

Fifty-eighth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1362

Introduced by

Representatives DeKrey, Delmore

Senators Nelson, Traynor

1 A BILL for an Act to create and enact sections 10-19.1-01.1, 10-19.1-100.1, 10-19.1-149.1,
2 10-32-02.1, 10-32-153.1, 10-33-01.1, 10-33-142.1, 45-10.1-01.1, 45-10.1-63, 45-10.1-64,
3 45-10.1-65, 45-10.1-66, 45-10.1-67, 45-10.1-68, 45-10.1-69, 45-10.1-70, 45-10.1-71,
4 45-10.1-72, 45-13-01.1, 45-16-07, 45-16-08, 45-22-01.1, 45-23-01.1, and 45-23-07 of the North
5 Dakota Century Code, relating to business corporations, limited liability companies, nonprofit
6 corporations, limited partnerships, partnerships, limited liability partnerships, and limited liability
7 limited partnerships; to amend and reenact section 10-19.1-01, subsection 4 of section
8 10-19.1-13, sections 10-19.1-14 and 10-19.1-19, subsection 2 of section 10-19.1-31,
9 subsections 1 and 2 of section 10-19.1-43, subsections 1 and 2 of section 10-19.1-47,
10 subsection 1 of section 10-19.1-63, subsection 3 of section 10-19.1-71, subsection 3 of section
11 10-19.1-72, sections 10-19.1-75 and 10-19.1-75.2, subsection 1 of section 10-19.1-76.2,
12 subsection 1 of section 10-19.1-87, section 10-19.1-100, subsection 1 of section 10-19.1-110,
13 subsections 2 and 3 of section 10-19.1-113.1, subsection 3 of section 10-19.1-129,
14 subsection 2 of section 10-19.1-146, subsection 10 of section 10-31-01, section 10-32-02,
15 subsections 2, 3, and 4 of section 10-32-07, subsection 5 of section 10-32-10, section
16 10-32-11, subsection 1 of section 10-32-13, section 10-32-15, subsection 6 of section
17 10-32-17, subsection 1 of section 10-32-22, subsection 17 of section 10-32-23, sections
18 10-32-36 and 10-32-37, subsections 2 and 3 of section 10-32-38, subsections 2 and 3 of
19 section 10-32-39, subsection 3 of section 10-32-40, sections 10-32-40.1, 10-32-43, and
20 10-32-43.2, subsection 1 of section 10-32-48, subsection 1 of section 10-32-50, section
21 10-32-51, subsection 1 of section 10-32-54, subsection 4 of section 10-32-55, section
22 10-32-56, subsection 2 of section 10-32-57, subsection 3 of section 10-32-58, subsection 1 of
23 section 10-32-59, sections 10-32-60 and 10-32-61, subsection 1 of section 10-32-64, section
24 10-32-67, subsections 2 and 3 of section 10-32-68, sections 10-32-69, 10-32-70, 10-32-73, and
25 10-32-74, subsection 2 of section 10-32-76, subsection 2 of section 10-32-77, subsections 2

1 and 3 of section 10-32-78, subsection 2 of section 10-32-78.1, subsection 1 of section
2 10-32-79, sections 10-32-80, 10-32-81, and 10-32-83, subsections 1 and 2 of section 10-32-84,
3 subsections 1 and 3 of section 10-32-85, subsections 2 and 4 of section 10-32-86, subsections
4 1 and 2 of section 10-32-87, sections 10-32-88, 10-32-89, and 10-32-92, subsection 3 of
5 section 10-32-94, section 10-32-95, subsection 1 of section 10-32-97, sections 10-32-99 and
6 10-32-104, subsections 1 and 2 of section 10-32-108, subsection 2 of section 10-32-112,
7 subsection 3 of section 10-32-113, subsection 1 of section 10-32-114, subsections 2 and 3 of
8 section 10-32-117, subsection 1 of section 10-32-119, subsection 2 of section 10-32-130.1,
9 subsection 3 of section 10-32-132, subsection 2 of section 10-32-149, sections 10-33-01,
10 10-33-10, 10-33-11, and 10-33-21, subsection 3 of section 10-33-23, subsection 2 of section
11 10-33-25, subsection 1 of section 10-33-27, subsections 1 and 2 of section 10-33-39,
12 subsections 1 and 2 of section 10-33-43, subsection 1 of section 10-33-44, subsection 1 of
13 section 10-33-50, subsection 3 of section 10-33-65, subsection 3 of section 10-33-66, sections
14 10-33-73 and 10-33-75, subsection 1 of section 10-33-77, sections 10-33-81 and 10-33-93,
15 subsection 1 of section 10-33-101, subsections 2 and 3 of section 10-33-103, subsection 4 of
16 section 10-33-104, subsection 1 of section 10-33-107, subsections 1, 2, and 3 of section
17 10-33-108, subsection 3 of section 10-33-120, subsection 1 of section 10-33-128, subsection 2
18 of section 10-33-139, section 45-10.1-01, subsection 6 of section 45-10.1-02, sections
19 45-10.1-03 and 45-10.1-07.1, subsections 7 and 8 of section 45-10.1-09, sections 45-10.1-13,
20 45-10.1-55, 45-10.1-56, and 45-13-01, subsections 5 and 6 of section 45-13-04.1, section
21 45-13-04.2, subsections 6 and 7 of section 45-13-05, subsection 1 of section 45-13-06,
22 subsection 1 of section 45-15-03, subsection 1 of section 45-15-03.1, subsection 2 of section
23 45-15-03.2, section 45-15-04, subsection 1 of section 45-19-04, subsections 1 and 2 of section
24 45-21-05, subsection 2 of section 45-21-06, subsections 1 and 2 of section 45-21-07, section
25 45-22-01, subsection 3 of section 45-22-03, subsection 5 of section 45-22-04, section
26 45-22-05, subsection 2 of section 45-22-17, subsection 2 of section 45-22-21.1, section
27 45-23-01, and subsection 5 of section 45-23-03 of the North Dakota Century Code, relating to
28 business corporations, professional corporations, limited liability companies, nonprofit
29 corporations, limited partnerships, partnerships, limited liability partnerships, and limited liability
30 limited partnerships; and to repeal sections 45-10.1-14, 45-10.1-15, and 45-10.1-16 of the
31 North Dakota Century Code, relating to limited partnerships.

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

2 **SECTION 1. AMENDMENT.** Section 10-19.1-01 of the North Dakota Century Code is
3 amended and reenacted as follows:

4 **10-19.1-01. Definitions.** For the purposes of this chapter, unless the context clearly
5 indicates a different meaning is intended:

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

- 1 (2) To an officer or agent of the corporation authorized by the corporation
2 to receive the electronic communication; and
- 3 b. That the electronic communication sets forth information from which the
4 corporation can reasonably conclude that the electronic communication was
5 sent by the purported sender.
- 6 6. "Board" or "board of directors" means the board of directors of a corporation.
- 7 ~~6.~~ 7. "Board member" means:
- 8 a. An individual serving on the board of directors in the case of a corporation;
9 and
- 10 b. An individual serving on the board of ~~governors~~ in the case of a limited liability
11 company.
- 12 ~~7.~~ 8. "Bylaws" means the code adopted for the regulation or management of the internal
13 affairs of a corporation, regardless of how that code is designated.
- 14 ~~8.~~ 9. "Class", when used with reference to shares, means a category of shares that
15 differs in designation or one or more rights or preferences from another category of
16 shares of the corporation.
- 17 ~~9.~~ 10. "Closely held corporation" means a corporation that does not have more than
18 thirty-five shareholders.
- 19 ~~10.~~ 11. "Constituent corporation" means a corporation or a foreign corporation that:
20 a. In a merger, is either the surviving corporation or a corporation that is merged
21 into the surviving organization; or
- 22 b. In an exchange, is either the acquiring corporation or a corporation whose
23 shares are acquired by the acquiring organization.
- 24 ~~11.~~ 12. "Constituent organization" means a corporation, foreign corporation, limited liability
25 company, or foreign limited liability company that:
26 a. In a merger, is either the surviving organization or an organization that is
27 merged into the surviving organization; or
- 28 b. In an exchange, is either the acquiring organization or an organization whose
29 securities are acquired by the acquiring organization.
- 30 ~~12.~~ 13. "Corporation" means a corporation, other than a foreign corporation, organized for
31 profit and incorporated under or governed by this chapter.

- 1 ~~43.~~ 14. "Director" means a member of the board.
- 2 ~~44.~~ 15. "Distribution" means a direct or indirect transfer of money or other property, other
3 than a corporation's own shares, with or without consideration, or an incurrence or
4 issuance of indebtedness, by a corporation to any of the corporation's
5 shareholders in respect of the corporation's shares, and may be in the form of a
6 dividend or a distribution in liquidation, or as consideration for the purchase,
7 redemption, or other acquisition of the corporation's shares, or otherwise.
- 8 ~~45.~~ 16. "Division" or "combination" means dividing or combining shares of a class or
9 series, whether issued or unissued, into a greater or lesser number of shares of
10 the same class or series.
- 11 ~~46.~~ 17. "Domestic organization" means an organization created under the laws of this
12 state.
- 13 18. "Electronic" means relating to technology having electrical, digital, magnetic,
14 wireless, optical, electromagnetic, or similar capabilities.
- 15 19. "Electronic communication" means any form of communication, not directly
16 involving the physical transmission of paper that:
- 17 a. Creates a record that may be retained, retrieved, and reviewed by a recipient
18 of the communication; and
- 19 b. May be directly reproduced in paper form by the recipient through an
20 automated process.
- 21 20. "Electronic record" means a record created, generated, sent, communicated,
22 received, or stored by electronic means.
- 23 21. "Electronic signature" means an electronic sound, symbol, or process attached to
24 or logically associated with a record and executed or adopted by a person with the
25 intent to sign the record.
- 26 22. "Filed with the secretary of state" means, except as otherwise permitted by law or
27 rule, a signed original or a legible facsimile telecommunication of a signed original
28 of a request for reserved name or a signed original of all other documents;
- 29 a. That a document meeting the applicable requirements of this chapter,
30 together with the fees provided in section 10-19.1-147, was delivered or
31 communicated to the secretary of state by a method or medium of

communication acceptable by the secretary of state and was determined by the secretary of state to conform to law. ~~The~~

b. ~~That the~~ secretary of state shall ~~endorse on the original the word "filed" and the month, day, and year, then:~~

(1) Record the actual date on which the document is filed, and if different the effective date of filing; and record

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

~~47.~~ 23. "Foreign corporation" means a corporation organized for profit which is incorporated under laws other than the laws of this state for a purpose for which a corporation may be incorporated under this chapter.

~~48.~~ 24. "Foreign limited liability company" means a limited liability company organized for profit which is organized under laws other than the laws of this state for a purpose for which a limited liability company may be organized under chapter 10-32.

~~49.~~ 25. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which an organization may be created under the laws of this state.

26. "Good faith" means honesty in fact in the conduct of an act or transaction.

~~20.~~ 27. "Intentionally" means that the person referred to has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result. A person "intentionally" violates a statute if:

a. If the person intentionally does the act or causes the result prohibited by the statute; or

b. If the person intentionally fails to do the act or cause the result required by the statute, even though the person may not know of the existence or constitutionality of the statute or the scope or meaning of the terms used in the statute.

~~24.~~ 28. "Knows" or has "knowledge" means the person has actual knowledge of a fact. A person does not "know" or have "knowledge" of a fact merely because the person has reason to know of the fact.

~~22.~~ 29. "Legal representative" means a person empowered to act for another person, including an agent, a manager, an officer, a partner, or an associate of an

organization; a trustee of a trust; a personal representative; a trustee in
bankruptcy; and a receiver, guardian, custodian, or conservator.

~~23. 30.~~ "Limited liability company" means a limited liability company, other than a foreign
limited liability company, organized under chapter 10-32.

~~24. 31.~~ "Nonprofit corporation" means a corporation, whether domestic or foreign,
incorporated under or governed by chapter 10-33.

~~25. 32.~~ "Notice" ~~is:~~

a. Is given by a shareholder of a corporation to the corporation or an officer of
the corporation ~~when:~~

(1) When in writing and mailed or delivered to the corporation or the officer
at the registered office or principal executive office of the corporation:

~~a. In all other cases, "notice" is:~~ or

(2) When given by a form of electronic communication consented to by the
corporation to which the notice is given if by:

(a) Facsimile communication, when directed to a telephone number
at which the corporation has consented to receive notice.

(b) Electronic mail, when directed to an electronic mail address at
which the corporation has consented to receive notice.

(c) Posting on an electronic network on which the corporation has
consented to receive notice, together with separate notice to the
corporation of the specific posting, upon the later of:

[1] The posting; or

[2] The giving of the separate notice.

(d) Any other form of electronic communication by which the
corporation has consented to receive notice, when directed to the
corporation.

b. Is given by a publicly held corporation to a shareholder if the notice is
addressed to the shareholder or group of shareholders in a manner permitted
by the rules and regulations under the Securities Exchange Act of 1934, as
amended, provided that the corporation has first received any affirmative
written consent or implied consent required under those rules and regulations.

~~c.~~ c. ~~Is given to a person, in all other cases:~~

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

(2) When handed to the person; ~~or~~

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

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

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

(4) When given by a form of electronic communication consented to by the person to whom the notice is given if by:

(a) Facsimile communication, when directed to a telephone number at which the person has consented to receive notice.

(b) Electronic mail, when directed to an electronic mail address at which the person has consented to receive notice.

(c) Posting on an electronic network on which the person has consented to receive notice, together with separate notice to the person of the specific posting, upon the later of:

[1] The posting; or

[2] The giving of the separate notice.

(d) Any other form of electronic communication by which the person has consented to receive notice, when directed to the person.

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

~~e.~~ e. ~~Notice is~~ Is deemed received when it is given.

~~26.~~ 33. "Officer" means an individual who is eighteen years of age or more who is ~~elected;~~

a. Elected, appointed, or otherwise designated as an officer by the board; ~~or~~
~~deemed~~

- 1 b. Deemed elected as an officer pursuant to section 10-19.1-56.
- 2 27. 34. "Organization" means, ~~whether:~~
- 3 a. Whether domestic or foreign, a corporation ~~incorporated in or authorized to~~
- 4 ~~do business in this state under this or another chapter of this code~~, limited
- 5 liability company, partnership, limited partnership, limited liability partnership,
- 6 limited liability limited partnership, joint venture, association, business trust,
- 7 estate, trust, enterprise, and any other legal or commercial entity; but
- 8 b. Excludes any nonprofit corporation, whether a domestic nonprofit corporation
- 9 which is incorporated under chapter 10-33 or a foreign nonprofit corporation
- 10 which is incorporated in another jurisdiction.
- 11 28. 35. "Outstanding shares" means all shares duly issued and not reacquired by a
- 12 corporation.
- 13 29. 36. "Owners" means:
- 14 a. Shareholders in the case of a corporation; and
- 15 b. Members in the case of a limited liability company or a nonprofit corporation.
- 16 30. 37. "Ownership interests" means:
- 17 a. Shares in the case of a corporation;
- 18 b. Membership interests in the case of a nonprofit corporation or limited liability
- 19 company; and
- 20 c. Similar interests in other organizations.
- 21 34. 38. "Parent" of a specified corporation means a corporation or limited liability company
- 22 that directly, or indirectly through related ~~corporations or limited liability companies~~
- 23 organizations, owns more than fifty percent of the voting power of the shares
- 24 entitled to vote for directors of the specified corporation.
- 25 32. 39. "Principal executive office" means:
- 26 a. If the corporation has an elected or appointed president, an office where the
- 27 elected or appointed president of a corporation has an office; ~~or~~ if
- 28 b. If the corporation has no elected or appointed president, then the registered
- 29 office of the corporation.
- 30 33. 40. "Record" means information that is inscribed on a tangible medium or that is stored
- 31 in an electronic or other medium and is retrievable in perceivable form.

- 1 41. "Registered office" means the place in this state designated in the articles as the
2 registered office of the corporation.
- 3 ~~34.~~ 42. "Related organization" means an organization that controls, is controlled by, or is
4 under common control with another organization with control existing if an
5 organization:
- 6 a. Owns, directly or indirectly, at least fifty percent of the shares, membership
7 interests, or other ownership interests of another organization;
- 8 b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or
9 more of the voting members of the governing body of another organization; or
- 10 c. Has the power, directly or indirectly, to direct or cause the direction of the
11 management and policies of another organization, whether through the
12 ownership of voting interests, by contract, or otherwise.
- 13 ~~35.~~ 43. "Remote communication" means communication via electronic communication,
14 conference telephone, videoconference, the internet, or such other means by
15 which persons not physically present in the same location may communicate with
16 each other on a substantially simultaneous basis.
- 17 44. "Security" has the meaning given in section 10-04-02.
- 18 ~~36.~~ 45. "Series" means a category of shares, within a class of shares authorized or issued
19 by a corporation by or pursuant to a corporation's articles, that have some of the
20 same rights and preferences as other shares within the same class, but that differ
21 in designation or one or more rights and preferences from another category of
22 shares within that class.
- 23 ~~37.~~ 46. "Share" means one of the units, however designated, into which the shareholders'
24 proprietary interests in a corporation are divided.
- 25 ~~38.~~ 47. "Shareholder" means a person registered on the books or records of a corporation
26 or the corporation's transfer agent or registrar as the owner of whole or fractional
27 shares of the corporation.
- 28 ~~39.~~ 48. "Signed" means ~~that~~:
- 29 a. That the signature of a person, which may be a facsimile affixed, engraved,
30 printed, placed, stamped with indelible ink, transmitted by facsimile
31 telecommunication or electronically, or in any other manner reproduced on

1 the document, is placed on a document, as provided in ~~subsection 39 of~~
2 under section ~~41-01-11, 41-01-09;~~ and:

3 ~~a.~~ b. With respect to a document required by this chapter to be filed with the
4 secretary of state, ~~means that the:~~

5 (1) The document is signed by a person authorized to do so by this
6 chapter, the articles or bylaws, or a resolution approved by the directors
7 as required under section 10-19.1-46 or the shareholders as required
8 under section 10-19.1-74; and

9 ~~b. With respect to a document not required by this chapter to be filed with the~~
10 ~~secretary of state, the signature may be a facsimile affixed, engraved, printed,~~
11 ~~placed, stamped with indelible ink, transmitted by facsimile~~
12 ~~telecommunication or electronically, or in any other manner reproduced on~~
13 ~~the document.~~

14 (2) The signature and the document are communicated by a method or
15 medium of communication acceptable by the secretary of state.

