnership agreement, or in a resolution approved by the

30 affirmative vote of the required proportion or number of partners. If the limited

31 liability partnership is in the hands of a receiver or trustee, the annual report must

- 1 be signed on behalf of the limited liability partnership by the receiver or trustee.
- 2 The secretary of state may destroy any annual report provided for in this section
- 3 after the annual report is on file for six years.
- 4 3. The annual report of a limited liability partnership must be delivered to the
- 5 secretary of state before April first of each year, except the first annual report of a
- 6 limited liability partnership must be delivered before April first of the year following
- 7 the calendar year in which the registration is filed by the secretary of state. A
- 8 limited liability partnership in existence on July 1, 1999, shall file the first annual
- 9 report before April first in the year of the expiration of the registration in effect on
- 10 July 1, 1999.
- 11 a. An annual report in a sealed envelope postmarked by the United States
- 12 postal service before April first, or an annual report in a sealed packet with a
- 13 verified shipment date by any other carrier service before April first, complies
- 14 with this requirement.
- 15 b. The secretary of state must file the annual report if the annual report
- 16 conforms to the requirements of subsection 2.
- 17 (1) If the annual report does not conform, the annual report must be
- 18 returned to the limited liability partnership for any necessary
- 19 corrections.
- 20 (2) If the annual report is filed before the deadlines prescribed in this
- 21 subsection, penalties for the failure to file a report within the time
- 22 provided do not apply if the annual report is corrected to conform to the
- 23 requirements of subsection 2 and returned to the secretary of state
- 24 within thirty days after the annual report was returned by the secretary
- 25 of state for correction.
- 26 4. After the date established under subsection 3, the secretary of state shall notify
- 27 any limited liability partnership failing to file an annual report that the limited liability
- 28 partnership's registration is not in good standing and the limited liability partnership
- 29 may be revoked pursuant to subsection 5.
- 30 a. The secretary of state shall mail notice of revocation to the last registered
- 31 agent at the last registered office of record.

- 1 b. If the limited liability partnership files an annual report after the notice is
2 mailed, together with the annual report filing fee and late filing penalty fee as
3 prescribed by section 45-22-22, the secretary of state shall restore the limited
4 liability partnership's registration to good standing.
- 5 5. A domestic limited liability partnership that does not file an annual report, along
6 with the statutory filing and penalty fees, within six months after the date
7 established in subsection 3, forfeits the limited liability partnership's registration.
- 8 a. The secretary of state shall note the revocation of the domestic limited liability
9 partnership's registration on the records of the secretary of state and shall
10 give notice of the action to the revoked domestic limited liability partnership.
- 11 b. Notice by the secretary of state must be mailed to the domestic limited liability
12 partnership's last registered agent at the last registered office of record.
- 13 6. A foreign limited liability partnership that does not file an annual report, along with
14 the statutory filing and penalty fees, within six months after the date established by
15 subsection 3, forfeits the foreign limited liability partnership's registration and
16 authority to transact business in this state.
- 17 a. The secretary of state shall note the revocation of the foreign limited liability
18 partnership's registration and authority on the records of the secretary of state
19 and shall give notice of the action to the foreign limited liability partnership.
- 20 b. Notice by the secretary of state must be mailed to the foreign limited liability
21 partnership's last registered agent at the last registered office of record.
- 22 c. The secretary of state's decision that a registration must be revoked under
23 this subsection is final.
- 24 7. A domestic limited liability partnership with a registration that is revoked for failure
25 to file an annual report or a foreign limited liability partnership with registration and
26 authority that are forfeited by failure to file an annual report may be reinstated by
27 filing a past-due report, together with the statutory filing and penalty fees for an
28 annual report and a reinstatement fee as prescribed in section 45-22-22. The fees
29 must be paid and the report filed within one year following the revocation.
30 Reinstatement under this subsection does not affect any right or liability of a

1 domestic limited liability partnership or a foreign limited liability partnership for the
2 time from the revocation to the reinstatement.