16 ~~40.~~ 49. "Subscriber" means a person who subscribes for shares in a corporation, whether
17 before or after incorporation.

18 ~~41.~~ 50. "Subsidiary" of a specified corporation means:

19 a. A corporation having more than fifty percent of the voting power of the
20 corporation's shares entitled to vote for directors owned directly, or indirectly
21 through related ~~corporations or limited liability companies~~ organizations, by
22 the specified corporation; or

23 b. A limited liability company having more than fifty percent of the voting power
24 of the limited liability company's membership interests entitled to vote for
25 governors owned directly, or indirectly through related limited liability
26 companies or corporations, by the specified limited liability company.

27 ~~42.~~ 51. "Surviving corporation" means the domestic or foreign corporation resulting from a
28 merger.

29 ~~43.~~ 52. "Surviving organization" means the corporation or foreign corporation or domestic
30 or foreign limited liability company resulting from a merger.

31 ~~44.~~ 53. "Vote" includes authorization by written action.

45- 54. "Written action" means a:

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

b. The counterparts of a written document signed by any of the persons taking
the action described.

(1) Each counterpart constitutes the action of the person signing; and all

(2) All the counterparts, taken together, constitute one written action by all
of the persons signing the counterparts.

SECTION 2. Section 10-19.1-01.1 of the North Dakota Century Code is created and
enacted as follows:

10-19.1-01.1. Legal recognition of electronic records and electronic signatures.

For purposes of this chapter:

1. A record or signature may not be denied legal effect or enforceability solely
because it is in electronic form;

2. A contract may not be denied legal effect or enforceability solely because an
electronic record was used in its formation;

3. If a provision requires a record to be in writing, an electronic record satisfies the
requirement; and

4. If a provision requires a signature, an electronic signature satisfies the
requirement.

SECTION 3. AMENDMENT. Subsection 4 of section 10-19.1-13 of the North Dakota
Century Code is amended and reenacted as follows:

4. A corporation that is ~~merged~~ the surviving organization in a merger with ~~another~~
~~domestic one or foreign organization, or that is incorporated by the reorganization~~
~~of one or more domestic or foreign other organizations, or that acquires by sale,~~
lease, or other disposition to or exchange with ~~a domestic~~ an organization all or
substantially all of the assets of another ~~domestic or foreign~~ organization including
its name, may have the same name, subject to the requirements of subsection 1,
as that used in this state by any of the other organizations, if the other organization
whose name is sought to be used:

- a. Was incorporated, organized, formed, or registered under the laws of this state;
- b. Is authorized to transact business or conduct activities in this state;
- c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
- d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
- e. Holds a trade name registered in the manner provided in chapter 47-25.

SECTION 4. AMENDMENT. Section 10-19.1-14 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-14. Reserved name.

1. The exclusive right to the use of a corporate name otherwise permitted by section 10-19.1-13 may be reserved by any person.
2. The reservation must be made by filing with the secretary of state a request that the name be reserved, together with the fees provided in section 10-19.1-147:
 - a. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months.
 - b. The reservation may be renewed for successive twelve-month periods.
3. The right to the exclusive use of a corporate name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee, together with the fees provided in section 10-19.1-147.
4. The right to the exclusive use of a corporate name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the cancellation, together with the fees provided in section 10-19.1-147.
5. ~~The secretary of state may accept for filing a legible facsimile copy of the signed original of any request for reserved name.~~
6. The secretary of state may destroy all reserved name requests and index thereof one year after expiration.

1 **SECTION 5. AMENDMENT.** Section 10-19.1-19 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **10-19.1-19. Procedure for amendment after issuance of shares.**

- 4 1. Except as otherwise provided in section 10-19.1-18, after the issuance of shares
5 by the corporation, the articles may be amended in the manner set forth in this
6 section.
- 7 2. A resolution approved by the affirmative vote of a majority of the directors present,
8 or proposed by a shareholder or shareholders holding five percent or more of the
9 voting power of the shares entitled to vote, that sets forth the proposed
10 amendment must be submitted to a vote at the next regular or special meeting of
11 the shareholders of which notice has not yet been given but still can be timely
12 given. Any number of amendments may be submitted to the shareholders and
13 voted upon at one meeting, but the same or substantially the same amendment
14 proposed by a shareholder or shareholders need not be submitted to the
15 shareholders or be voted upon at more than one meeting during a fifteen-month
16 period, except that if a corporation is registered or reporting under the federal
17 securities laws, the provisions of this sentence do not apply to the extent that these
18 provisions are in conflict with the federal securities laws or rules adopted under
19 those laws. The resolution may amend the articles in their entirety to restate and
20 supersede the original articles and all amendments to them.
- 21 3. Written notice of the shareholders' meeting setting forth the substance of the
22 proposed amendment must be given to each shareholder entitled to vote in the
23 manner provided in section 10-19.1-73 for the giving of notice of meetings of
24 shareholders.
- 25 4. The proposed amendment to the articles is adopted:
- 26 a. When approved by the affirmative vote of the shareholders required by
27 section 10-19.1-74, except as provided in subdivision b and in subsection 5;
28 or
- 29 b. If the articles provide for a specified proportion or number equal to or larger
30 than the majority necessary to transact a specified type of business at a
31 meeting, or if it is proposed to amend the articles to provide for a specified

proportion or number equal to or larger than the majority necessary to transact a specified type of business at a meeting, the affirmative vote necessary to add the provision to, or to amend an existing provision in, the articles is the larger of:

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

5. An amendment that merely restates the existing articles, as amended, may be authorized by a resolution approved by the board and may be submitted to and approved by the shareholders as provided in subsections 2, 3, and 4.

6. Notwithstanding any contrary provision of this chapter, the board of a corporation that is registered as an open-end management investment company under the Investment Company Act of 1940, as amended, may, without shareholder approval, increase or decrease, but not below the then outstanding shares, the aggregate number of shares the corporation has authority to issue, including shares of any class or series, unless a provision has been included in the corporation's articles prohibiting the board from increasing or decreasing the aggregate number of shares, or any class or series of shares, as applicable, that the corporation has authority to issue.

SECTION 6. AMENDMENT. Subsection 2 of section 10-19.1-31 of the North Dakota Century Code is amended and reenacted as follows:

2. Initial bylaws may be adopted by the first board or by the incorporators, pursuant to section 10-19.1-30. Unless reserved by the articles to the shareholders, the power to adopt, amend, or repeal the bylaws is vested in the board. The power of the board is subject to the power of the shareholders, exercisable in the manner provided in subsection 3, to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board. ~~After the adoption of the initial bylaws, the board may not~~

~~adopt, amend, or repeal a bylaw fixing a quorum for meetings of shareholders,
prescribing procedures for removing directors or filling vacancies in the board, or
fixing the number of directors or their classifications, qualifications, or terms of
office, but may adopt or amend a bylaw to increase the number of directors.~~

SECTION 7. AMENDMENT. Subsections 1 and 2 of section 10-19.1-43 of the North
Dakota Century Code are amended and reenacted as follows:

1. Meetings of the board may be held from time to time as provided in the articles or bylaws at any place within or without the state that the board may select or by any means described in subsection 2.

- a. If the articles, bylaws, or board fail to select a place for a meeting, the meeting must be held at the principal executive office, unless the articles or bylaws provide otherwise.

- b. The board may determine under subsection 2 that a meeting of the board shall be held solely by means of remote communication.

- c. Any participation in a meeting by either of the means set forth in subsection 2 constitutes presence at the meeting.

2. ~~A board~~ Any meeting may be conducted by:

- a. ~~A conference among directors using any means of~~ Solely by one or more means of remote communication through which all of the directors may simultaneously hear participate with each other during the conference, if meeting:

- (1) ~~If the same notice required by subsection 3 is given of for the conference as would be required by subsection 3 for a meeting;~~ and if

- (2) ~~If the number of directors participating in the conference meeting is a quorum at a meeting. Participation in a meeting by this means is personal presence at the meeting;~~ or

- b. ~~Any~~ By means of conference telephone or, if authorized by the board, by one or more other means of remote communication, in each case, through which the director, other directors so participating, and all directors physically present at the meeting may simultaneously hear participate with each other

1 during the meeting. ~~Participation in a meeting by this means is personal~~
2 ~~presence at the meeting.~~

3 **SECTION 8. AMENDMENT.** Subsections 1 and 2 of section 10-19.1-47 of the North
4 Dakota Century Code are amended and reenacted as follows:

- 5 1. An action required or permitted to be taken at a board meeting may be taken by
6 written action signed by all of the directors. If the articles so provide, any action,
7 other than an action requiring shareholder approval, may be taken by written
8 action signed, or consented to by authenticated electronic communication, by the
9 number of directors that would be required to take written action, signed by all of
10 the directors, if the articles so provide, the same action at a meeting of the board at
11 which all directors were present.
- 12 2. The written action is effective when signed by, or consented to by authenticated
13 electronic communication, the required number of directors, unless a different
14 effective time is provided in the written action.

15 **SECTION 9. AMENDMENT.** Subsection 1 of section 10-19.1-63 of the North Dakota
16 Century Code is amended and reenacted as follows:

- 17 1. Subject to any restrictions in the articles:
- 18 a. ~~The consideration for the issuance of shares may be paid, in whole or in part,~~
19 ~~in money; in other property, tangible or intangible; or in labor or services~~
20 ~~actually performed for the corporation. When payment of the consideration~~
21 ~~for which shares are to be issued is received by the corporation, the shares~~
22 ~~are considered fully paid and nonassessable. Neither promissory notes nor~~
23 ~~future services constitute payment or part payment for shares of a~~
24 ~~corporation. Shares may be issued for any consideration, including, without~~
25 ~~limitation:~~
- 26 (1) Money or other tangible or intangible property received by the
27 corporation or to be received by the corporation under a written
28 agreement, or services rendered to the corporation or to be rendered to
29 the corporation, as authorized by resolution approved by the affirmative
30 vote of the directors required by section 10-19.1-46; or

(2) If provided for in the articles, approved by the affirmative vote of the shareholders required by section 10-19.1-74, establishing a price in money or other consideration, or a minimum price, or a general formula or method by which the price will be determined.

- b. Without any new or additional consideration, a corporation may issue the corporation's own shares in exchange for or in conversion of the corporation's outstanding shares, or may, subject to authorization of share dividends, divisions, and combinations according to section 10-19.1-61.1, issue the corporation's own shares pro rata to the corporation's shareholders or the shareholders of one or more classes or series, to effectuate share dividends, divisions, or combinations. Shares of a class or series, shares of which are then outstanding, may not be issued to the holders of shares of another class or series, except in exchange for or in conversion of outstanding shares of the other class or series, unless the issuance is expressly provided for in the articles or is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares of the same class or series as the shares to be issued.

SECTION 10. AMENDMENT. Subsection 3 of section 10-19.1-71 of the North Dakota Century Code is amended and reenacted as follows:

3. A regular meeting, if any, must be held on the date and at the time and place fixed by, or in a manner authorized by, the articles or bylaws, except that a meeting called by or at the demand of a shareholder pursuant to subsection 2 must be held in the county where the principal executive office of the corporation is located. To the extent authorized by the articles or bylaws, the board may determine that a regular meeting of the shareholders shall be held solely by means of remote communication in accordance with subsection 3 of section 10-19.1-75.2.

SECTION 11. AMENDMENT. Subsection 3 of section 10-19.1-72 of the North Dakota Century Code is amended and reenacted as follows:

3. Special meetings must be held on the date and at the time and place fixed by the president, the board, or a person authorized by the articles or bylaws to call a meeting, except that a special meeting called by or at the demand of a shareholder

or shareholders pursuant to subsection 2 must be held in the county where the principal executive office is located. To the extent authorized by the articles or bylaws, the board may determine that a special meeting of the shareholders shall be held solely by means of remote communication in accordance with subsection 3 of section 10-19.1-75.2.

SECTION 12. AMENDMENT. Section 10-19.1-75 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-75. Action without a meeting. An action required or permitted to be taken at a meeting of the shareholders may be taken without a meeting by written action signed, or consented to by authenticated electronic communication, by all of the shareholders entitled to vote on that action.

1. If the articles so provide, any action may be taken by written action signed, or consented to by authenticated electronic communication, by the shareholders who own voting power equal to the voting power that would be required to take the same action at a meeting of the shareholders at which all shareholders were present.

a. When written action is permitted to be taken by less than all shareholders, all shareholders must be notified immediately of its text and effective date.

b. Failure to provide the notice does not invalidate the written action.

c. A shareholder who does not sign or consent to the written action has no liability for the action or actions taken by the written actions.

2. The written action is effective when it has been signed, or consented to by authenticated electronic communication, by the required shareholders, unless a different effective time is provided in the written action.

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

- 4- When this chapter requires or permits a certificate concerning an action to be filed with the secretary of state, the officers signing the certificate must so indicate if the action was taken under this section.

SECTION 13. AMENDMENT. Section 10-19.1-75.2 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-75.2. Electronic Remote communications for shareholder meetings.

1. This section shall be construed and applied to:
 - a. Facilitate remote communication consistent with other applicable law; and
 - b. Be consistent with reasonable practices concerning remote communication and with the continued expansion of those practices.
2. To the extent authorized in the articles or the bylaws and determined by the board:
 - a. ~~A conference among meeting of the shareholders may be held solely by any combination of means of remote communication through which the participants may simultaneously hear each other during participate in the conference constitutes a regular or special meeting of shareholders:~~
 - a- (1) ~~If the same notice of the meeting is given of the conference to every holder of shares entitled to vote as would be required by this chapter for a meeting; and~~
 - b- (2) ~~If the number of shares held by the shareholders participating in the conference meeting would be sufficient to constitute a quorum at a meeting.~~
 - 2- ~~Participation in a conference meeting the requirements of subsection 1 constitutes presence at the meeting in person or by proxy if all the other requirements of section 10-19.1-76.2 are met.~~
 - 3- b. ~~A shareholder may participate in not physically present in person or by proxy at a regular or special meeting of shareholders not described in subsection 4 may by any means of remote communication through which the shareholder, other participants, and all persons physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence at the meeting in person or by~~

~~proxy if all the other requirements of section 10-19.1-76.2 are met, participate~~
in a meeting of shareholders held at a designated place.

4. 3. In any meeting of shareholders held solely by means of remote communication under subdivision a of subsection 2 or in any meeting of shareholders held at a designated place in which one or more shareholders participate by means of remote communication under subdivision b of subsection 2:

a. The corporation shall implement reasonable measures to:

(1) Verify that each person deemed present and entitled to vote at the meeting by means of remote communication is a shareholder; and

(2) Provide each shareholder participating by means of remote communication with a reasonable opportunity to participate in the meeting, including an opportunity to:

(a) Read or hear the proceedings of the meeting substantially concurrently with those proceedings;

(b) If allowed by the procedures governing the meeting, have the shareholder's remarks heard or read by other participants in the meeting substantially concurrently with the making of those remarks; and

(c) If otherwise entitled, vote on matters submitted to the shareholders.

b. Participation in a meeting by this means constitutes presence at the meeting in person or by proxy if all of the requirements of section 10-19.1-76.2 are met.

4. With respect to notice to shareholders:

a. Any notice to shareholders given by the corporation under any provision of this chapter, the articles, or the bylaws by a form of electronic communication consented to by the shareholder to whom the notice is given is effective when given. The notice is deemed given:

(1) If by facsimile communication, when directed to a telephone number at which the shareholder has consented to receive notice;

- 1 (2) If by electronic mail, when directed to an electronic mail address at
2 which the shareholder has consented to receive notice;
- 3 (3) If by a posting on an electronic network on which the shareholder has
4 consented to receive notice, together with separate notice to the
5 shareholder of the specific posting, upon the later of:
6 (a) The posting; or
7 (b) The giving of the separate notice.
- 8 (4) If by any other form of electronic communication by which the
9 shareholder has consented to receive notice, when directed to the
10 shareholder.
- 11 b. An affidavit of the secretary, other authorized officer, or authorized agent of
12 the corporation, that the notice has been given by a form of electronic
13 communication is, in the absence of fraud, prima facie evidence of the facts
14 stated in the affidavit.
- 15 c. Consent by a shareholder to notice given by electronic communication may
16 be given in writing or by authenticated electronic communication. The
17 corporation is entitled to rely on any consent so given until revoked by the
18 shareholder. However, no revocation affects the validity of any notice given
19 before receipt by the corporation of revocation of the consent.
- 20 5. Any ballot, vote, authorization, or consent submitted by electronic communication
21 under this chapter may be revoked by the shareholder submitting the ballot, vote,
22 authorization, or consent so long as the revocation is received by an officer of the
23 corporation at or before the meeting or before an action without a meeting is
24 effective according to section 10-19.1-75.
- 25 6. Waiver of notice by a shareholder of a meeting by means of authenticated
26 electronic communication ~~described in subsection 4 or 3~~ may be given in the
27 manner provided in subsection 4 of section 10-19.1-73. Participation in a meeting
28 by means of ~~communications~~ remote communication described in subdivisions a
29 and b of subsection ~~4 or 3~~ 2 is a waiver of notice of that meeting, except when the
30 shareholder objects:

- a. At the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened; or
- b. Before a vote on an item of business because the item may not lawfully be considered at the meeting and does not participate in the consideration of the item at that meeting.

SECTION 14. AMENDMENT. Subsection 1 of section 10-19.1-76.2 of the North Dakota Century Code is amended and reenacted as follows:

1. At or before the meeting for which the appointment is to be effective, a shareholder may cast or authorize the casting of a vote ~~by:~~

- a. By filing with an officer authorized to tabulate votes a written appointment of a proxy which is signed by the shareholder, ~~with,~~
- b. By telephonic transmission or authenticated electronic communication to an officer authorized to tabulate votes, whether or not accompanied by written instructions of the shareholder, of an appointment of a proxy.

- a. ~~Before the meeting, a shareholder may cast or authorize the casting of a vote by a proxy by transmitting to the corporation or the corporation's duly authorized agent an appointment of a proxy by means of telegram, cablegram, or any other form of electronic transmission, including telephonic transmission, whether or not accompanied by written instructions of the shareholders. An electronic~~

- (1) The telephonic transmission or authenticated electronic communication must set forth or be submitted with information indicating from which it can be determined that the appointment is authorized by the shareholder. If it is ~~determined a telegram, cablegram, or other electronic~~ reasonably concluded that the telephonic transmission or authenticated electronic communication is valid, the inspectors of election or, if there are no inspectors, the other persons making that determination of validity shall specify the information upon which they relied to make that determination.

- (2) A proxy so appointed may vote on behalf of the shareholder, or otherwise participate, in a meeting by remote communication according

1 to section 10-19.1-75.2 to the extent the shareholder appointing the
2 proxy would have been entitled to participate by remote communication
3 according to section 10-19.1-75.2 if the shareholder did not appoint the
4 proxy.

5 ~~b-~~ c. A copy, facsimile telecommunication, or other reproduction of the original
6 writing or transmission may be substituted or used in lieu of the original
7 writing or transmission for any purpose for which the original writing or
8 transmission could be used if the copy, facsimile, telecommunication, or other
9 reproduction is a complete and legible reproduction of the entire original
10 writing or transmission.

11 ~~e-~~ d. An appointment of a proxy for shares held jointly by two or more shareholders
12 is valid if signed or consented to by authenticated electronic communication
13 by any one of the shareholders, unless the corporation receives from any of
14 those shareholders written notice or authenticated electronic communication
15 either denying the authority of that person to appoint a proxy or appointing a
16 different proxy.

17 **SECTION 15. AMENDMENT.** Subsection 1 of section 10-19.1-87 of the North Dakota
18 Century Code is amended and reenacted as follows:

- 19 1. A shareholder of a corporation may dissent from, and obtain payment for the fair
20 value of the shareholder's shares in the event of, any of the following corporate
21 actions:
- 22 a. An amendment of the articles that materially and adversely affects the rights
23 or preferences of the shares of a dissenting shareholder in that it:
- 24 (1) Alters or abolishes a preferential right of the shares;
- 25 (2) Creates, alters, or abolishes a right in respect of the redemption of the
26 shares, including a provision respecting a sinking fund for the
27 redemption or repurchase of shares;
- 28 (3) Alters or abolishes a preemptive right of the holder of the shares to
29 acquire shares, securities other than shares, or rights to purchase
30 shares or securities other than shares; or

- (4) Excludes or limits the right of a shareholder to vote on a matter, or to accumulate votes, except as the right may be excluded or limited through the authorization or issuance of securities of an existing or new class or series with similar or different voting rights;
- b. A sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation, but not including a transaction permitted without shareholder approval in subsection 1 of section 10-19.1-104, or a disposition in dissolution described in subsection 2 of section 10-19.1-109 or a disposition pursuant to an order of a court, or a disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the shareholders in accordance with their respective interests within one year after the date of disposition;
- c. A plan of merger to which the corporation is a ~~party~~ constituent organization, except as provided in subsection 3 and except for a plan of merger adopted under section 10-19.1-100.1;
- d. A plan of exchange, whether under this chapter or under chapter 10-32, to which the corporation is a constituent organization as the corporation whose shares will be acquired by the acquiring corporation, except as provided in subsection 3; or
- e. Any other corporate action taken pursuant to a shareholder vote with respect to which the articles, the bylaws, or a resolution approved by the board directs that dissenting shareholders may obtain payment for their shares.

SECTION 16. AMENDMENT. Section 10-19.1-100 of the North Dakota Century Code is amended and reenacted as follows:

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

1. A parent owning at least ninety percent of the outstanding ownership interests of each class and series of a subsidiary directly, or indirectly through related ~~corporations or limited liability companies~~ may organizations other than classes or series that, absent this section, would otherwise not be entitled to vote on the merger:

- 1 a. May merge the subsidiary into the parent or into any other subsidiary at least
2 ninety percent of the outstanding ownership interests of each class and series
3 of which is owned by the parent directly, or indirectly through related
4 ~~corporations or limited liability companies~~ organizations other than classes or
5 series that, absent this section, would otherwise not be entitled to vote on the
6 merger, without a vote of the owners of the parent or any subsidiary; or ~~may~~
7 b. May merge the parent, or the parent and one or more subsidiaries into one of
8 the subsidiaries under this section.

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

- 12 a. The name of the subsidiary or subsidiaries, the name of the parent, and the
13 name of the surviving constituent organization;
14 b. The manner and basis of converting the ownership interests of the subsidiary
15 or subsidiaries or the parent into securities of the parent, subsidiary, or of
16 another organization; or, in whole or in part, into money or other property;
17 c. If the parent is a constituent organization but is not the surviving constituent
18 organization in the merger, a provision for the pro rata issuance of ownership
19 interests of the surviving constituent organization to the owners of ownership
20 interests of the parent on surrender of any ownership interests of the parent;
21 and
22 d. If the surviving constituent organization is a subsidiary, a statement of any
23 amendments to the articles of the surviving constituent organization that will
24 be part of the merger.

- 25 3. If the parent is a constituent organization and is the surviving organization in the
26 merger, it may change its corporate name, without a vote of its owners, by the
27 inclusion of a provision to that effect in the resolution of merger setting forth the
28 plan of merger that is approved by the affirmative vote of a majority of the board
29 members of the parent present. Upon the effective date of the merger, the name
30 of the parent must be changed.

- 1 4. 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 also
3 approved by the affirmative vote of the holders of a majority of the voting power of
4 all ownership interests of the parent entitled to vote at a regular or special meeting
5 held in accordance with section 10-19.1-98 if the parent is a domestic 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 5. A Notice of the action, including a copy of the plan of merger must be mailed given
10 to each owner, other than the parent and any subsidiary, of each subsidiary that is
11 a constituent organization in the merger before, or within ten days after, the
12 effective date of the merger.
- 13 6. Articles of merger must be prepared which contain:
 - 14 a. The plan of merger;
 - 15 b. The number of outstanding ownership interests of each class and series of
16 the subsidiary that is a constituent organization in the merger, other than the
17 classes or series that, absent this section, would otherwise not be entitled to
18 vote on the merger, and the number of ownership interests of each class and
19 series owned, other than the classes or series that, absent this section, would
20 otherwise not be entitled to vote on the merger, by the parent directly, or
21 indirectly through related constituent organizations; and
22 c. ~~The date a copy of the plan of merger was mailed to owners, other than the~~
23 ~~parent or a subsidiary, of each subsidiary that is a constituent organization in~~
24 ~~the merger; and~~
25 d. A statement that the plan of merger is approved by the parent under this
26 section.
- 27 7. ~~Within thirty days after a copy of the plan of merger is mailed to owners of each~~
28 ~~subsidiary that is a constituent organization to the merger or upon waiver of the~~
29 ~~mailing by the owners of all outstanding ownership interests of each subsidiary that~~
30 ~~is a constituent organization to the merger, the~~ The articles of merger must be

signed on behalf of the parent and filed with the secretary of state, with the fees provided in section 10-19.1-147.

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

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

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

SECTION 17. Section 10-19.1-100.1 of the North Dakota Century Code is created and enacted as follows:

10-19.1-100.1. Merger to effect a holding company reorganization.

1. For purposes of this section:

1 a. "Holding company" means the corporation that is or becomes the direct
2 parent of the surviving corporation of a merger accomplished under this
3 section.

4 b. "Parent constituent corporation" means the parent that merges with or into the
5 subsidiary constituent corporation.

6 c. "Subsidiary constituent corporation" means the subsidiary that the parent
7 constituent corporation merges with or into in the merger.

8 2. Unless its articles expressly provide otherwise, and subject to subdivision 3, a
9 parent constituent corporation may merge with or into a subsidiary constituent
10 corporation without a vote of the shareholders of the parent constituent
11 corporation.

12 3. A merger may be accomplished under this section only if each of the following
13 requirements is met:

14 a. The holding company and the constituent corporations to the merger are each
15 organized under this chapter;

16 b. At all times following the issuance of shares until the consummation of a
17 merger under this section, the holding company was a direct wholly owned
18 subsidiary of the parent constituent corporation;

19 c. Immediately before the consummation of a merger under this section, the
20 subsidiary constituent corporation is an indirect wholly owned subsidiary of
21 the parent constituent corporation and a direct wholly owned subsidiary of the
22 holding company;

23 d. The parent constituent corporation and the subsidiary constituent corporation
24 are the only constituent corporations to the merger;

25 e. Immediately after the merger becomes effective, the surviving corporation
26 becomes or remains a direct wholly owned subsidiary of the holding
27 company;

28 f. Each share or fraction of a share of the parent constituent corporation
29 outstanding immediately before the effective time of the merger is converted
30 in the merger into a share or equal fraction of a share of the holding company
31 having the same designation and relative rights and preferences, and the

1 same restrictions thereon, as the share or fraction of a share of the parent
2 constituent corporation being converted in the merger;

3 g. The articles and bylaws of the holding company immediately following the
4 effective time of the merger contain provisions identical to the articles and
5 bylaws of the parent constituent corporation immediately before the effective
6 time of the merger, other than provisions, if any, regarding the incorporator or
7 incorporators, the corporate name, the registered office and agent, the initial
8 board, and the initial subscribers for shares and the provisions contained in
9 any amendment to the articles of the parent constituent corporation that were
10 necessary to effect an exchange, reclassification, or cancellation of shares if
11 the exchange, reclassification, or cancellation has become effective;

12 h. The articles and bylaws of the surviving corporation immediately following the
13 effective time of the merger are identical to the articles and bylaws of the
14 parent constituent corporation immediately before the effective time of the
15 merger, other than provisions, if any, regarding the incorporator or
16 incorporators, the corporate name, the registered office and agent, the initial
17 board, and the initial subscribers for shares and the provisions contained in
18 any amendment to the articles of the parent constituent corporation that were
19 necessary to effect an exchange, reclassification, or cancellation of shares if
20 the exchange, reclassification, or cancellation has become effective, except
21 that:

22 (1) The articles of the surviving corporation shall be amended in the
23 merger to contain a provision requiring that any act or transaction by or
24 involving the surviving corporation, other than the election or removal of
25 directors of the surviving corporation, that requires for its adoption
26 under this chapter or its articles the approval of the shareholders of the
27 surviving corporation shall, by specific reference to this section, require,
28 in addition, the approval of the shareholders of the holding company, or
29 any successor by merger, by the same vote as is required by this
30 chapter or the articles of the surviving corporation; and

- 1 (2) The articles of the surviving corporation may be amended in the merger
2 to reduce the number of classes, series, and shares that the surviving
3 corporation is authorized to issue;
- 4 i. The directors of the parent constituent corporation become or remain the
5 directors of the holding company immediately after the merger becomes
6 effective;
- 7 j. The board of the parent constituent corporation determines that the
8 shareholders of the parent constituent corporation will not recognize gain or
9 loss for United States federal income tax purposes; and
- 10 k. A resolution approved by the affirmative vote of a majority of the directors of
11 the parent constituent corporation present sets forth a plan of merger that
12 contains provisions addressing the requirements of subdivisions a through j.
- 13 4. Neither paragraph 1 of subdivision h of subsection 3, nor any provisions of the
14 surviving corporation's articles required by that item may be construed to require
15 approval of the shareholders of the holding company to elect or remove directors
16 of the surviving corporation.
- 17 5. If the name of the holding company at the time the merger takes effect is the same
18 as the name of the parent constituent corporation immediately before that time, the
19 shares of the holding company into which the shares of the parent constituent
20 corporations are converted in the merger must, unless new certificates are issued,
21 be represented by the share certificates that previously represented shares of the
22 parent constituent corporation.
- 23 6. Articles of merger must be:
- 24 a. Prepared that contain:
- 25 (1) The plan of merger; and
- 26 (2) A statement that the plan of merger was adopted under this section.
- 27 b. Signed on behalf of the parent constituent corporation and filed with the
28 secretary of state.
- 29 7. The secretary of state shall issue a certificate of merger to the surviving
30 corporation or its legal representative.

- 1 8. A merger between a parent and a subsidiary may be accomplished under sections
2 10-19.1-97, 10-19.1-98, 10-19.1-99, and 10-19.1-100 instead of this section, in
3 which case this section does not apply.

4 **SECTION 18. AMENDMENT.** Subsection 1 of section 10-19.1-110 of the North
5 Dakota Century Code is amended and reenacted as follows:

- 6 1. If notice to creditors and claimants is given, it must be given by:
7 a. Publishing the notice once each week for four successive weeks in an official
8 newspaper, as defined in chapter 46-06, in the county or counties where the
9 registered office and the principal executive office of the corporation are
10 located; and
11 b. Giving written notice to known creditors and claimants pursuant to
12 subsection ~~23~~ 32 of section 10-19.1-01.

13 **SECTION 19. AMENDMENT.** Subsections 2 and 3 of section 10-19.1-113.1 of the
14 North Dakota Century Code are amended and reenacted as follows:

- 15 2. When the certificate of dissolution has been issued by the secretary of state, or on
16 a later date within thirty days after filing if the articles of dissolution so provide, the
17 corporation is dissolved.
18 3. The secretary of state shall issue to the ~~dissolved~~ corporation, or its legal
19 representative, a certificate of dissolution that contains:
20 a. The name of the corporation;
21 b. The date the ~~articles of dissolution were filed with the secretary of state is~~
22 effective; and
23 c. A statement that the corporation was dissolved on the effective date of the
24 dissolution.

25 **SECTION 20. AMENDMENT.** Subsection 3 of section 10-19.1-129 of the North
26 Dakota Century Code is amended and reenacted as follows:

- 27 3. If neither the corporation's registered agent nor an officer of the corporation can be
28 found at the registered office, or if a corporation fails to maintain a registered agent
29 in this state and an officer of the corporation cannot be found at the registered
30 office, then the secretary of state is the agent of the corporation upon whom the
31 process, notice, or demand may be served. ~~The~~ Service on the secretary of state:

a. Shall be made by registered mail or personal delivery to the secretary of state and not by electronic communication;

b. Shall include the return of the sheriff, or the affidavit of a person who is not a party, verifying that ~~neither the~~ registered agent ~~or nor an~~ officer can be found at the registered office ~~must be provided to the secretary of state.~~
Service on the secretary of state of any process, notice, or demand is; and

c. Is deemed personal service upon the corporation and must be made by filing with the secretary of state an;

(1) An original and two copies of the process, notice, or demand, ~~with the;~~
and

(2) The fees provided in section 10-19.1-147. The secretary of state shall immediately forward, by registered mail, addressed to the corporation at the registered office, a copy of the process, notice, or demand.

Service on the secretary of state is returnable in not less than thirty days notwithstanding a shorter period specified in the process, notice, or demand.

SECTION 21. AMENDMENT. Subsection 2 of section 10-19.1-146 of the North Dakota Century Code is amended and reenacted as follows:

2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report except as to the information required by ~~subdivisions~~ subdivision g, i, and j of subsection 1 which must be given as of the close of business on December thirty-first next preceding the date herein provided for the filing of the report, or, in the alternative, data of the fiscal year ending next preceding this report may be used. The annual report must be signed as prescribed in subsection ~~39~~ 48 of section 10-19.1-01, or the articles or the bylaws or a resolution approved by the affirmative vote of the required proportion or number of the directors or holders of shares entitled to vote. If the corporation or foreign corporation is in the hands of a receiver or trustee, it must be signed on behalf of the corporation or foreign corporation by the receiver or trustee. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years.

The secretary of state, or any employee or legal representative of the secretary of state, may not disclose the information reported under ~~subdivisions~~ subdivision g; ~~i, and j~~ of subsection 1 to any person, except a person who is verified to be a shareholder of the corporation or foreign corporation, a legal representative of the shareholder for which information is requested, or to the tax commissioner or any employee or legal representative of the tax commissioner, who may not disclose the information and may use the information only for the administration of the tax laws.

SECTION 22. Section 10-19.1-149.1 of the North Dakota Century Code is created and enacted as follows:

10-19.1-149.1. Secretary of state - Exempt records. Any social security number or federal tax identification number disclosed or contained in any document filed with the secretary of state under this chapter is an exempt record as defined by subsection 5 of section 44-04-17.1. The secretary of state shall take reasonable precautions to delete or obscure any social security number or federal tax identification number the secretary of state determines to be a closed record before a copy of any document is released to the public.

SECTION 23. AMENDMENT. Subsection 10 of section 10-31-01 of the North Dakota Century Code is amended and reenacted as follows:

10. "Professional service" means the personal service to the public which requires a license as a condition precedent to the rendering of such service and which ~~before the passage of this chapter could not be performed by a corporation, limited liability company, or a limited liability partnership~~ requires as a condition of licensure an undergraduate or advanced college degree in the specific field.

SECTION 24. AMENDMENT. Section 10-32-02 of the North Dakota Century Code is amended and reenacted as follows:

10-32-02. Definitions. For purposes of this chapter, unless the context otherwise requires:

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

2. "Address" means:

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

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

- a. In the case of a limited liability company organized under this chapter, articles of organization, articles of amendment, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of membership interests, articles of merger, articles of abandonment, and articles of termination.
- b. In the case of a foreign limited liability company, the term includes all documents serving a similar function required to be filed with the secretary of state or other state office of the limited liability company's state of organization.

4. "Authenticated electronic communication" means:

a. That the electronic communication is delivered:

- (1) To the principal place of business of the limited liability company; or
- (2) To a manager or agent of the limited liability company authorized by the limited liability company to receive the electronic communication; and

b. That the electronic communication sets forth information from which the limited liability company can reasonably conclude that the electronic communication was sent by the purported sender.

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

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

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

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

- a. Relates to the management of the business or the regulation of the affairs of the limited liability company; and
- b. Was expressly part of the bylaws by the action, taken from time to time under section 10-32-68, by the board of ~~governors~~ or the members.