3 **SECTION 195. AMENDMENT.** Section 45-22-22 of the 1997 Supplement to the North
4 Dakota Century Code is amended and reenacted as follows:

5 **45-22-22. Fees and charges.**

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

7 a. Filing a registration as a domestic limited liability partnership, twenty-five
8 dollars. ~~When~~ If there are more than two managing partners, an additional
9 three dollars must be paid for each additional managing partner not to exceed
10 two hundred fifty dollars.

11 b. Filing a ~~renewal~~ registration as a foreign limited liability partnership,
12 ~~twenty-five~~ fifty dollars.

13 c. ~~Late filing of a renewal registration after the lapse of a registration, twenty~~
14 ~~dollars. This fee is in addition to the renewal registration fee.~~ Filing an
15 annual report of a domestic limited liability partnership or foreign limited
16 liability partnership, twenty-five dollars. The secretary of state shall charge
17 and collect additional fees for late filing of an annual report as follows:

18 (1) After the date prescribed in subsection 3 of section 45-22-21.1, twenty
19 dollars; and

20 (2) After the revocation of the domestic limited liability partnership
21 registration or the foreign limited liability partnership registration, the
22 reinstatement fee of fifty dollars.

23 d. Filing a statement of correction; or amended registration, twenty-five dollars.

24 e. Filing an application to reserve a name, ten dollars.

25 f. Filing a notice of transfer of a reserved name, ten dollars.

26 g. Filing a cancellation of reserved name, ten dollars.

27 h. Filing a consent to use of name, ten dollars.

28 i. Filing a statement of change of address of registered office or change of
29 registered agent or both, ten dollars.

- 1 j. Filing a statement of change of address of registered office by registered
2 agent, ten dollars for each domestic limited liability partnership or foreign
3 limited liability partnership affected by ~~such~~ the change.
- 4 k. Filing a registered agent's consent to serve in ~~such~~ the capacity of registered
5 agent, ten dollars.
- 6 l. Filing a resignation as registered agent, ten dollars.
- 7 m. Filing a notice of withdrawal, ten dollars.
- 8 n. Filing a certificate of fact stating a merger of a foreign limited liability
9 partnership registered with the secretary of state, fifty dollars.
- 10 o. Filing any other statement of a domestic limited liability partnership, ten
11 dollars.
- 12 p. Filing any process, notice, or demand for service, twenty-five dollars.
- 13 q. ~~Filing a registration as a foreign limited liability partnership, fifty dollars.~~ Any
14 document submitted for approval before the actual time of submission for
15 filing, one-half of the fee provided in this section for filing the document.
- 16 2. The secretary of state shall charge and collect for:
- 17 a. Furnishing a copy of any document, instrument, or paper relating to a
18 domestic limited liability partnership or foreign limited liability partnership, one
19 dollar for every four pages, or fraction ~~thereof~~ of pages.
- 20 b. A certificate certifying a copy or reciting facts related to a domestic limited
21 liability partnership or foreign limited liability partnership, twenty dollars.
- 22 c. Each page of any document or form sent by electronic transmission, one
23 dollar.

24 **SECTION 196. AMENDMENT.** Section 45-22-23 of the 1997 Supplement to the North
25 Dakota Century Code is amended and reenacted as follows:

26 **45-22-23. Powers - Enforcement - Penalty - Appeal.**

- 27 1. The secretary of state shall administer this chapter.
- 28 2. The secretary of state may propound to any limited liability partnership ~~or foreign~~
29 ~~limited liability partnership~~ subject to this chapter and to any partner, any
30 interrogatory reasonably necessary and proper to ascertain whether the
31 partnership has complied with this chapter.

- 1 a. Any interrogatory must be answered within thirty days after mailing, or within
2 any additional time fixed by the secretary of state. ~~The answers~~ Every
3 answer to the interrogatory must be full and complete and be made in writing
4 and under oath.
- 5 b. If an interrogatory is directed:
- 6 (1) To an individual, ~~# the interrogatory~~ must be answered by that
7 individual; ~~or~~
- 8 (2) To a domestic limited liability partnership ~~or foreign limited liability~~
9 ~~partnership~~, ~~# the interrogatory~~ must be answered by a managing
10 partner; ~~or~~
- 11 (3) To a foreign limited liability partnership, the interrogatory must be
12 answered by a resident partner or, if no partner is a resident partner, a
13 partner designated by the foreign limited liability partnership.
- 14 c. The secretary of state need not file any document to which an interrogatory
15 relates until the interrogatory ~~has been~~ is answered, ~~and not then~~ except if
16 the answers disclose ~~that such~~ the document is not in conformity with this
17 chapter.
- 18 d. The secretary of state shall certify to the attorney general, for any action the
19 attorney general determines appropriate, any interrogatory and answers
20 ~~which that~~ disclose a violation of this chapter.
- 21 e. Each managing partner of a domestic limited liability partnership or a resident
22 partner or designated partner of a foreign limited liability partnership who fails
23 or refuses within the time provided by this section to answer truthfully and
24 fully every interrogatory propounded to that person by the secretary of state is
25 guilty of an infraction.
- 26 f. Any interrogatory propounded by the secretary of state and the answers are
27 not open to public inspection under section 44-04-18. The secretary of state
28 may not disclose any ~~facts~~ fact or information obtained from an interrogatory
29 ~~except insofar as may be~~ to the extent permitted by law or ~~insofar as is~~
30 required for evidence in any criminal ~~proceedings~~ proceeding or other action
31 by this state.

- 1 3. If the secretary of state rejects any document required by this chapter to be
2 approved by the secretary of state before the document may be filed, the secretary
3 of state, ~~within ten days after receipt of the document,~~ shall give written notice of
4 the rejection to the person who delivered the document, specifying the reasons for
5 rejection. That person may appeal to the district court of the county in which the
6 registered office of the domestic limited liability partnership or foreign limited
7 liability partnership is, or is proposed to be, situated by filing with the clerk of ~~such~~
8 that court a petition setting forth a copy of the document sought to be filed and a
9 copy of the written rejection of the document by the secretary of state. The court
10 shall try the matter de novo. The court shall ~~either~~ sustain the action of the
11 secretary of state or direct the secretary of state to take any action the court
12 determines proper.
- 13 4. If the secretary of state revokes the registration of any foreign limited liability
14 partnership pursuant to section 45-22-16, the foreign limited liability partnership
15 may appeal to district court of the county where the registered office of the foreign
16 limited liability partnership in this state is situated by filing with the clerk of ~~such~~
17 that court a petition setting forth a copy of ~~its~~ the foreign limited liability
18 partnership's registration and a copy of the notice of revocation given by the
19 secretary of state. The court shall try the matter de novo. The court shall ~~either~~
20 sustain the action of the secretary of state or direct the secretary of state to take
21 any action the court determines proper.
- 22 5. The attorney general may maintain an action to restrain a foreign limited liability
23 partnership from transacting business in this state in violation of this chapter.

24 **SECTION 197. AMENDMENT.** Subsection 2 of section 45-22-24 of the 1997

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

- 26 2. A certificate by the secretary of state under the great seal of this state, as to the
27 existence or nonexistence of the facts relating to domestic limited liability
28 partnerships or foreign limited liability partnerships which would not appear from a
29 certified copy of any of the foregoing documents or certificates, must be taken and
30 received in all courts, public offices, and official bodies as prima facie evidence of
31 the existence or nonexistence of the facts stated.

1 **SECTION 198. AMENDMENT.** Section 45-22-25 of the 1997 Supplement to the North
2 Dakota Century Code is amended and reenacted as follows:

3 **45-22-25. Forms to be furnished by the secretary of state.** ~~All renewal registrations~~
4 Every annual report must be made on forms prescribed by the secretary of state. Upon
5 request, the secretary of state may furnish forms for all other documents to be filed in the office
6 of the secretary of state. However, the use of these documents, unless otherwise specifically
7 required by law, is not mandatory.