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

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

9- 10. "Constituent organization" means a limited liability company or a domestic or foreign corporation that:

- a. In a merger, is either the surviving organization or an organization that is merged into the surviving organization; or
- b. In an exchange, is either the acquiring organization or an organization whose securities are acquired by the acquiring organization.

40- 11. "Contribution" means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a member contributes to a limited liability company in the capacity of that member as a member.

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

- a. The person agrees to make a contribution in the future; and
- b. The limited liability company agrees that, at the time specified for the contribution in the future, the limited liability company will accept the contribution and reflect the contribution in the required records.

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

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

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

~~42.~~ 14. "Dissolution" means that the limited liability company incurred an event under subsection 1 of section 10-32-109, subject only to sections 10-32-116 and 10-32-124, that obligates the limited liability company to wind up the limited liability company's affairs and to terminate the limited liability company's existence as a legal entity.

~~43.~~ 15. "Dissolution avoidance consent" means the consent of all remaining members:

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

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

~~44.~~ 16. "Distribution" means a direct or indirect transfer of money or other property, other than its own membership interests, with or without consideration, or an incurrence or issuance of indebtedness, by a limited liability company to any of the limited liability company's members in respect of membership interests. A distribution may be in the form of an interim distribution or a termination distribution, or as consideration for the purchase, redemption, or other acquisition of its membership interests, or otherwise.

~~45.~~ 17. "Domestic corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by chapter 10-19.1.

~~46.~~ 18. "Domestic organization" means an organization created under the laws of this state.

19. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

20. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper:

a. That creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and

- 1 b. That may be directly reproduced in paper form by the recipient through an
2 automated process.
- 3 21. "Electronic record" means a record created, generated, sent, communicated,
4 received, or stored by electronic means.
- 5 22. "Electronic signature" means an electronic sound, symbol, or process attached to
6 or logically associated with a record and executed or adopted by a person with the
7 intent to sign the record.
- 8 23. "Filed with the secretary of state" means except as otherwise permitted by law or
9 rule:
- 10 a. ~~That either of the following~~ a document meeting the applicable requirements
11 of this chapter, together with the fees provided in section 10-32-150, has
12 been delivered or communicated to the secretary of state by a method or
13 medium of communication acceptable by the secretary of state, and has been
14 determined by the secretary of state to conform to law:
- 15 (1) ~~A signed original or a legible facsimile telecommunication of a signed~~
16 ~~original of a request for reserved name; or~~
- 17 (2) ~~A signed original of all other documents, meeting the applicable~~
18 ~~requirements of this chapter, together with the fees provided in section~~
19 ~~10-32-150.~~
- 20 b. That the secretary of state shall then:
- 21 (1) ~~Endorse on the original Record the word "filed" and the month, day,~~
22 ~~and year~~ actual date on which the document is filed, and if different, the
23 effective date of filing; and
- 24 (2) Record the document in the office of the secretary of state.
- 25 ~~47.~~ 24. "Financial rights" means a member's rights:
- 26 a. To share in profits and losses as provided in section 10-32-36;
- 27 b. To share in distributions as provided in section 10-32-60;
- 28 c. To receive interim distributions as provided in section 10-32-61; and
- 29 d. To receive termination distributions as provided in subdivision c of
- 30 subsection 1 of section 10-32-131.

- 1 ~~48.~~ 25. "Foreign corporation" means a corporation organized for profit that is incorporated
2 under laws other than the laws of this state for a purpose for which a corporation
3 may be incorporated under chapter 10-19.1.
- 4 ~~49.~~ 26. "Foreign limited liability company" means a limited liability company organized for
5 profit which is organized under laws other than the laws of this state for a purpose
6 for which a limited liability company may be organized under this chapter.
- 7 ~~20.~~ 27. "Foreign organization" means an organization created under laws other than the
8 laws of this state for a purpose for which an organization may be created under the
9 laws of this state.
- 10 28. "Good faith" means honesty in fact in the conduct of the act or transaction
11 concerned.
- 12 ~~24.~~ 29. "Governance rights" means all of a member's rights as a member in the limited
13 liability company other than financial rights and the right to assign financial rights.
- 14 ~~22.~~ 30. "Governing board" means:
15 a. The board of governors in the case of a limited liability company; and
16 b. The board of directors in the case of a corporation.
- 17 ~~23.~~ 31. "Governor" means an individual serving on the board ~~of governors~~.
- 18 ~~24.~~ 32. "Intentionally" means that the person referred to either has a purpose to do or fail
19 to do the act or cause the result specified or believes that the act or failure to act, if
20 successful, will cause that result. A person "intentionally" violates a statute:
21 a. If the person intentionally does the act or causes the result prohibited by the
22 statute; or
23 b. If the person intentionally fails to do the act or cause the result required by the
24 statute, even though the person may not know of the existence or
25 constitutionality of the statute or the scope or meaning of the terms used in
26 the statute.
- 27 ~~25.~~ 33. "Knows" or has "knowledge" means the person has actual knowledge of a fact. A
28 person does not "know" or have "knowledge" of a fact merely because the person
29 has reason to know of the fact.
- 30 ~~26.~~ 34. "Legal representative" means a person empowered to act for another person,
31 including an agent, manager, officer, partner, or associate of an organization; a

trustee of a trust; a personal representative; a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator.

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

"Manager" means:

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

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

"Member" means a person, with or without voting rights, reflected in the required records of a limited liability company as the owner of a membership interest in the limited liability company.

"Membership interest" means one of the units, however designated, into which a member's proprietary interest in a limited liability company is divided consisting of:

a. A member's financial rights;

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

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

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

"Notice" ~~is~~:

a. Is given by a member of a limited liability company to the limited liability company or a manager of a limited liability company ~~when~~:

(1) When in writing and mailed or delivered to the limited liability company or the manager at the registered office or principal executive office of the limited liability company.

(2) When given by a form of electronic communication consented to by the limited liability company or a manager to which the notice is given:

(a) If by facsimile communication, when directed to a telephone number at which the limited liability company or a manager has consented to receive notice;

(b) If by electronic mail, when directed to an electronic mail address at which the limited liability company or a manager has consented to receive notice;

(c) If by posting on an electronic network on which the limited liability company or a manager has consented to receive notice, together with separate notice to the limited liability company or a manager of the specific posting, upon the later of:

[1] The posting; or

[2] The giving of the separate notice; or

(d) If by any other form of electronic communication by which the limited liability company or a manager has consented to receive notice, when directed to the limited liability company or a manager.

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

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

(2) When handed to the person; or

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

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

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

(4) When given by a form of electronic communication consented to by the person to whom the notice is given:

(a) If by facsimile communication, when directed to a telephone number at which the person has consented to receive notice.

(b) If by electronic mail, when directed to an electronic mail address at which the person has consented to receive notice.

(c) If by posting on an electronic network on which the person has consented to receive notice, together with separate notice to the person of the specific posting, upon the later of:

[1] The posting; or

[2] The giving of the separate notice.

(d) If by any other form of electronic communication by which the person has consented to receive notice when directed to the person.

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

~~e. d.~~ Notice is considered ~~Is deemed~~ received when it is given.

~~32. 40.~~ "Organization" means, ~~whether~~

a. Whether domestic or foreign, a limited liability company, corporation, partnership, limited partnership, limited liability partnership, limited liability limited partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity; but

b. Excludes any nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under chapter 10-33 or a foreign nonprofit corporation which is incorporated in another jurisdiction.

~~33. 41.~~ "Owners" means:

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

b. Shareholders in the case of a corporation.

~~34. 42.~~ "Ownership interests" means:

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

b. Shares in the case of a corporation.

~~35. 43.~~ "Parent" of a specified limited liability company means a limited liability company or corporation that directly or indirectly, through related organizations, owns more than fifty percent of the voting power of the membership interests entitled to vote for governors of the specified limited liability company.

- 1 ~~36.~~ 44. "Pertains" means a contribution "pertains":
- 2 a. To a particular series when the contribution is made in return for a
- 3 membership interest in that particular series.
- 4 b. To a particular class when the class has no series and the contribution is
- 5 made in return for a membership interest in the class.
- 6 A contribution that pertains to a series does not pertain to the class of which the
- 7 series is a part.
- 8 ~~37.~~ 45. "Principal executive office" means:
- 9 a. If the limited liability company has an elected or appointed president, an office
- 10 where the elected or appointed president of the limited liability company has
- 11 an office; or
- 12 b. If the limited liability company has no elected or appointed president, the
- 13 registered office of the limited liability company.
- 14 ~~38.~~ 46. "Record" means information that is inscribed on a tangible medium or that is stored
- 15 in an electronic or other medium and is retrievable in perceivable form.
- 16 47. "Registered office" means the place in this state designated in the articles as the
- 17 registered office of the limited liability company.
- 18 ~~39.~~ 48. "Related organization" means an organization that controls, is controlled by, or is
- 19 under common control with another organization with control existing if an
- 20 organization:
- 21 a. Owns, directly or indirectly, at least fifty percent of the shares, membership
- 22 interests, or other ownership interests of another organization;
- 23 b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or
- 24 more of the voting members of the governing body of another organization; or
- 25 c. Has the power, directly or indirectly, to direct or cause the direction of the
- 26 management and policies of another organization, whether through the
- 27 ownership of voting interests, by contract, or otherwise.
- 28 ~~40.~~ 49. "Remote communication" means communication via electronic communication,
- 29 conference telephone, videoconference, the internet, or such other means by
- 30 which persons not physically present in the same location may communicate with
- 31 each other on a substantially simultaneous basis.

- 1 50. "Required records" are those records required to be maintained under section
2 10-32-51.
- 3 ~~41.~~ 51. "Security" has the meaning given it in ~~subsection 13 of~~ section 10-04-02.
- 4 ~~42.~~ 52. "Series" means a category of membership interests, within a class of membership
5 interests, that has some of the same rights and preferences as other membership
6 interests within the same class, but that differ in one or more rights and
7 preferences from another category of membership interests within that class.
- 8 ~~43.~~ 53. "Signed" means:
- 9 a. That the signature of a person has been, which may be a facsimile affixed,
10 engraved, printed, placed, stamped with indelible ink, transmitted by facsimile
11 telecommunication or electronically, or in any other manner reproduced on
12 the document, is placed on a document, as provided in subsection 39 of
13 under section 41-01-11, and, with 41-01-09.
- 14 b. With respect to a document:
- 15 a. ~~Required~~ required by this chapter to be filed with the secretary of state,
16 ~~means the that:~~
- 17 (1) The document has been signed by a person authorized to do so by this
18 chapter, the articles of organization, a member-control agreement, or
19 the bylaws or a resolution approved by the governors as required by
20 section 10-32-83 or the members as required by section 10-32-42; and
- 21 b. ~~Not required by this chapter to be filed with the secretary of state, the~~
22 ~~signature may be a facsimile affixed, engraved, printed, placed, stamped with~~
23 ~~indelible ink, transmitted by facsimile telecommunication or electronically, or~~
24 ~~in any other manner reproduced on the document.~~
- 25 (2) The signature and the document are communicated by a method or
26 medium acceptable by the secretary of state.
- 27 ~~44.~~ 54. "Subsidiary" of a specified limited liability company means:
- 28 a. A limited liability company having more than fifty percent of the voting power
29 of its membership interests entitled to vote for governors owned directly or
30 indirectly through related organizations by the specified limited liability
31 company; or

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

~~45.~~ 55. "Successor organization" means an organization that, pursuant to a business continuation agreement or an order of the court under subsection 6 of section 10-32-119, continues the business of the dissolved and terminated limited liability company.

~~46.~~ 56. "Surviving organization" means the foreign or domestic limited liability company or domestic or foreign corporation resulting from a merger.

~~47.~~ 57. "Termination" means the end of a limited liability company's existence as a legal entity and occurs when a notice of termination is:

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

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

~~48.~~ 58. "Vote" includes authorization by written action.

~~49.~~ 59. "Winding up" means the period triggered by dissolution during which the limited liability company ceases to carry on business, except to the extent necessary for concluding affairs, and disposing of assets under section 10-32-131.

~~50.~~ 60. "Written action" means ~~a~~:

a. A written document signed by every person required to take the action described; ~~and the~~

b. The counterparts of a written document signed by any person taking the action described.

(1) Each counterpart constitutes the action of the persons signing it; ~~and all~~

(2) All the counterparts, taken together, constitute one written action by all of the persons signing them.

SECTION 25. Section 10-32-02.1 of the North Dakota Century Code is created and enacted as follows:

10-32-02.1. Legal recognition of electronic records and electronic signatures.

For purposes of this chapter:

1. A record or signature may not be denied legal effect or enforceability solely because it is in electronic form;
2. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation;
3. If a provision requires a record to be in writing, an electronic record satisfies the requirement; and
4. If a provision requires a signature, an electronic signature satisfies the requirement.

SECTION 26. AMENDMENT. Subsections 2, 3, and 4 of section 10-32-07 of the North Dakota Century Code are amended and reenacted as follows:

2. The following provisions govern a limited liability company unless modified in the articles of organization or a member-control agreement under section 10-32-50:
 - a. A limited liability company has general business purposes as provided in section 10-32-04;
 - b. A limited liability company has certain powers as provided in section 10-32-23;
 - c. The power to adopt, amend, or repeal the bylaws is vested in the board of ~~governors~~ as provided in section 10-32-68;
 - d. A limited liability company must allow cumulative voting for governors as provided in section 10-32-76;
 - e. The affirmative vote of the greater of a majority of governors present or a majority of the minimum number of governors constituting a quorum is required for an action of the board of ~~governors~~ as provided in section 10-32-83;
 - f. A written action by the board of ~~governors~~ taken without a meeting must be signed by all governors as provided in section 10-32-84;
 - g. The board may accept contributions, make contribution agreements, and make contribution allowance agreements as provided in subsection 1 of section 10-32-56 and sections 10-32-58 and 10-32-59;

- 1 h. All membership interests are ordinary membership interests entitled to vote
2 and are of one class with no series as provided in subdivisions a and b of
3 subsection 5 of section 10-32-56;
- 4 i. All membership interests have equal rights and preferences in all matters not
5 otherwise provided for by the board ~~of governors~~ as provided in subdivision b
6 of subsection 5 of section 10-32-56;
- 7 j. The value of previous contributions must be restated when a new contribution
8 is accepted as provided in subsections 3 and 4 of section 10-32-57;
- 9 k. A member has certain preemptive rights, unless otherwise provided by the
10 board ~~of governors~~ as provided in section 10-32-37;
- 11 l. The affirmative vote of the greater of the owners of a majority of the voting
12 power of the membership interests present and entitled to vote at a duly held
13 meeting or a majority of the voting power of the membership interests with
14 voting rights constituting the minimum voting power needed for a quorum for
15 the transaction of business is required for an action of the members, except if
16 this chapter requires the affirmative vote of a majority of the voting power of
17 all membership interests entitled, to vote as provided in subsection 1 of
18 section 10-32-42;
- 19 m. The voting power of each membership interest is in proportion to the value
20 reflected in the required records of the contributions of the members as
21 provided in section 10-32-40.1;
- 22 n. Members share in distributions in proportion to the value reflected in the
23 required records of the contributions of members as provided in section
24 10-32-60;
- 25 o. Members share profits and losses in proportion to the value reflected in the
26 required records of the contributions of members as provided in section
27 10-32-36;
- 28 p. A written action by the members taken without a meeting must be signed by
29 all members as provided in section 10-32-43;

- q. Members have no right to receive distributions in kind and the limited liability company has only limited rights to make distributions in kind as provided in section 10-32-62;
 - r. A member is not subject to expulsion as provided in subsection 2 of section 10-32-30;
 - s. Unanimous consent is required for the transfer of governance rights to a person not already a member as provided in subsection 2 of section 10-32-32;
 - t. For a limited liability company whose existence begins before July 1, 1999, unanimous consent is required to avoid dissolution as provided in subdivision e of subsection 1 of section 10-32-109;
 - u. The termination of a person's membership interest has specified consequences as provided in section 10-32-30; and
 - v. Restrictions apply to the assignment of governance rights as provided in section 10-32-32.
3. The following provisions govern a limited liability company unless modified in the articles of organization, a member-control agreement under section 10-32-50, or in the bylaws:
- a. Governors serve for an indefinite term that expires at the next regular meeting of members as provided in section 10-32-72;
 - b. The compensation of governors is fixed by the board ~~of governors~~ as provided in section 10-32-74;
 - c. A certain method must be used for removal of governors as provided in section 10-32-78;
 - d. A certain method must be used for filling board ~~of governors~~ vacancies as provided in section 10-32-79;
 - e. If the board ~~of governors~~ fails to select a place for a board meeting, it must be held at the principal executive office as provided in subsection 1 of section 10-32-80;
 - f. The notice of a board ~~of governors~~ meeting need not state the purpose of the meeting as provided in subsection 3 of section 10-32-80;

- 1 g. A majority of the board ~~of governors~~ is a quorum for a board meeting as
- 2 provided in section 10-32-82;
- 3 h. A committee consists of one or more individuals, who need not be governors,
- 4 appointed by affirmative vote of a majority of the governors present as
- 5 provided in subsection 2 of section 10-32-85;
- 6 i. The board may establish a special litigation committee as provided in section
- 7 10-32-85;
- 8 j. The president and treasurer have specified duties, until the board ~~of~~
- 9 ~~governors~~ determines otherwise as provided in section 10-32-89;
- 10 k. Managers may delegate some or all of their duties and powers, if not
- 11 prohibited by the board ~~of governors~~ from doing so as provided in section
- 12 10-32-95;
- 13 l. Regular meetings of members need not be held, unless demanded by a
- 14 member under certain conditions as provided in section 10-32-38;
- 15 m. In all instances when a specific minimum notice period has not otherwise
- 16 been fixed by law, not less than ten days' notice is required for a meeting of
- 17 members as provided in subsection 2 of section 10-32-40;
- 18 n. For a quorum at a members' meeting, there is required a majority of the
- 19 voting power of the membership interests entitled to vote at the meeting as
- 20 provided in section 10-32-44;
- 21 o. The board ~~of governors~~ may fix a date up to fifty days before the date of a
- 22 members' meeting as the date for the determination of the members entitled
- 23 to notice of and entitled to vote at the meeting as provided in section
- 24 10-32-40.1;
- 25 p. Indemnification of certain persons is required as provided in section 10-32-99;
- 26 q. The board ~~of governors~~ may authorize, and the limited liability company may
- 27 make, distributions not prohibited, limited, or restricted by an agreement as
- 28 provided in subsection 1 of section 10-32-64; and
- 29 r. Members have no right to interim distributions except as provided through the
- 30 bylaws or an act of the board ~~of governors~~ as provided in section 10-32-61.