8 **SECTION 199. AMENDMENT.** Section 45-22-26 of the 1997 Supplement to the North
9 Dakota Century Code is amended and reenacted as follows:

10 **45-22-26. Audit reports and audit of limited liability partnerships receiving state**
11 **subsidies for production of alcohol or methanol for combination with gasoline.** Any
12 limited liability partnership ~~or foreign limited liability partnership~~ that produces agricultural ethyl
13 alcohol or methanol within this state and which receives a production subsidy from the state,
14 whether in the form of reduced taxes or otherwise, shall submit an annual audit report,
15 prepared by a certified public accountant based on an audit of all records and accounts of the
16 limited liability partnership ~~or foreign limited liability partnership~~, to the legislative audit and
17 fiscal review committee. The audit must be submitted within ninety days of the close of the
18 taxable year of the limited liability partnership ~~or foreign limited liability partnership~~. Upon
19 request of the legislative audit and fiscal review committee, the state auditor shall conduct an
20 audit of the records and accounts of any limited liability partnership ~~or foreign limited liability~~
21 ~~partnership~~ required to submit an annual report under this section.

22 **SECTION 200. AMENDMENT.** Subdivision b of subsection 1 of section 45-22-27 of
23 the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

24 b. "Private limited liability partnership" means a domestic limited liability
25 partnership or foreign limited liability partnership, one of the purposes of
26 which is to establish, operate, and maintain a foreign trade zone by itself or in
27 conjunction with a public corporation.

28 **SECTION 201.** Chapter 45-23 of the North Dakota Century Code is created and
29 enacted as follows:

30 **45-23-01. Definitions.** In this chapter, unless the context otherwise requires:

31 1. "Address" means:

- 1 a. In case of a registered office or principal executive office, the mailing address
2 of the actual office location which may not be only a post-office box; and
3 b. In all other cases, the mailing address.
- 4 2. "Domestic limited liability limited partnership" means a limited liability limited
5 partnership that is formed under this chapter.
- 6 3. "Filed with the secretary of state", except as otherwise permitted by law or rule,
7 means:
- 8 a. That a signed original or legible facsimile telecommunication of a signed
9 original of a request for reserved name or a signed original of all of the
10 documents meeting the applicable requirements of this chapter, together with
11 the fees provided in section 45-23-08, was delivered to the secretary of state
12 and was determined by the secretary of state to conform to law.
- 13 b. That the secretary of state shall then endorse on the original the word "filed"
14 and the month, day, and year and record the document in the office of the
15 secretary of state.
- 16 4. "Foreign limited liability limited partnership" means a limited liability limited
17 partnership that is:
- 18 a. Organized under the laws other than the laws of this state for a purpose or
19 purposes for which a limited liability limited partnership may be organized
20 under this chapter; and
- 21 b. In good standing in the jurisdiction of origin.
- 22 5. "Foreign limited partnership" means a limited partnership that is:
- 23 a. Organized under laws other than the laws of this state for a purpose for which
24 a limited partnership may be organized under chapter 45-10.1; and
- 25 b. Authorized to transact business in this state as provided in chapter 45-10.1.
- 26 6. "Jurisdiction of origin" refers to the jurisdiction in which the limited liability limited
27 partnership status of a foreign limited liability limited partnership was created.
- 28 7. "Limited liability limited partnership" means a domestic limited liability limited
29 partnership.
- 30 8. "Limited partnership" means a limited partnership formed under chapter 45-10.1.
- 31 9. "Notice":

- 1 a. Is given to a limited liability limited partnership or to a partner of the limited
2 liability limited partnership when in writing and mailed or delivered to the
3 limited liability limited partnership or to the partner at the registered office or
4 principal executive office of the partnership; and
- 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 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 if there is no one in charge, when left in a
11 conspicuous place in the office and if the office is closed or the person
12 to be notified has no office, when left at the dwelling house or usual
13 place of abode of the person with some person of suitable age and
14 discretion residing in that house or abode.
- 15 c. Is given when deposited in the United States mail with sufficient postage
16 affixed.
- 17 d. Is deemed received when given.
- 18 10. "Principal executive office" means:
- 19 a. An office from which the limited liability limited partnership conducts business;
20 or
- 21 b. If the limited liability limited partnership has no office from which the limited
22 liability limited partnership conducts business, then the registered office of the
23 limited liability limited partnership.
- 24 11. "Registered office" means the place in this state designated as the registered
25 office of the limited liability limited partnership.
- 26 12. "Signed" means the signature of a person is placed on a document, as provided in
27 section 41-01-11.
- 28 a. With respect to a document required by this chapter to be filed with the
29 secretary of state, means the document is signed by a person authorized to
30 sign by this chapter, or pursuant to an agreement among the partners, or by a

- 1 resolution approved by the affirmative vote of the required proportion or
2 number of partners; and
3 b. With respect to a document not required by this chapter to be filed with the
4 secretary of state, the signature may be a facsimile affixed, engraved, printed,
5 placed, stamped with indelible ink, transmitted by facsimile
6 telecommunication or electronically, or in any other manner reproduced on
7 the document.