- 1 4. The provisions in subdivisions a, g, o, p, and r may be included in the articles of
2 organization or a member-control agreement under section 10-32-50. The
3 provisions in subdivisions b through f, h, i, j, k, l, m, n, and q may be included in the
4 articles of organization, in a member-control agreement under section 10-32-50,
5 or, in the bylaws:
- 6 a. The persons to serve as the first board ~~of governors~~ may be named in the
7 articles of organization as provided in subsection 1 of section 10-32-69;
8 b. A manner for increasing or decreasing the number of governors may be
9 provided as provided in section 10-32-70;
10 c. Additional qualifications for governors may be imposed as provided in section
11 10-32-71;
12 d. Governors may be classified as provided in section 10-32-75;
13 e. The date, time, and place of board ~~of governors~~ meetings may be fixed as
14 provided in subsection 1 of section 10-32-80;
15 f. Absent governors may be permitted to give written consent or opposition to a
16 proposal as provided in section 10-32-81;
17 g. A larger than majority vote may be required for board ~~of governors~~ action as
18 provided in section 10-32-83;
19 h. Authority to sign and deliver certain documents may be delegated to a
20 manager or agent of the limited liability company other than the president as
21 provided in section 10-32-89;
22 i. Additional managers may be designated as provided in section 10-32-88;
23 j. Additional powers, rights, duties, and responsibilities may be given to
24 managers as provided in section 10-32-89;
25 k. A method for filling vacant offices may be specified as provided in
26 subsection 3 of section 10-32-94;
27 l. The date, time, and place of regular member meetings may be fixed as
28 provided in subsection 3 of section 10-32-38;
29 m. Certain persons may be authorized to call special meetings of members as
30 provided in subsection 1 of section 10-32-39;

- 1 n. Notices of member meetings may be required to contain certain information
2 as provided in subsection 3 of section 10-32-40;
- 3 o. A larger than majority vote may be required for member action as provided in
4 section 10-32-42;
- 5 p. Voting rights may be granted in or pursuant to the articles of organization to
6 persons who are not members as provided in subsection 3 of section
7 10-32-40.1;
- 8 q. Limited liability company actions giving rise to dissenter rights may be
9 designated as provided in subdivision d of subsection 1 of section 10-32-55;
10 and
- 11 r. A governor's personal liability to the limited liability company or the limited
12 liability company's members for monetary damages for breach of fiduciary
13 duty as a governor may be eliminated or limited in the articles as provided in
14 subsection 4 of section 10-32-86.

15 **SECTION 27. AMENDMENT.** Subsection 5 of section 10-32-10 of the North Dakota
16 Century Code is amended and reenacted as follows:

- 17 5. A limited liability company that is ~~merged~~ the surviving organization in a merger
18 ~~with another limited liability company or domestic or foreign corporation, or that is~~
19 ~~organized by the reorganization of one or more limited liability companies or~~
20 ~~domestic or foreign corporations~~ other organizations, or that acquires by sale,
21 lease, or other disposition to or exchange with ~~a limited liability company an~~
22 organization all or substantially all of the assets of another ~~limited liability company~~
23 ~~or domestic or foreign corporation~~ organization including its name, may have the
24 same name, subject to the requirements of subsection 1, as that used in this state
25 by any of the other ~~limited liability companies or domestic or foreign corporations~~
26 organizations, if the ~~other limited liability company or domestic or foreign~~
27 ~~corporation~~ organization whose name is sought to be used:
- 28 a. Was organized ~~or~~ incorporated, formed or registered under the laws of this
29 state;
- 30 b. Is authorized to transact business or conduct activities in this state;

- c. Holds a reserved name in the manner provided in section 10-19.1-14,
10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
- d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
- e. Holds a trade name registered in the manner provided in chapter 47-25.

SECTION 28. AMENDMENT. Section 10-32-11 of the North Dakota Century Code is amended and reenacted as follows:

10-32-11. Reserved name.

- 1. The exclusive right to the use of a limited liability company name otherwise permitted by section 10-32-10 may be reserved by any person.
- 2. The reservation is made by filing with the secretary of state a request that the name be reserved together with the fees provided in section 10-32-150.
 - a. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months.
 - b. The reservation may be renewed for successive twelve-month periods.
- 3. The right to the exclusive use of a limited liability company name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee together with the fees provided in section 10-32-150.
- 4. The right to the exclusive use of a limited liability company name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the cancellation together with the fees provided in section 10-32-150.
- ~~5. The secretary of state may accept for filing a legible facsimile telecommunication of the signed original of any request for reserved name.~~
- ~~6.~~ The secretary of state may destroy all reserved name requests and index thereof one year after expiration.

SECTION 29. AMENDMENT. Subsection 1 of section 10-32-13 of the North Dakota Century Code is amended and reenacted as follows:

- 1 1. A limited liability company may change its registered office, change its registered
- 2 agent, or state a change in the name of its registered agent, by filing with the
- 3 secretary of state, along with the fees provided in section 10-32-150, a statement
- 4 containing:
- 5 a. The name of the limited liability company;
- 6 b. If the address of its registered office is to be changed, the new address of its
- 7 registered office;
- 8 c. If its registered agent is to be designated or changed, the name of its new
- 9 registered agent;
- 10 d. If the name of its registered agent is to be changed, the name of its registered
- 11 agent as changed;
- 12 e. A statement that the address of its registered office and the address of the
- 13 business office of its registered agent, as changed, will be identical; and
- 14 f. A statement that the change of registered office or registered agent was
- 15 authorized by resolution approved by the board ~~of governors~~.

16 **SECTION 30. AMENDMENT.** Section 10-32-15 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **10-32-15. Procedure for amendment before contribution.** Before any contribution is
19 reflected in the required records of a limited liability company, the articles of organization may
20 be amended pursuant to section 10-32-67 by the organizers or by the board ~~of governors~~. The
21 articles of organization may also be amended by the board ~~of governors~~ to change or cancel a
22 statement pursuant to subsection 6 of section 10-32-56 establishing or fixing the rights and
23 preferences of a class or series of membership interests before any contribution pertaining to
24 that class or series is reflected in the required records of the limited liability company by filing
25 articles of amendment or a statement of cancellation, as appropriate, with the secretary of
26 state.

27 **SECTION 31. AMENDMENT.** Subsection 6 of section 10-32-17 of the North Dakota
28 Century Code is amended and reenacted as follows:

- 29 6. Divide the membership interests of the class into series and determine the
- 30 designation of each series and the variations in the relative rights and preferences

between the membership interests of each series or authorize the board of
governors to do so;

SECTION 32. AMENDMENT. Subsection 1 of section 10-32-22 of the North Dakota
Century Code is amended and reenacted as follows:

1. Whenever a plan of reorganization of a limited liability company has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of the limited liability company, pursuant to the provisions of any applicable statute of the United States relating to reorganization of limited liability companies, the articles may be amended, in the manner provided in this section, in as many respects as may be necessary to carry out the plan and to put it into effect, so long as the articles as amended contain only provisions which might be lawfully contained in original articles of organization at the time of making the amendment. In particular, and without limitation upon any general power of amendment, the articles may be amended to:
 - a. Change the limited liability company name, period of duration, or organizational purposes of the limited liability company.
 - b. Repeal, alter, or amend the bylaws of the limited liability company.
 - c. Change the preferences, limitations, relative rights in respect of all or any part of the membership interests of the limited liability company, and classify, reclassify, or cancel all or any part thereof.
 - d. Authorize the issuance of bonds, debentures, or other obligations of the limited liability company, whether convertible into membership interests of any class or bearing warrants or other evidence of optional rights to purchase or subscribe for membership interests of any class, and fix the terms and conditions thereof.
 - e. Constitute or reconstitute and classify or reclassify the board of ~~governors~~ and appoint governors and managers in place of or in addition to all or any of the governors or managers then in office.

SECTION 33. AMENDMENT. Subsection 17 of section 10-32-23 of the North Dakota
Century Code is amended and reenacted as follows:

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

4 **SECTION 34. AMENDMENT.** Section 10-32-36 of the North Dakota Century Code is
5 amended and reenacted as follows:

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

11 **SECTION 35. AMENDMENT.** Section 10-32-37 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **10-32-37. Preemptive rights.**

- 14 1. To the extent allowed by section 9 of article XII of the Constitution of North Dakota,
15 a member of a limited liability company has the preemptive rights provided in this
16 section, unless denied or limited in the articles of organization, in a member-control
17 agreement, or by the board ~~of governors~~ pursuant to subdivision b of subsection 5
18 of section 10-32-56.
- 19 2. A preemptive right is the right of a member to make contributions of a certain
20 amount or to make a contribution allowance agreement specifying future
21 contributions of a certain amount before the limited liability company may accept
22 new contributions from other persons or to make contribution allowance
23 agreements with other persons.
- 24 3. A member has a preemptive right whenever the limited liability company proposes
25 to accept contributions from other persons, or to make contribution allowance
26 agreements with other persons, pertaining to membership interests of the same
27 series or class as the series or class owned by the member.
- 28 4. Unless otherwise provided in the articles of organization or a member-control
29 agreement, no preemptive rights pursuant to this section arise as to contributions
30 to be accepted from others or as to contribution allowance agreements to be made
31 with others when the contribution is:

- 1 a. To be made in a form other than money;
- 2 b. To be made or reflected pursuant to a plan of merger;
- 3 c. To be made or reflected pursuant to an employee or incentive benefit plan
- 4 approved at a meeting by the affirmative vote of the owners of a majority of
- 5 the voting power of all membership interests entitled to vote;
- 6 d. To be made pursuant to a previously made contribution allowance
- 7 agreement; or
- 8 e. To be made or reflected pursuant to a plan of reorganization approved by a
- 9 court of competent jurisdiction pursuant to a statute of this state or of the
- 10 United States.
- 11 5. The extent to which each member may make a new contribution, or obtain the right
- 12 to make a new contribution under a contribution allowance agreement, by exercise
- 13 of a preemptive right as to any class or series is the ratio that the value of that
- 14 member's contributions, as reflected in the required records as pertaining to that
- 15 class or series before the contribution, bears to the total value of all members'
- 16 contributions reflected in the required records as pertaining to that class or series
- 17 before the new contribution.
- 18 6. A member may waive a preemptive right in writing. The waiver is binding upon the
- 19 member whether or not consideration has been given for the waiver. Unless
- 20 otherwise provided in the waiver, a waiver of preemptive rights is effective only for
- 21 the proposed contribution or contribution allowance agreement described in the
- 22 waiver.
- 23 7. When proposing to accept new contributions, or to make contribution allowance
- 24 agreements, with respect to which members have preemptive rights under this
- 25 section, the board of ~~governors~~ shall cause notice to be given to each member
- 26 entitled to preemptive rights. The notice must be given at least ten days before the
- 27 date by which the member must exercise a preemptive right and must contain:
- 28 a. The extent of the member's preemptive right, being:
- 29 (1) In the case of a preemptive right to make a contribution, the amount of
- 30 the contribution to be made; and

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

28 **SECTION 36. AMENDMENT.** Subsections 2 and 3 of section 10-32-38 of the North
29 Dakota Century Code are amended and reenacted as follows:

- 30 2. If a regular meeting of members has not been held within the earlier of six months
31 after the fiscal yearend of the corporation or fifteen months after its last meeting:

1 a. A member or members owning five percent or more of the voting power of all
2 members entitled to vote may demand a regular meeting of members by
3 written notice of demand given to the president or the secretary of the limited
4 liability company.

5 b. Within thirty days after receipt of the demand by one of those managers, the
6 board ~~of governors~~ shall cause a regular meeting of members to be called
7 and held on notice no later than ninety days after receipt of the demand.

8 c. If the board ~~of governors~~ fails to cause a regular meeting to be called and
9 held as required by this subsection, the member or members making the
10 demand may call the regular meeting by giving notice as required by section
11 10-32-40.

12 d. All necessary expenses of the notice and the meeting must be paid by the
13 limited liability company.

14 3. A regular meeting, if any, must be held on the date and at the time and place fixed
15 by, or in a manner authorized by the articles, a member-control agreement, or the
16 bylaws, except a meeting called by or at the demand of a member pursuant to
17 subsection 2 must be held in the county where the principal executive office of the
18 limited liability company is located. To the extent authorized in the articles, a
19 member-control agreement, or the bylaws, the board may determine that a regular
20 meeting of the members shall be held solely by means of remote communication in
21 accordance with subdivision a of subsection 2 of section 10-32-43.2.

22 **SECTION 37. AMENDMENT.** Subsections 2 and 3 of section 10-32-39 of the North
23 Dakota Century Code are amended and reenacted as follows:

24 2. A member or members owning ten percent or more of the voting power of all
25 membership interests entitled to vote may demand a special meeting of members
26 by written notice of demand given to the president or secretary of the limited
27 liability company and containing the purposes of the meeting.

28 a. Within thirty days after receipt of the demand by one of those managers, the
29 board ~~of governors~~ shall cause a special meeting of members to be called
30 and held on notice no later than ninety days after receipt of the demand, all at
31 the expense of the limited liability company.

b. If the board ~~of governors~~ fails to cause a special meeting to be called and held as required by this subsection, the member or members making the demand may call the meeting by giving notice as required by section 10-32-40.

c. All necessary expenses of the notice and the meeting must be paid by the limited liability company.

3. Special meetings must be held on the date and at the time and place fixed by the president, the board ~~of governors~~, or a person authorized by the articles, a member-control agreement, or the bylaws to call a meeting, except a special meeting called by or at the demand of a member or members pursuant to subsection 2 must be held in the county where the principal executive office is located. To the extent authorized in the articles, a member-control agreement, or the bylaws, the board may determine that a special meeting of the members shall be held solely by means of remote communication in accordance with subdivision a of subsection 2 of section 10-32-43.2.

SECTION 38. AMENDMENT. Subsection 3 of section 10-32-40 of the North Dakota Century Code is amended and reenacted as follows:

3. The notice:

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

b. Must contain the date, time, and place of the meeting;

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

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

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

f. Must contain any other information:

- (1) Required by the articles of organization, any member-control agreement, the bylaws, or this chapter; or
 - (2) Considered necessary or desirable by the board ~~of governors~~; and
- g. May contain any other information considered necessary or desirable by the person or persons calling the meeting.

SECTION 39. AMENDMENT. Section 10-32-40.1 of the North Dakota Century Code is amended and reenacted as follows:

10-32-40.1. Voting rights.

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

as beneficial owners, rather than the actual member, are deemed the members for the purposes specified in the writing.

5. Unless otherwise provided in the articles, in a member-control agreement, or by the board ~~of governors~~ under subsections 5 and 6 of section 10-32-56, members have voting power in proportion to the value of the contributions of the members as reflected in the required records.
6. The articles of organization or a member-control agreement may give or prescribe the manner of giving a creditor, securityholder, or other person a right to vote under this section.
7. Membership interests owned by two or more members may be voted by any one of them unless the limited liability company receives written notice from any one of them denying the authority of that person to vote those membership interests.
8. Except as provided in subsection 7, an owner of a membership interest entitled to vote may vote any portion of the membership interest in any way the member chooses. If a member votes without designating the proportion voted in a particular way, the member is considered to have voted all of the membership interest in that way.

SECTION 40. AMENDMENT. Section 10-32-43 of the North Dakota Century Code is amended and reenacted as follows:

10-32-43. Action without a meeting.

- ~~4.~~ An action required or permitted to be taken at a meeting of the members may be taken without a meeting by written action signed, or consented to by authenticated electronic communication, by all of the members entitled to vote on that action.
1. If ~~provided by~~ the articles or a member-control agreement so provide, any action may be taken by written action signed, or consented to by authenticated electronic communication, by the members who own voting power equal to the voting power that would be required to take the same action at a meeting of the members at which all members were present.
2. The written action is effective when signed, or consented to by authenticated electronic communication, by the required members, unless a different effective time is provided in the written action.

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

- 6 4. 3. When this chapter requires or permits a certificate concerning an action to be filed
7 with the secretary of state, the managers signing the certificate must so indicate
8 ~~that if~~ the action was taken under this section.

9 **SECTION 41. AMENDMENT.** Section 10-32-43.2 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **10-32-43.2. Electronic Remote communications for member meetings.**

- 12 1. This section shall be construed and applied to:
13 a. Facilitate remote communication consistent with other applicable law; and
14 b. Be consistent with reasonable practices concerning remote communication
15 and with the continued expansion of those practices.
16 2. To the extent authorized in the articles, a member-control agreement or the
17 bylaws, and determined by the board:
18 a. A ~~conference among~~ meeting of the members may be held solely by any
19 combination of means of remote communication through which the
20 participants may ~~simultaneously hear each other during~~ participate in the
21 ~~conference constitutes a regular or special meeting of members if the same:~~
22 (1) If notice of the meeting is given of the conference to every owner of
23 membership interests entitled to vote as would be required by this
24 chapter for a meeting; and
25 (2) If the membership interests held by the members participating in the
26 ~~conference~~ meeting would be sufficient to constitute a quorum at a
27 meeting. ~~Participation in a conference by this means constitutes~~
28 ~~presence at the meeting in person or by proxy if all the other~~
29 ~~requirements of section 10-32-48 are met.~~
30 ~~2.~~ b. A member ~~may participate in~~ not physically present in person or by proxy at a
31 regular or special meeting of members ~~not described in subsection 1~~ may by

1 ~~any means of remote communication through which the member, other~~
2 ~~participants, and all participants physically present at the meeting may~~
3 ~~simultaneously hear each other during the meeting. Participation in a~~
4 ~~meeting by that means constitutes presence at the meeting in person or by~~
5 ~~proxy if all the other requirements of section 10-32-48 are met, participate in a~~
6 ~~meeting of members held at a designated place.~~

- 7 3. In any meeting of members held solely by means of remote communication under
8 subdivision a of subsection 2 or in any meeting of members held at a designated
9 place in which one or more members participate by means of remote
10 communication under subdivision b of subsection 2:

- 11 a. The limited liability company shall implement reasonable measures:

12 (1) To verify that each person deemed present and entitled to vote at the
13 meeting by means of remote communication is a member; and

14 (2) To provide each member participating by means of remote
15 communication with a reasonable opportunity to participate in the
16 meeting, including an opportunity to:

17 (a) Read or hear the proceedings of the meeting substantially
18 concurrently with those proceedings;

19 (b) If allowed by the procedures governing the meeting, have the
20 member's remarks heard or read by other participants in the
21 meeting opportunity to; and

22 (c) If otherwise entitled, vote on matters submitted to the members.

- 23 b. Participation in a meeting by this means constitutes presence at the meeting
24 in person or by proxy of all if all of the other requirements of section 10-32-48
25 are met.

- 26 4. With respect to notice to members:

- 27 a. Any notice to members given by the limited liability company under any
28 provision of this chapter, the articles, a member-control agreement, or the
29 bylaws by a form of electronic communication consent to by the member to
30 whom the notice is given is effective when given. The notice is deemed
31 given:

- (1) If by facsimile communication, when directed to a telephone number at which the member has consented to receive notice;
 - (2) If by electronic mail, when directed to an electronic mail address at which the member has consented to receive notice;
 - (3) If by a posting on an electronic network on which the member has consented to receive notice, together with separate notice to the member of the specific posting, upon the later of:
 - (a) The posting; or
 - (b) The giving of the separate notice; and
 - (4) If by any other form of electronic communication by which the member has consented to receive notice, when directed to the member.
- b. An affidavit of the secretary, other authorized manager, or authorized agent of the limited liability company, that the notice has been given by a form of electronic communication is, in the absence of fraud, prima facie evidence of the facts stated in the affidavit.
- c. Consent by a member to notice given by electronic communication may be given in writing or by authenticated electronic communication. The limited liability company is entitled to rely on any consent so given until revoked by the member, provided that no revocation affects the validity of any notice given before receipt by the limited liability company of revocation of the consent.
5. Any ballot, vote authorization, or consent submitted by electronic communication under this chapter may be revoked by the member submitting the ballot, vote, authorization, or consent so long as the revocation is received by a manager of the limited liability company at or before the meeting or before an action without a meeting is effective according to section 10-32-43.
6. Waiver of notice by a member of a meeting by means of authenticated electronic communication ~~described in subsections 1 and 2~~ may be given in the manner provided in subsection 4 of section 10-32-40. Participation in a meeting by means of remote communication described in ~~subsections 1 and~~ subdivisions a and b of

subsection 2 is a waiver of notice of that meeting, except when the member objects at:

- a. At the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened; or objects before
- b. Before a vote on an item of business because the item may not lawfully be considered at the meeting and does not participate in the consideration of the item at that meeting.

SECTION 42. AMENDMENT. Subsection 1 of section 10-32-48 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~A~~ At or before the meeting at which the appointment is to be effective, a member may cast or authorize the casting of a vote by:
 - a. By filing with a manager authorized to tabulate votes a written appointment of a proxy with a manager of the limited liability company at or before the meeting at which the appointment is to be effective which is signed by the member.
 - a. ~~A written appointment of a proxy may be signed by the member or authorized by the member by transmission of a telegram, cablegram, or other means of electronic transmission, provided the limited liability company has no reason to believe that the telegram, cablegram, or other electronic transmission was not authorized by the member.~~
 - b. By telephonic transmission or authenticated electronic communication to a manager authorized to tabulate votes, whether or not accompanied by written instructions of the member, of an appointment of a proxy.
 - (1) The telephonic transmission or authenticated electronic communication must set forth or be submitted with information from which it can be determined that the appointment is authorized by the member. If it is reasonably concluded that the telephonic transmission or authenticated electronic communication is valid, the inspectors of election or, if there are not inspectors, the other persons making that determination of validity shall specify the information upon which they relied to make that determination.

(2) A proxy so appointed may vote on behalf of the member, or otherwise participate, in a meeting by remote communication according to section 10-32-43.2, to the extent the member appointing the proxy would have been entitled to participate by remote communication according to section 10-32-43.2 if the member did not appoint the proxy.

c. Any copy, facsimile telecommunication, or other reproduction of the original writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the original transmission could be used, if the copy, facsimile telecommunication, or other reproduction is a complete and legible reproduction of the entire original writing or transmission.

e. d. An appointment of a proxy for membership interests owned jointly by two or more members is valid if signed or ~~otherwise authorized~~ consented to by authenticated electronic communication by any one of ~~them~~ the members, unless the limited liability company receives from any one of those members written notice or an authenticated electronic communication either denying the authority of that person to appoint a proxy or appointing a different proxy.

SECTION 43. AMENDMENT. Subsection 1 of section 10-32-50 of the North Dakota Century Code is amended and reenacted as follows:

1. A member-control agreement relating to any phase or aspect of the business and affairs of a limited liability company is valid as provided in subsection 2 and enforceable as provided in subsection 3.

a. A member-control agreement valid under subsection 2 may relate to, without limitation, the:

- (1) Management of the limited liability company's business;
- (2) Declaration and payment of distributions;
- (3) Sharing of profits and losses;
- (4) Election of governors or managers;
- (5) Employment of members and others by the limited liability company;
- (6) Relations among members and persons who have signed contribution agreements, including the termination of continued membership;

(7) Dissolution, termination, and liquidation of the limited liability company, including the continuation of the limited liability company's business through a successor organization or individual; and

(8) Arbitration of disputes.

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

c. A member-control agreement may:

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

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

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

SECTION 44. AMENDMENT. Section 10-32-51 of the North Dakota Century Code is amended and reenacted as follows:

10-32-51. Required records and information.

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

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

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

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

d. Copies of any currently effective written bylaws;

- e. Copies of the limited liability company's federal, state, and local income tax returns and reports, if any, for the three most recent years;
- f. Financial statements required by section 10-32-52;
- g. Records of all proceedings of members for the last three years;
- h. Records of all proceedings of the board ~~of governors~~ for the last three years;
- i. Reports made to members generally within the last three years;
- j. Member-control agreements described in section 10-32-50;
- k. A statement of all contributions accepted under subsection 3 of section 10-32-56 including for each contribution:
 - (1) The identity of the member to whom the contribution relates;
 - (2) The class or series to which the contribution pertains;
 - (3) The amount of cash accepted by the limited liability company or promised to be paid to the limited liability company;
 - (4) A description of any services rendered to or for the benefit of the limited liability company or promised to be rendered to or for the benefit of the limited liability company; and
 - (5) The value accorded under subsection 4 of section 10-32-56 to:
 - (a) Any other property transferred or promised to be transferred to the limited liability company; and
 - (b) Any services rendered to or for the benefit of the limited liability company or promised to be rendered to or for the benefit of the limited liability company;
- l. A statement of all contribution agreements made under section 10-32-58, including for each contribution agreement:
 - (1) The identity of the would-be contributor;
 - (2) The class or series to which the future contribution pertains; and
 - (3) As to each future contribution to be made, the same information as subdivision k requires for contributions already accepted;
- m. A statement of all contribution allowance agreements made under section 10-32-59, including for each contribution allowance agreement:
 - (1) The identity of the would-be contributor;

- 1 (2) The class or series to which the future contribution would pertain; and
- 2 (3) As to each future contribution allowed to be made, the same
- 3 information as subdivision k requires for contributions already
- 4 accepted;
- 5 n. An explanation of any restatement of value made under section 10-32-57;
- 6 o. Any written consents obtained from members under this chapter; and
- 7 p. A copy of agreements, contracts, or other arrangements or portions of them
- 8 incorporated by reference under subsections 6 through 8 of section 10-32-56.
- 9 2. A member of a limited liability company has an absolute right, upon written
- 10 demand, to examine and copy, in person or by a legal representative, at any
- 11 reasonable time, and the limited liability company shall make available within ten
- 12 days after receipt by a manager of the limited liability company of the written
- 13 demand, all documents referred to in subsection 1.
- 14 3. A member of a limited liability company who has been a member for at least six
- 15 months immediately preceding the member's demand or who is the holder of
- 16 record of at least five percent of all membership interests of the limited liability
- 17 company has a right, upon written demand, to examine and copy, in person or by a
- 18 legal representative, other limited liability company records at any reasonable time
- 19 only if the member demonstrates a proper purpose for the examination. A "proper
- 20 purpose" is one reasonably related to the person's interest as a member of a
- 21 limited liability company.
- 22 4. On application of the limited liability company, a court in this state may issue a
- 23 protective order permitting the limited liability company to withhold portions of the
- 24 records of proceedings of the board of ~~governors~~ for a reasonable period of time,
- 25 not to exceed twelve months, in order to prevent premature disclosure of
- 26 confidential information that would be likely to cause competitive injury to the
- 27 limited liability company. A protective order may be renewed for successive
- 28 reasonable periods of time, each not to exceed twelve months and in total not to
- 29 exceed thirty-six months, for good cause shown. In the event a protective order is
- 30 issued, the statute of limitations for any action that the member might bring as a
- 31 result of information withheld automatically extends for the period of delay. If the

1 court does not issue a protective order with respect to any portion of the records of
2 proceedings as requested by the limited liability company, it shall award
3 reasonable expenses, including attorney's fees and disbursements, to the
4 member. This subsection does not limit the right of a court to grant other
5 protective orders or impose other reasonable restrictions on the nature of the
6 limited liability company records that may be copied or examined under
7 subsections 2 and 3 or the use or distribution of the records by the demanding
8 member.

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

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

19 7. The records maintained by a limited liability company may utilize any information
20 storage technique, including, for example, punched holes, printed or magnetized
21 spots, or microimages, even though that makes them illegible visually, if the
22 records can be converted accurately and within a reasonable time, into a form that
23 is legible visually and whose contents are assembled by related subject matter to
24 permit convenient use by people in the normal course of business. A limited
25 liability company shall convert any of the records referred to in subsections 2 and 3
26 upon the request of a person entitled to inspect them, and the expense of the
27 conversion must be borne by the person who bears the expense of copying
28 pursuant to subsection 6. A copy of the conversion is admissible in evidence, and
29 is acceptable for all other purposes, to the same extent as the existing or original
30 records would be if they were legible visually.

1 **SECTION 45. AMENDMENT.** Subsection 1 of section 10-32-54 of the North Dakota
2 Century Code is amended and reenacted as follows:

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

7 a. An amendment of the articles of organization, but not an amendment to a
8 member-control agreement, which materially and adversely affects the rights
9 or preferences of the membership interests of the dissenting member in that
10 it:

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

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

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

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

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

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

25 b. A sale, lease, transfer, or other disposition of all or substantially all of the
26 property and assets of the limited liability company, but not including a
27 transaction permitted without member approval under section 10-32-108, a
28 disposition in dissolution described in subsection 4 of section 10-32-113, a
29 disposition pursuant to an order of a court, or a disposition for cash on terms
30 requiring that all or substantially all of the net proceeds of disposition be

- distributed to the members in accordance with the member's respective membership interests within one year after the date of disposition;
- c. A plan of merger to which the limited liability company is a constituent organization;
- d. A plan of exchange to which the limited liability company is a constituent organization as the organization whose ownership interests will be acquired by the acquiring organization; if the membership interests being acquired are entitled to be voted on the plan; or
- e. Any other limited liability company action taken pursuant to a member vote with respect to which the articles of organization, a member-control agreement, the bylaws, or a resolution approved by the board ~~of governors~~ directs that dissenting members may obtain payment for the dissenting members' membership interests.

SECTION 46. AMENDMENT. Subsection 4 of section 10-32-55 of the North Dakota Century Code is amended and reenacted as follows:

4. After the proposed action is approved by the board ~~of governors~~ and, if necessary, the members, the limited liability company shall send to all members who complied with subsection 3 and to all members entitled to dissent if no member vote was required, a notice that contains:
- a. The address to which a demand for payment must be sent in order to obtain payment and the date by which the demand must be received;
- b. A form to be used to certify the date on which the member acquired the membership interests and to demand payment; and
- c. A copy of section 10-32-54 and this section.

SECTION 47. AMENDMENT. Section 10-32-56 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Subject to any restrictions in the articles of organization or a member-control agreement and only when authorized by the board ~~of governors~~ or pursuant to a member-control agreement, a limited liability company may accept contributions

under subsections 2 and 3, make contribution agreements under section 10-32-58, and make contribution allowance agreements under section 10-32-59.

2. ~~A person may make a contribution to a limited liability company by paying money or transferring the ownership of an interest in property to the limited liability company for rendering services to or for the benefit of the~~ Subject to subsection 3, a person may make a contribution to a limited liability company.

3. No purported contribution is to be treated or considered as a contribution, unless:

a. The board ~~of governors~~ accepts the contribution on behalf of the limited liability company and in that acceptance describes the contribution and states the value being accorded to the contribution; and

b. The fact of contribution and the contribution's accorded value are both reflected in the required records of the limited liability company.

4. The determinations of the board ~~of governors~~ as to the amount or fair value or the fairness to the limited liability company of the contribution accepted or to be accepted by the limited liability company or the terms of payment or performance, including under a contribution agreement in section 10-32-58, and a contribution allowance agreement in section 10-32-59, are presumed to be proper if they are made in good faith and on the basis of accounting methods, or a fair valuation or other method, reasonable in the circumstances. Governors who are present and entitled to vote, and who, intentionally or without reasonable investigation, fail to vote against approving a consideration that is unfair to the limited liability company, or overvalue property or services received or to be received by the limited liability company as a contribution, are jointly and severally liable to the limited liability company for the benefit of the then members who did not consent to and are damaged by the action, to the extent of the damages of those members. A governor against whom a claim is asserted pursuant to this subsection, except in case of knowing participation in a deliberate fraud, is entitled to contribution on an equitable basis from other governors who are liable under this subsection.

5. All the membership interests of a limited liability company must:

- a. Be of one class, without series, unless a member-control agreement or the articles of organization establish, or authorize the board ~~of governors~~ to establish, more than one class or series within classes;
 - b. Be ordinary membership interests entitled to vote as provided in section 10-32-40.1, and have equal rights and preferences in all matters not otherwise provided for by the board ~~of governors~~ unless and to the extent the articles of organization or a member-control agreement fixes the relative rights and preferences of different classes and series; and
 - c. Share profits and losses as provided in section 10-32-36 and be entitled to distributions as provided in sections 10-32-60 and 10-32-61 and subdivision c of subsection 1 of section 10-32-131.
6. Subject to any restrictions in the articles of organization or a member-control agreement, the power granted in subsection 5 may be exercised by a resolution approved by the affirmative vote of a majority of the directors present establishing a class or series, setting forth the designation of the class or series, and fixing the relative rights and preferences of the class or series established in the articles of organization, in a member-control agreement, or by resolution of the board ~~of governors~~.
7. A statement signed by a manager setting forth the name of the limited liability company and the text of the resolution and certifying the adoption of the resolution and the date of adoption must be filed with the secretary of state together with the fees provided in section 10-32-150 before the acceptance of any contributions for which the resolution creates rights or preferences not set forth in the articles of organization or a member-control agreement. The resolution is effective when the statement has been filed with the secretary of state unless the statement specifies a later effective date within thirty days of filing the statement with the secretary of state.
8. Without limiting the authority granted in this section, a limited liability company may have membership interests of a class or series:

- a. Subject to the right of the limited liability company to redeem any of those membership interests at the price fixed for their redemption by the articles of organization or by the board ~~of governors~~;
- b. Entitling the members to cumulative, partially cumulative, or noncumulative distributions;
- c. Having preference over any class or series of membership interests for the payment of distributions of any or all kinds;
- d. Convertible into membership interests of any other class or any series of the same or another class; or
- e. Having full, partial, or no voting rights, except as provided in section 10-32-17.

SECTION 48. AMENDMENT. Subsection 2 of section 10-32-57 of the North Dakota Century Code is amended and reenacted as follows:

2. Whenever a limited liability company accepts a new contribution, the board ~~of governors~~ shall restate, as required by this section, the value of all old contributions.

SECTION 49. AMENDMENT. Subsection 3 of section 10-32-58 of the North Dakota Century Code is amended and reenacted as follows:

3. A contribution agreement, whether made before or after the formation of a limited liability company, must be paid or performed in full at the time or times, or in the installments, if any, specified in the contribution agreement. In the absence of a provision in the contribution agreement specifying the time at which the contribution is to be paid or performed, the contribution must be paid or performed at the time or times determined by the board ~~of governors~~, but a call made by the board ~~of governors~~ for payment or performance on contributions must be uniform for all membership interests of the same class or for all membership interests of the same series.

SECTION 50. AMENDMENT. Subsection 1 of section 10-32-59 of the North Dakota Century Code is amended and reenacted as follows:

1. Subject to any restrictions in the articles of organization or a member-control agreement, a limited liability company may enter into contribution allowance

agreements under the terms, provisions, and conditions fixed by the board of
governors or by a manager pursuant to board authorization.

SECTION 51. AMENDMENT. Section 10-32-60 of the North Dakota Century Code is
amended and reenacted as follows:

10-32-60. Sharing of distributions. Unless otherwise provided in the articles of
organization, in a member-control agreement, or by the board of governors under
subsections 5 through 7 of section 10-32-56, distributions of cash or other assets of a limited
liability company, including distributions on termination of the limited liability company, must be
allocated in proportion to the value of the contributions of the members reflected in the required
records.