8 **45-23-02. Applicability of chapter 45-10.1.**

- 9 1. In any case not provided for in this chapter, chapter 45-10.1 governs.
10 2. If applying chapter 45-10.1 to a limited liability limited partnership:
11 a. All references in chapter 45-10.1 to "limited partnership" refer to "limited
12 liability limited partnership"; and
13 b. All references in chapter 45-10.1 to "foreign limited partnership" refer to
14 "foreign limited liability limited partnership".
15 3. If any provision of this chapter conflicts with chapter 45-10.1, that provision of this
16 chapter takes precedence.

17 **45-23-03. Limited liability limited partnership name.**

- 18 1. The name of each limited liability limited partnership as set forth in the limited
19 liability limited partnership's certificate of limited liability limited partnership:
20 a. Must be in the English language or in another language expressed in English
21 letters or characters.
22 b. Must contain:
23 (1) Without abbreviation the words "limited liability limited partnership" or
24 the abbreviation "L.L.L.P." or "LLLP", either of which abbreviation may
25 be used interchangeably for any purpose authorized by this chapter
26 including real estate matters, contracts, and filings with the secretary of
27 state; or
28 (2) In the case of a foreign limited liability limited partnership, any other
29 words or abbreviations as may be authorized or required under the
30 laws of the jurisdiction of origin.
31 c. May not contain the name of a limited partner unless:

- 1 (1) The name is also the name of a general partner; or
- 2 (2) The business of the limited liability limited partnership was carried on
- 3 under that name before the admission of that limited partner.
- 4 d. May not contain the word "corporation", "company", "incorporated", "limited
- 5 liability company", "limited liability partnership", or any abbreviation of these
- 6 words.
- 7 e. May not contain a word or phrase indicating or implying the limited liability
- 8 limited partnership may not be organized under this chapter.
- 9 f. May not contain a word or phrase indicating or implying the limited liability
- 10 limited partnership is organized for a purpose other than a legal business
- 11 purpose for which a limited liability limited partnership may be organized
- 12 under this chapter.
- 13 g. May not contain a word or phrase indicating or implying the limited liability
- 14 limited partnership is organized other than for a purpose stated in the
- 15 certificate of the limited liability limited partnership.
- 16 h. May not be the same as, or deceptively similar to:
- 17 (1) The name, whether foreign and authorized to do business in this state
- 18 or domestic, unless there is filed with the certificate a document in
- 19 compliance with subsection 3, of:
- 20 (a) Another limited liability limited partnership;
- 21 (b) A limited partnership;
- 22 (c) A corporation;
- 23 (d) A limited liability company; or
- 24 (e) A limited liability partnership;
- 25 (2) A name the right to which is, at the time of organization, reserved in the
- 26 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 2. The secretary of state shall determine whether a limited liability limited partnership
- 31 name is deceptively similar to another name for purposes of this chapter.

- 1 3. If the secretary of state determines a limited liability limited partnership name is
2 deceptively similar to another name for purposes of this chapter, the limited liability
3 limited partnership name may not be used unless there is filed with the certificate:
- 4 a. The written consent of the holder of the registered trade name or the holder of
5 the rights to the name to which the proposed name has been determined to
6 be deceptively similar; or
- 7 b. A certified copy of a judgment of a court in this state establishing the earlier
8 right of the applicant to the use of the name in this state.
- 9 4. This section does not abrogate or limit the law of unfair competition or unfair
10 practices; chapter 47-25; the laws of the United States with respect to the right to
11 acquire and protect copyrights, trade names, trademarks, service names, service
12 marks; or any other rights to the exclusive use of any name or symbol. This
13 section does not derogate the common law or the principles of equity.
- 14 5. A limited liability limited partnership that is merged with another domestic or foreign
15 organization, that is organized by the reorganization of one or more domestic or
16 foreign organizations, or that acquires by sale, lease, or other disposition to or
17 exchange with a domestic organization all or substantially all of the assets of
18 another domestic or foreign organization, including the organization's name, may
19 include in the limited liability limited partnership's name the name of any of the
20 other organizations, if the other organization:
- 21 a. Is incorporated, organized, formed, or registered under the laws of this state;
22 b. Is authorized to transact business or conduct activities in this state;
23 c. Holds a reserved name in the manner provided in section 10-19.1-14,
24 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
- 25 d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
26 e. Holds a trade name registered in the manner provided in chapter 47-25.
- 27 6. The use of a name of a limited liability limited partnership in violation of this section
28 does not affect or vitiate a limited liability limited partnership's existence. However,
29 a court in this state may, upon application of the state or of an interested or
30 affected person, enjoin the limited liability limited partnership from doing business