SECTION 52. AMENDMENT. Section 10-32-61 of the North Dakota Century Code is
amended and reenacted as follows:

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

SECTION 53. AMENDMENT. Subsection 1 of section 10-32-64 of the North Dakota
Century Code is amended and reenacted as follows:

1. The board of governors may authorize and cause the limited liability company to
make a distribution only if the board of governors determines, in accordance with
subsection 2, that the limited liability company will be able to pay its debts in the
ordinary course of business after making the distribution and the board of
governors does not know before the distribution is made that the determination
was or has become erroneous.
 - a. The limited liability company may make the distribution if it is able to pay its
debts in the ordinary course of business after making the distribution.
 - b. The effect of a distribution on the ability of the limited liability company to pay
its debts in the ordinary course of business after making the distribution must
be measured in accordance with subsection 3.
 - c. The right of the board of governors to authorize, and the limited liability
company to make, distributions may be, prohibited, limited, or restricted by

the articles of organization, a member-control agreement, the bylaws, or an agreement.

SECTION 54. AMENDMENT. Section 10-32-67 of the North Dakota Century Code is amended and reenacted as follows:

10-32-67. Organization.

1. If the first board ~~of governors~~ is not named in the articles of organization, the organizers may elect the first board ~~of governors~~ or may act as governors with all of the powers, rights, duties, and liabilities of governors, until governors are elected or until a contribution is accepted, whichever occurs first.
2. After the issuance of the certificate of organization, the organizers or the governors named in the articles of organization shall hold an organizational meeting at the call of a majority of the organizers or of the governors named in the articles, or take written action, for the purposes of transacting business and taking actions necessary or appropriate to complete the organization of the limited liability company, including, without limitation, amending the articles, electing governors, adopting the bylaws, electing managers, adopting banking resolutions, authorizing or ratifying the purchase, lease, or other acquisition of suitable space, furniture, furnishings, supplies, and materials, approving a limited liability company seal, adopting a fiscal year for the limited liability company, contracting to receive and accept contributions, and making any appropriate tax elections.
 - a. If a meeting is held, the person or persons calling the meeting shall give at least three days' notice of the meeting to each organizer or governor named, stating the date, time, and place of the meeting.
 - b. Organizers and governors may waive notice of an organizational meeting in the same manner a governor may waive notice of meetings of the board ~~of governors~~ under subsection 5 of section 10-32-80.

SECTION 55. AMENDMENT. Subsections 2 and 3 of section 10-32-68 of the North Dakota Century Code are amended and reenacted as follows:

2. Initial bylaws may be adopted pursuant to section 10-32-67 by the organizers or by the first board ~~of governors~~. Unless reserved by the articles of organization or a member-control agreement to the members, the power to adopt, amend, or repeal

the bylaws is vested in the board ~~of governors~~. The power of the board ~~of governors~~ is subject to the power of the members, exercisable in the manner provided in subsection 3, to adopt, amend, or repeal the bylaws adopted, amended, or repealed by the board ~~of governors~~. ~~After the adoption of the initial bylaws, the board of governors may not adopt, amend, or repeal a bylaw provision fixing a quorum for meetings of members, prescribing procedures for removing governors or filling vacancies in the board of governors, or fixing the number of governors or the governors' classifications, qualifications, or terms of office, but may adopt or amend a bylaw provision to increase the number of governors.~~

3. Unless the articles or bylaws provide otherwise, members owning five percent or more of the voting power of the members entitled to vote may propose a resolution for action by the members to adopt, amend, or repeal the bylaws adopted, amended, or repealed by the board ~~of governors~~ and the resolution must set forth the provision or provisions proposed for adoption, amendment, or repeal, the limitations and procedures for submitting, considering, and adopting the resolution are the same as provided in subsections 2 through 4 of section 10-32-16, for amendment of the articles of organization. The articles or bylaws may impose different or additional requirements for the members to adopt, amend, or repeal the bylaws.

SECTION 56. AMENDMENT. Section 10-32-69 of the North Dakota Century Code is amended and reenacted as follows:

10-32-69. Board ~~of governors~~.

1. The business and affairs of a limited liability company are to be managed by or under the direction of a board ~~of governors~~, subject to the provisions of subsection 2 and section 10-32-50. The first board ~~of governors~~ may be named in the articles of organization or in a member-control agreement or may be elected by the organizers pursuant to section 10-32-67 or by the members.
2. The owners of the membership interests entitled to vote for governors of the limited liability company may, by unanimous affirmative vote, take any action that this chapter requires or permits the board ~~of governors~~ to take. As to an action taken by the members in that manner:

- 1 a. The governors have no duties, liabilities, or responsibilities as governors
2 under this chapter with respect to or arising from the action;
- 3 b. The members collectively and individually have all of the duties, liabilities, and
4 responsibilities of governors under this chapter with respect to and arising
5 from the action;
- 6 c. If the action relates to a matter required or permitted by this chapter or by any
7 other law to be approved or adopted by the board ~~of governors~~, either with or
8 without approval or adoption by the members, the action is considered to
9 have been approved or adopted by the board ~~of governors~~; and
- 10 d. A requirement that an instrument filed with a governmental agency contain a
11 statement that the action has been approved and adopted by the board ~~of~~
12 ~~governors~~ is satisfied by a statement that the members have taken the action
13 under this subsection.

14 **SECTION 57. AMENDMENT.** Section 10-32-70 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **10-32-70. Number.** The board ~~of governors~~ consists of one or more governors. The
17 number of governors must be fixed by or in the manner provided in the articles of organization,
18 a member-control agreement, or the bylaws. The number of governors may be increased or,
19 subject to section 10-32-78, decreased at any time by amendment to or in the manner provided
20 in the articles, a member-control agreement, or the bylaws.

21 **SECTION 58. AMENDMENT.** Section 10-32-73 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **10-32-73. Acts not void or voidable.** The expiration of a governor's term with or
24 without the election of a qualified successor does not make prior or subsequent acts of the
25 governors or the board ~~of governors~~ void or voidable.

26 **SECTION 59. AMENDMENT.** Section 10-32-74 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **10-32-74. Compensation.** Subject to any limitations in the articles, a member-control
29 agreement, or the bylaws, the board ~~of governors~~ may fix the compensation of governors.

30 **SECTION 60. AMENDMENT.** Subsection 2 of section 10-32-76 of the North Dakota
31 Century Code is amended and reenacted as follows:

2. An amendment to the articles, a member-control agreement, or the bylaws which has the effect of denying, limiting, or modifying the right to cumulative voting for members provided in this section may not be adopted if the votes of a proportion of the voting power sufficient to elect a governor at an election of the entire board of ~~governors~~ under cumulative voting are cast against the amendment.

SECTION 61. AMENDMENT. Subsection 2 of section 10-32-77 of the North Dakota Century Code is amended and reenacted as follows:

2. If a resignation is made effective at a later time, the board may fill the pending vacancy before the effective time if the board of ~~governors~~ provides that the successor does not take office until the effective time.

SECTION 62. AMENDMENT. Subsections 2 and 3 of section 10-32-78 of the North Dakota Century Code are amended and reenacted as follows:

2. A governor may be removed at any time, with or without cause, if:
- a. The governor was named by the board of ~~governors~~ to fill a vacancy;
 - b. The members have not elected governors in the interval between the time of the appointment to fill a vacancy and the time of the removal; and
 - c. A majority of the remaining governors present affirmatively votes to remove the governor.
3. Any one or all of the governors may be removed at any time, with or without cause, by the affirmative vote of the owners of a majority of the voting power of all membership interests entitled to vote at an election of governors.
- a. If less than the entire board of ~~governors~~ is to be removed, no one of the governors may be removed if the votes cast against the governor's removal which, if then cumulatively voted at the election of the entire board of ~~governors~~, or if there be classes of governors at an election of the class of governors of which the governor is a part, would be sufficient to elect the governor.
 - b. If a governor has been elected solely by the holders of a class or series of membership interests as stated in the articles, any member-control agreement, or the bylaws, then that governor may be removed only by the affirmative vote of the holders of a majority of the voting power of all

membership interests of that class or series entitled to vote at an election of that governor.

SECTION 63. AMENDMENT. Subsection 2 of section 10-32-78.1 of the North Dakota Century Code is amended and reenacted as follows:

2. The court that removes a governor may bar the governor from serving on the board of ~~governors~~ for a period prescribed by the court.

SECTION 64. AMENDMENT. Subsection 1 of section 10-32-79 of the North Dakota Century Code is amended and reenacted as follows:

1. Unless different rules for filling vacancies are provided for in the articles, a member-control agreement, or the bylaws:
 - a. Vacancies on the board of ~~governors~~ resulting from the death, resignation, removal, or disqualification of a governor may be filled by the affirmative vote of a majority of the remaining governors, even though less than a quorum; and
 - b. Vacancies on the board of ~~governors~~ resulting from newly created governorships may be filled by the affirmative vote of a majority of the governors serving at the time of the increase.

SECTION 65. AMENDMENT. Section 10-32-80 of the North Dakota Century Code is amended and reenacted as follows:

10-32-80. Board of ~~governors~~ meetings.

1. Meetings of the board of ~~governors~~ may be held from time to time as provided in the articles of organization, a member-control agreement, or the bylaws at any place within or without the state that the board of ~~governors~~ may select or by any means described in subsection 2.
 - a. If the articles, bylaws, or board of ~~governors~~ fails to select a place for a meeting, the meeting must be held at the principal executive office, unless the articles, a member-control agreement, or the bylaws provide otherwise.
 - b. The board may determine under subsection 2 that a meeting of the board shall be held solely by means of remote communication.
 - c. Participation in a meeting by either of the means set forth in subdivision 2 constitutes personal presence at the meeting.

- 1 2. ~~A board of governors~~ Any meeting among governors may be conducted by:
- 2 a. ~~A conference among governors using~~ Solely by any one or more means of
- 3 remote communication through which all of the governors may
- 4 ~~simultaneously hear~~ participate with each other during the ~~conference~~
- 5 ~~constitutes a board of governors~~ meeting, if:
- 6 (1) If the same notice is given of the ~~conference~~ meeting as would be
- 7 required by subsection 3 ~~for a meeting~~; and if
- 8 (2) If the number of governors participating in the ~~conference~~ meeting is a
- 9 quorum at a meeting. ~~Participation in a meeting by this means~~
- 10 ~~constitutes personal presence at the meeting; or~~
- 11 b. By ~~any~~ means of conference telephone or, if authorized by the board, by such
- 12 other means of remote communication, in each case, through which the
- 13 governor, other governors so participating, and all governors physically
- 14 present at the meeting may ~~simultaneously hear~~ participate with each other
- 15 during the meeting. ~~Participation in a meeting by this means constitutes~~
- 16 ~~personal presence at the meeting.~~
- 17 3. Unless the articles of organization, a member-control agreement, or the bylaws
- 18 provide for a different time period, a governor may call a board meeting by giving
- 19 at least ten days' notice or, in the case of organizational meetings under
- 20 subsection 2 of section 10-32-67, at least three days' notice to all governors of the
- 21 date, time, and place of the meeting. The notice need not state the purpose of the
- 22 meeting unless the articles, a member-control agreement, or the bylaws otherwise
- 23 require.
- 24 4. If the date, time, and place of a board ~~of governors~~ meeting are provided in the
- 25 articles, a member-control agreement, or the bylaws, or announced at a previous
- 26 meeting of the board ~~of governors~~, notice is not required. Notice of an adjourned
- 27 meeting need not be given other than by announcement at the meeting at which
- 28 adjournment is taken.
- 29 5. A governor may waive notice of a meeting of the board ~~of governors~~. A waiver of
- 30 notice by a governor entitled to notice is effective whether given before, at, or after
- 31 the meeting, and whether given in writing, or by attendance. Attendance by a

governor at a meeting is a waiver of notice of that meeting, except when the governor objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting after the objection.

SECTION 66. AMENDMENT. Section 10-32-81 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 67. AMENDMENT. Section 10-32-83 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 68. AMENDMENT. Subsections 1 and 2 of section 10-32-84 of the North Dakota Century Code are amended and reenacted as follows:

1. An action required or permitted to be taken at a board ~~of governors~~ meeting may be taken by written action signed, or consented to by authenticated electronic communication, by all of the governors. If the articles or a member-control agreement so provide, any action, other than an action requiring member approval,

1 may be taken by written action signed, or consented to by authenticated electronic
2 communication, by the number of governors which would be required to take the
3 same action at a meeting of the board ~~of governors~~ at which all governors were
4 present.

- 5 2. The written action is effective when signed, or consented to by authenticated
6 electronic communication, by the required number of governors, unless a different
7 effective time is provided in the written action.

8 **SECTION 69. AMENDMENT.** Subsections 1 and 3 of section 10-32-85 of the North
9 Dakota Century Code are amended and reenacted as follows:

- 10 1. A resolution approved by the affirmative vote of a majority of the board ~~of~~
11 ~~governors~~ may establish committees having the authority of the board in the
12 management of the business of the limited liability company only to the extent
13 provided in the resolution. Committees may include a special litigation committee
14 consisting of one or more independent governors or other independent persons to
15 consider legal rights or remedies of the limited liability company and whether those
16 rights and remedies should be pursued. Committees other than special litigation
17 committees are subject at all times to the direction and control of the board ~~of~~
18 ~~governors~~.
- 19 3. Sections 10-32-80 through 10-32-84 apply to committees and members of
20 committees to the same extent as those sections apply to the board ~~of governors~~
21 and governors.

22 **SECTION 70. AMENDMENT.** Subsections 2 and 4 of section 10-32-86 of the North
23 Dakota Century Code are amended and reenacted as follows:

- 24 2. A governor is entitled to rely on information, opinions, reports, or statements,
25 including financial statements and other financial data, in each case prepared or
26 presented by:
- 27 a. One or more managers or employees of the limited liability company whom
28 the governor reasonably believes to be reliable and competent in the matters
29 presented;

b. Counsel, public accountants, or other persons as to matters that the governor reasonably believes are within the person's professional or expert competence; or

c. A committee of the board ~~of governors~~ upon which the governor does not serve, duly established in accordance with section 10-32-85, as to matters within its designated authority, if the governor reasonably believes the committee to merit confidence.

4. A governor who is present at a meeting of the board ~~of governors~~ when an action is approved by the affirmative vote of a majority of the governors present is presumed to have assented to the action approved, unless the governor:

a. Objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting after the objection, in which case the governor is not considered to be present at the meeting for any purpose of this chapter;

b. Votes against the action at the meeting; or

c. Is prohibited from voting on the action by the articles; by the bylaws; as the result of the decision to approve, ratify, or authorize a transaction pursuant to section 10-32-87; or by a conflict of interest policy adopted by the board.

SECTION 71. AMENDMENT. Subsections 1 and 2 of section 10-32-87 of the North Dakota Century Code are amended and reenacted as follows:

1. A contract or other transaction between a limited liability company and one or more of its governors or a member of the family of the governor; a director of a related organization or a member of the family of a director of a related organization; or an organization in or of which the limited liability company's governor or a member of the family of the governor is a governor, director, manager, officer, or legal representative or has a material financial interest is not void or voidable because the governor or the other organization is a party or because the governor is present at the meeting of the members or the board ~~of governors~~ or a committee at which the contract or transaction is authorized, approved, or ratified, if at least one of the requirements of subsection 2 is satisfied.

2. The contract or transaction described in subsection 1 is not void or voidable if:

- 1 a. The contract or transaction was, and the person asserting the validity of the
2 contract or transaction sustains the burden of establishing that the contract or
3 transaction was, fair and reasonable as to the limited liability company at the
4 time it was authorized, approved, or ratified;
- 5 b. The material facts as to the contract or transaction and as to the governor's
6 interest are fully disclosed or known to the members, whether ~~or not~~ entitled
7 to vote, and the contract or transaction is approved in good faith by:
- 8 (1) The owners of two-thirds of the voting power of membership interests
9 entitled to vote which are owned by persons other than the interested
10 governor; or
- 11 (2) The unanimous affirmative vote of all members, whether ~~or not~~ entitled
12 to vote;
- 13 c. The material facts as to the contract or transaction and as to the governor's
14 interest are fully disclosed or known to the board ~~of governors~~ or a committee,
15 and the board ~~of governors~~ or committee authorizes, approves, or ratifies the
16 contract or transaction in good faith by a majority of the board ~~of governors~~ or
17 committee, but the interested governor is not counted in determining the
18 presence of a quorum and may not vote; or
- 19 d. The contract or transaction is a distribution described in subsection 1 of
20 section 10-32-64 or a merger or exchange described in subsection 1 or 2 of
21 section 10-32-100.

22 **SECTION 72. AMENDMENT.** Section 10-32-88 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **10-32-88. Managers.** A limited liability company must consist of one or more
25 individuals eighteen years of age or more, exercising the functions of the offices, however
26 designated, of president and treasurer and may have one or more vice presidents and a
27 secretary, as may be provided in the bylaws. Any other managers, assistant managers, and
28 agents, as necessary, may be elected or appointed by the board ~~of governors~~ or chosen in
29 such other manner as may be provided in the bylaws.

30 **SECTION 73. AMENDMENT.** Section 10-32-89 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **10-32-89. Duties of managers and agents.** Unless otherwise provided by the articles
2 of organization, a member-control agreement, the bylaws, or a resolution adopted by the board
3 ~~of governors~~ which is not inconsistent with the articles, a member-control agreement, or the
4 bylaws, the managers have the following duties:

5 1. The president shall:

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

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

- 23 a. In the absence or disability of the president, perform the duties and exercise
24 the powers of the president; and
25 b. Perform other duties and have other powers as the board ~~of governors~~ may
26 from time to time prescribe.

27 3. The treasurer shall:

- 28 a. Keep accurate financial records for the limited liability company;
29 b. Deposit all money, drafts, and checks in the name of and to the credit of the
30 limited liability company in the banks and depositories designated by the
31 board ~~of governors~~;

- c. Endorse for deposit all notes, checks, and drafts received by the limited liability company as ordered by the board ~~of governors~~, making proper vouchers for them;
 - d. Disburse limited liability company funds and issue checks and drafts in the name of the limited liability company, as ordered by the board ~~of governors~~;
 - e. Give to the president and the board ~~of governors~~, whenever requested, an account of all transactions by the treasurer and of the financial condition of the limited liability company; and
 - f. Perform other duties prescribed by the board ~~of governors~~ or by the president.
4. The secretary, if any, shall:
- a. Attend all meetings of the board ~~of governors~~, all meetings of the members, and, when required, all meetings of standing committees;
 - b. Record all proceedings of the meetings;
 - c. Give, or cause to be given, notice of all meetings of the members and meetings of the board ~~of governors~~; and
 - d. Perform other duties prescribed by the board ~~of governors~~.
5. Any other managers and agents of the limited liability company, as between the managers and agents and the limited liability company, shall perform the duties in the management of the limited liability company as may be provided in the articles, a member-control agreement, or the bylaws, or as may be determined by resolution of the board not inconsistent with the articles, a member-control agreement, or the bylaws.