1 under a name assumed in violation of this section, although a certificate of limited
2 liability limited partnership may have been filed with the secretary of state.

3 **45-23-04. Limited liability limited partnership formation.**

4 1. If a limited partnership does not exist, a limited liability limited partnership may be
5 formed by filing with the secretary of state, together with the fees provided in
6 section 45-23-08, a certificate of limited liability limited partnership:

- 7 a. That complies with the name requirements in section 45-23-03;
8 b. That contains a statement that limited liability limited partnership status is
9 elected; and
10 c. That otherwise conforms to the requirements of section 45-10.1-08.

11 2. An existing limited partnership:

12 a. May elect to become a limited liability limited partnership:

13 (1) By obtaining approval to be governed by this chapter by the vote
14 necessary to amend the limited partnership agreement except, in the
15 case of a limited partnership agreement that expressly considers
16 contribution obligations, the vote necessary to amend those provisions;

17 (2) By complying with the name requirements of section 45-23-03; and

18 (3) By filing with the secretary of state, together with the fees provided in
19 sections 45-10.1-15 and 45-23-08, a document that is designated as
20 both an amended certificate of limited partnership and a certificate of
21 limited liability limited partnership which:

22 (a) Amends the limited partnership name to comply with the name
23 requirements of section 45-23-03;

24 (b) Contains a statement that limited liability limited partnership
25 status is elected; and

26 (c) Otherwise conforms to the requirements of section 45-10.1-09.

27 b. Continues to be the same entity in existence before the filing with the
28 secretary of state pursuant to this section.

29 **45-23-05. Effective date of formation or election under this chapter.** With respect
30 to the date on which a limited liability limited partnership is formed or on which a limited
31 partnership elects to be governed by this chapter:

1 1. If a limited partnership does not exist, a limited liability limited partnership is formed
2 on the later of the filing of the certificate of limited liability limited partnership or the
3 date specified in the certificate of limited liability limited partnership which is within
4 ninety days after the filing of the certificate of limited liability limited partnership.

5 2. An existing limited partnership electing to become a limited liability limited
6 partnership is governed by this chapter on the later of the filing of the document
7 designated as both an amendment to the certificate of limited partnership and a
8 certificate of limited liability limited partnership or the date specified in that
9 document which is within ninety days after the filing of the document.

10 **45-23-06. General partner liability.** An obligation of a limited liability limited
11 partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the limited
12 liability limited partnership. A general partner is not personally liable, directly or indirectly by
13 way of contribution or otherwise, for an obligation of the limited liability limited partnership solely
14 by reason of being or acting as a general partner. This section applies notwithstanding
15 anything inconsistent in the partnership agreement.

16 **45-23-07. Foreign limited partnership - Adopting limited liability limited**
17 **partnership status.** An existing foreign limited partnership authorized to transact business in
18 this state pursuant to section 45-10.1-52 which subsequently adopts and maintains limited
19 liability limited partnership status in the jurisdiction of origin shall file with the secretary of state,
20 together with the fees required in sections 45-10.1-15 and 45-23-08:

21 1. A document designated as both an amended foreign limited partnership
22 registration as required by section 45-10.1-55 and a foreign limited liability limited
23 partnership registration as required by section 45-10.1-52; and

24 2. A certificate of identification, existence, and status of a foreign limited liability
25 limited partnership, duly certified by the proper officer of the jurisdiction of origin.

26 **45-23-08. Fees for filing documents.** The secretary of state shall charge and collect
27 for:

28 1. Filing a certificate of limited liability limited partnership, one hundred dollars.

29 2. Filing a certificate of limited liability limited partnership amendment, forty dollars.

30 3. Filing a certificate of limited liability limited partnership dissolution, twenty-five
31 dollars.

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

1 b. After the termination of the limited liability limited partnership or the revocation
2 of the registration of a foreign limited liability limited partnership, the
3 reinstatement fee of one hundred dollars.

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

6 **SECTION 202. AMENDMENT.** Subsection 6 of section 47-22-02 of the 1997
7 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8 6. Consists of or comprises a trademark ~~which so~~ that resembles a trademark
9 registered in this state or a trade name, corporate name, limited liability company
10 name, limited liability partnership name, limited partnership name, limited liability
11 limited partnership name, or fictitious name registered with the office of the
12 secretary of state, as to be likely, when applied to the goods of the applicant, to
13 cause confusion or mistake or to deceive.

14 **SECTION 203. AMENDMENT.** Section 47-25-03 of the 1997 Supplement to the North
15 Dakota Century Code is amended and reenacted as follows:

16 **47-25-03. Trade name - Nature.** ~~No~~ A trade name registered may not be the same
17 as or deceptively similar to any other trade name, domestic or foreign corporation name,
18 domestic or foreign limited liability company name, ~~or a name of any~~ domestic or foreign limited
19 partnership authorized to do business in this state name, domestic or foreign limited liability
20 partnership name, domestic or foreign limited liability limited partnership name, or a name the
21 right to which is in any manner reserved or registered in the office of the secretary of state,
22 unless there is filed with the trade name registration a written consent of the holder of the
23 similar name to use the proposed name, or if a franchise, a written consent from the franchiser.

24 **SECTION 204. AMENDMENT.** Section 61-13-03.1 of the North Dakota Century Code
25 is amended and reenacted as follows:

26 **61-13-03.1. Articles of organization or ~~operating agreement~~ bylaws may restrict**
27 **sales to members - When membership interest to become appurtenant to land - Sale of**
28 **water to others.** Any limited liability company organized for irrigation purposes may provide in
29 ~~its~~ the articles of organization or ~~operating agreement~~ bylaws that water ~~shall~~ must be sold,
30 distributed, supplied, or delivered only to owners of ~~its~~ the limited liability company's
31 membership interests and that ~~such~~ these membership interests ~~shall~~ must be appurtenant to

1 the land described in the document evidencing ~~such these~~ membership interests. ~~When~~ If a
2 copy of ~~such the~~ articles of organization or ~~operating agreement~~ bylaws is recorded in the
3 office of the register of deeds of the county in which ~~such the~~ lands are situated, ~~such the~~
4 membership interests ~~shall~~ become appurtenant to ~~said the~~ lands and ~~shall may~~ be transferred
5 only with the sale or transfer of ~~such the~~ lands, except in the event of sale or forfeiture of ~~such~~
6 the membership interests for delinquent assessments ~~thereon~~ on the land as provided in
7 section 61-13-04. Notwithstanding ~~such any~~ provision in ~~its~~ the limited liability company's
8 articles of organization or ~~operating agreement~~ bylaws, any limited liability company organized
9 for irrigation purposes may sell water to an irrigation district, this state, or any department or
10 agency ~~thereof of this state~~, and to the United States, or any department or agency ~~thereof of~~
11 the United States, at the same rates as to holders of membership interests of ~~such the~~ limited
12 liability company. ~~In the event~~ If lands to which any ~~such~~ membership interest is appurtenant
13 are acquired by the state, the United States, or any department or agency ~~thereof of the state~~
14 or the United States, ~~such the~~ membership interest ~~shall must~~ be canceled by the limited
15 liability company, ~~which shall and must~~ be reissued to any persons subsequently acquiring title
16 to ~~such the~~ land at a later date.

17 **SECTION 205. REPEAL.** Sections 45-10.1-54 and 45-22-08 of the 1997 Supplement
18 to the North Dakota Century Code are repealed.