SECTION 74. AMENDMENT. Section 10-32-92 of the North Dakota Century Code is amended and reenacted as follows:

10-32-92. Managers deemed elected. In the absence of an election or appointment of managers by the board ~~of governors~~, the individual or individuals exercising the functions of the principal managers of the limited liability company are deemed to have been elected to those offices.

SECTION 75. AMENDMENT. Subsection 3 of section 10-32-94 of the North Dakota Century Code is amended and reenacted as follows:

3. A vacancy in an office because of death, resignation, removal, disqualification, or other cause, may, or in the case of the president or treasurer, must be filled for the unexpired portion of the term in the manner provided in the articles, a member-control agreement, or the bylaws; in the manner determined by the board ~~of governors~~; or pursuant to section 10-32-92.

SECTION 76. AMENDMENT. Section 10-32-95 of the North Dakota Century Code is amended and reenacted as follows:

10-32-95. Delegation. Unless prohibited by the articles, a member-control agreement, the bylaws, or by a resolution adopted by the board ~~of governors~~, a manager elected or appointed by the board ~~of governors~~ may, without the approval of the board, delegate some or all of the duties and powers of an office to other individuals. A manager who delegates the duties or powers of an office remains subject to the standard of conduct for a manager with respect to the discharge of all duties and powers so delegated.

SECTION 77. AMENDMENT. Subsection 1 of section 10-32-97 of the North Dakota Century Code is amended and reenacted as follows:

1. A limited liability company may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist a person, if the transaction, or a class of transactions to which the transaction belongs, is approved by the affirmative vote of a majority of the governors present and:
 - a. Is in the usual and regular course of business of the limited liability company;
 - b. Is with, or for the benefit of, a related organization, an organization in which the limited liability company has a financial interest, an organization with which the limited liability company has a relationship in the usual and regular course of its business, or an organization to which the limited liability company has the power to make donations any of which relationships constitute consideration sufficient to make the loan, guarantee, suretyship, or other financial assistance so approved enforceable against the limited liability company;
 - c. Is with, or for the benefit of, a member who provides services to the limited liability company, or a manager or other employee of the limited liability company or a subsidiary, including a member, manager, or employee who is

1 a governor of the limited liability company or a subsidiary, and may
2 reasonably be expected, in the judgment of the board ~~of governors~~, to benefit
3 the limited liability company; or

- 4 d. Whether or not separate consideration has been promised to the limited
5 liability company, has been approved by the owners of two-thirds of the voting
6 power of persons other than the interested person or persons.

7 **SECTION 78. AMENDMENT.** Section 10-32-99 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **10-32-99. Indemnification.**

- 10 1. For purposes of this section:

11 a. "Limited liability company" includes a domestic or foreign limited liability
12 company that was the predecessor of the limited liability company referred to
13 in this section in a merger or other transaction in which the predecessor's
14 existence ceased upon consummation of the transaction.

- 15 b. "Official capacity" means:

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

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

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

agent, as the case may be, of the other organization or employee benefit plan.

c. "Proceeding" means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the limited liability company.

d. "Special legal counsel" means counsel who has not represented the limited liability company or a related organization, or a governor, manager, member of a committee of the board of governors, employee, or agent whose indemnification is in issue.

2. Subject to the provisions of subsection 5, a limited liability company shall indemnify a person made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person against judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorney's fees and disbursements, incurred by the person in connection with the proceeding, if, with respect to the acts or omissions of the person complained of in the proceeding, the person:

a. Has not been indemnified by another organization or employee benefit plan for the same judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorney's fees and disbursements, incurred by the person in connection with the proceeding with respect to the same acts or omissions;

b. Acted in good faith;

c. Received no improper personal benefit and section 10-32-87, if applicable, has been satisfied;

d. In the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful; and

e. In the case of acts or omissions occurring in the official capacity described in paragraph 1 or 2 of subdivision b of subsection 1, reasonably believed that the conduct was in the best interests of the limited liability company, or in the

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

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

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

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

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

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

29 5. The articles of organization, a member-control agreement, or the bylaws may
30 prohibit indemnification or advances of expenses otherwise required by this
31 section or may impose conditions on indemnification or advances of expenses in

1 addition to the conditions contained in subsections 2 through 4 including, without
2 limitation, monetary limits on indemnification or advances of expenses, if the
3 conditions apply equally to all persons or to all persons within a given class. A
4 prohibition or limit on indemnification or advances may not apply to or affect the
5 right of a person to indemnification or advances of expenses with respect to any
6 acts or omissions of the person occurring before the effective date of a provision in
7 the articles of organization, or a member-control agreement, or the date of
8 adoption of a provision in the bylaws establishing the prohibition or limit on
9 indemnification or advances.

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

15 7. All indemnification determinations must be made:

- 16 a. By the board ~~of governors~~ by a majority of a quorum. Governors who are, at
17 the time, parties to the proceeding are not counted for determining either a
18 majority or the presence of a quorum;
- 19 b. If a quorum under subdivision a cannot be obtained, by a majority of a
20 committee of the board ~~of governors~~, consisting solely of two or more
21 governors not at the time parties to the proceeding, duly designated to act in
22 the matter by a majority of the full board ~~of governors~~, including governors
23 who are parties;
- 24 c. If a determination is not made under subdivision a or b, by special legal
25 counsel, selected either by a majority of the board ~~of governors~~ or a
26 committee by vote pursuant to subdivision a or b or, if the requisite quorum of
27 the full board ~~of governors~~ cannot be obtained and the committee cannot be
28 established, by a majority of the full board ~~of governors~~, including governors
29 who are parties;

- 1 d. If a determination is not made under subdivisions a through c, by the
2 affirmative vote of the members required by section 10-32-42, other than the
3 members who are a party to the proceeding; 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 or
6 under subsection 8 within sixty days after the later to occur of the termination
7 of a proceeding; or a written request for indemnification to the limited liability
8 company; or a written request for an advance of expenses, as the case may
9 be, by a court in this state, which may be the same court in which the
10 proceeding involving the person's liability took place, upon application of the
11 person and any notice the court requires. The person seeking indemnification
12 or payment or reimbursement of expenses pursuant to this clause has the
13 burden of establishing that the person is entitled to indemnification or
14 payment or reimbursement of expenses.

- 15 8. With respect to a person who is not, and was not at the time of the acts or
16 omissions complained of in the proceedings, a governor, manager, or person
17 possessing, directly or indirectly, the power to direct or cause the direction of the
18 management or policies of the limited liability company, the determination whether
19 indemnification of this person is required because the criteria set forth in
20 subsections 2 and 3 have been satisfied and whether this person is entitled to
21 payment or reimbursement of expenses in advance of the final disposition of a
22 proceeding as provided in subsection 4 may be made by an annually appointed
23 committee of the board of ~~governors~~, having at least one member who is a
24 governor. The committee shall report at least annually to the board of ~~governors~~
25 concerning its actions.

- 26 9. A limited liability company may purchase and maintain insurance on behalf of a
27 person in that person's official capacity against any liability asserted against and
28 incurred by the person in or arising from that capacity, whether or not the limited
29 liability company would have been required to indemnify the person against the
30 liability under the provisions of this section.

10. A limited liability company that indemnifies or advances expenses to a person in accordance with this section in connection with a proceeding by or on behalf of the limited liability company shall report to the members in writing the amount of the indemnification or advance and to whom and on whose behalf it was paid not later than the next meeting of members as part of the annual financial statements furnished to members pursuant to section 10-32-52 covering the period when the indemnification or advance was paid or accrued under the accounting method of the limited liability company reflected in the financial statements.

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

SECTION 79. AMENDMENT. Section 10-32-104 of the North Dakota Century Code is amended and reenacted as follows:

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

1. A parent owning at least ninety percent of the outstanding ownership interests of each class and series of a subsidiary directly, or indirectly through related ~~corporations or limited liability companies~~ organizations other than classes or series that absent this section would otherwise not be entitled to vote on the merger:

a. May merge the subsidiary into the parent; or may merge the subsidiary into any other subsidiary at least ninety percent of the outstanding ownership interest of each class and series of which is owned by the parent directly, or indirectly through related ~~corporations or limited liability companies~~ organizations other than classes or series that, absent this section, would otherwise not be entitled to vote on the merger, without a vote of the owners of the parent or any subsidiary; or

b. May merge the parent, or the parent and one or more subsidiaries, into one of the subsidiaries under this section.

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

- 1 a. The name of the subsidiary or subsidiaries, the name of the parent, and the
2 name of the surviving constituent organization;
- 3 b. The manner and basis of converting the ownership interests of the subsidiary
4 into ownership interests of the parent or of another organization or, in whole
5 or in part, into money or other property;
- 6 c. If the parent is a constituent organization but is not the surviving constituent
7 organization in the merger, a provision for the pro rata issuance of ownership
8 interests of the surviving constituent organization to the owners of ownership
9 interests of the parent on surrender of any ownership interests of the parent;
10 and
- 11 d. If the surviving constituent organization is a subsidiary, a statement of any
12 amendments to the articles of the surviving constituent organization that will
13 be part of the merger.
- 14 3. If the parent is a constituent organization and is the surviving organization in the
15 merger, it may change its limited liability company name, without a vote of its
16 owners, by the inclusion of a provision to that effect in the resolution of merger
17 setting forth the plan of merger that is approved by the affirmative vote of the board
18 members of the parent present. Upon the effective date of the merger, the name
19 of the parent must be changed.
- 20 4. If the parent is a constituent organization but is not the surviving constituent
21 organization in a merger, the resolution is not effective unless the resolution is also
22 approved by the affirmative vote of the holders of a majority of the voting power of
23 all ownership interests of the parent entitled to vote at a regular or special meeting
24 held in accordance with section 10-19.1-98 if the parent is a corporation, section
25 10-32-102 if the parent is a limited liability company, or in accordance with the laws
26 of the jurisdiction under which the parent is incorporated or organized if the parent
27 is a foreign corporation or foreign limited liability company.
- 28 5. A Notice of the action, including a copy of the plan of merger must be mailed given
29 to each owner, other than the parent, of each subsidiary that is a constituent
30 organization to the merger before, or within ten days after, the effective date of the
31 merger.

- 1 6. Articles of merger must be prepared which contain:
- 2 a. The plan of merger;
- 3 b. The number of outstanding ownership interests of each class and series of
- 4 the subsidiary that is a constituent organization in the merger, other than the
- 5 classes or series that, absent this section, would otherwise not be entitled to
- 6 vote on the merger, and the number of ownership interests of each class and
- 7 series of the subsidiary or subsidiaries, other than the classes or series that,
- 8 absent this section, would otherwise not be entitled to vote on the merger,
- 9 owned by the parent directly or indirectly, through related constituent
- 10 organizations; and
- 11 c. ~~The date a copy of the plan of merger was mailed to the owners, other than~~
- 12 ~~the parent, of each subsidiary that is a constituent organization in the merger;~~
- 13 ~~and~~
- 14 d. A statement that the plan of merger has been approved by the parent under
- 15 this section.
- 16 7. ~~Within thirty days after a copy of the plan of merger is mailed to the owners of each~~
- 17 ~~subsidiary that is a constituent organization to the merger, or upon waiver of the~~
- 18 ~~mailing by the owners of all outstanding ownership interests of each subsidiary that~~
- 19 ~~is a constituent organization to the merger, the~~ The articles of merger must be
- 20 signed on behalf of the parent and filed with the secretary of state, together with
- 21 the fees provided in section 10-32-150.
- 22 8. The secretary of state shall issue a certificate of merger to the surviving constituent
- 23 organization in the merger or the surviving constituent organization's legal
- 24 representative. The certificate must contain the effective date of merger.
- 25 9. If all of the ownership interests of one or more domestic subsidiaries that are a
- 26 constituent organization to a merger under this section are not owned by the
- 27 parent directly, or indirectly through related constituent organizations, immediately
- 28 before the merger, the owners of each domestic subsidiary have dissenter's rights
- 29 under section 10-19.1-87 or under section 10-32-54, without regard to
- 30 subsection 3 of section 10-19.1-88 or to subsection 2 of section 10-32-54, and
- 31 under section 10-19.1-88 or 10-32-55. If the parent is a constituent organization

but is not the surviving constituent organization in the merger, and the articles of incorporation or articles of organization of the surviving constituent organization immediately after the merger differ from the articles of incorporation or articles of organization of the parent immediately before the merger in a manner that would entitle an owner of the parent to dissenter's rights under subsection 1 of section 10-19.1-87 or under subdivision a of subsection 1 of section 10-32-54 if the articles of incorporation or articles of organization of the surviving constituent organization constitute an amendment to the articles of incorporation or articles of organization of the parent, that owner of the parent has dissenter's rights as provided under section 10-19.1-87 or under section 10-32-54. Except as provided in this subsection, sections 10-19.1-87 and 10-32-54 do not apply to any merger affected under this section.

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

SECTION 80. AMENDMENT. Subsections 1 and 2 of section 10-32-108 of the North Dakota Century Code are amended and reenacted as follows:

1. A limited liability company may, by affirmative vote of a majority of the governors present, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board of ~~governors~~ considers expedient, and without member approval:
 - a. Sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business;
 - b. Grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its business; or
 - c. Transfer any or all of its property to a corporation all of the shares of which are owned by a limited liability company.
2. A limited liability company, by affirmative vote of a majority of the governors present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets, including its goodwill, not in the usual and regular course

of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board ~~of governors~~ considers expedient, when approved at a regular or special meeting of the members by the affirmative vote of the owners of a majority of the voting power of the interests entitled to vote. Written notice of the meeting must be given to all members whether or not they are entitled to vote at the meeting. The written notice must state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the limited liability company.

SECTION 81. AMENDMENT. Subsection 2 of section 10-32-112 of the North Dakota Century Code is amended and reenacted as follows:

2. When the notice of dissolution has been filed with the secretary of state, and subject to section 10-32-116, the limited liability company shall cease to carry on its business, except to the extent necessary for the winding up of the business of the limited liability company. The members shall retain the right to revoke the dissolution in accordance with section 10-32-116 and the right to remove governors or fill vacancies on the board ~~of governors~~. The limited liability company existence continues to the extent necessary to wind up the affairs of the limited liability company until the dissolution is revoked or articles of termination are filed with the secretary of state.

SECTION 82. AMENDMENT. Subsection 3 of section 10-32-113 of the North Dakota Century Code is amended and reenacted as follows:

3. When a notice of dissolution has been filed with the secretary of state, the board ~~of governors~~, or the managers acting under the direction of the board ~~of governors~~, shall proceed as soon as possible:
 - a. To give notice to creditors and claimants under section 10-32-114 or to proceed under section 10-32-115;
 - b. To collect or make provision for the collection of all known debts due or owing to the limited liability company, including unperformed contribution agreements; and

- 1 c. Except as provided in sections 10-32-114, 10-32-115, and 10-32-128, to pay
2 or make provision for the payment of all known debts, obligations, and
3 liabilities of the limited liability company according to their priorities under
4 section 10-32-131.

5 **SECTION 83. AMENDMENT.** Subsection 1 of section 10-32-114 of the North Dakota
6 Century Code is amended and reenacted as follows:

- 7 1. If notice to creditors and claimants is given, the notice must be given by publishing
8 the notice once each week for four successive weeks in an official newspaper as
9 defined in chapter 46-06 in the county or counties where the registered office and
10 the principal executive office of the limited liability company are located and by
11 giving written notice to known creditors and claimants pursuant to subsection ~~34~~
12 39 of section 10-32-02.

13 **SECTION 84. AMENDMENT.** Subsections 2 and 3 of section 10-32-117 of the North
14 Dakota Century Code are amended and reenacted as follows:

- 15 2. When the articles of termination have been filed with the secretary of state, or on a
16 later date within thirty days after filing if the articles of termination so provide, the
17 limited liability company is terminated.
- 18 3. The secretary of state shall issue to the ~~dissolved~~ limited liability company or its
19 legal representative a certificate of termination that contains:
- 20 a. The name of the limited liability company;
- 21 b. The date the ~~articles of termination were filed with the secretary of state is~~
22 effective; and
- 23 c. A statement that the limited liability company is terminated on the effective
24 date of termination.

25 **SECTION 85. AMENDMENT.** Subsection 1 of section 10-32-119 of the North Dakota
26 Century Code is amended and reenacted as follows:

- 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) The governors or the persons having the authority otherwise vested in the board ~~of governors~~ are deadlocked in the management of the affairs of the limited liability company and the members are unable to break the deadlock;
 - (2) The governors or those in control of the limited liability company have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one or more members in their capacities as members or governors of any limited liability company or as managers or employees of a closely held limited liability company;
 - (3) The members of the limited liability company are so divided in voting power that, for a period that includes the time when two consecutive regular meetings were held, they have failed to elect successors to governors whose terms have expired or would have expired upon the election and qualification of their successors;
 - (4) The limited liability company assets are being misapplied or wasted; or
 - (5) An event of dissolution has occurred under subdivision a, d, or e of subsection 1 of section 10-32-109 but the limited liability company is not acting to wind up its affairs;
- c. In an action by a creditor when:
- (1) The claim of the creditor has been reduced to judgment and an execution on the judgment has been returned unsatisfied; or
 - (2) The limited liability company has admitted in writing that the claim of the creditor is due and owing and it is established that the limited liability company is unable to pay its debts in the ordinary course of business; or
- d. In an action by the attorney general to dissolve the limited liability company in accordance with section 10-32-122 when it is established that a decree of termination is appropriate.

SECTION 86. AMENDMENT. Subsection 2 of section 10-32-130.1 of the North Dakota Century Code is amended and reenacted as follows:

2. An amendment to the articles must be approved by the board of ~~governors~~ and must include:

- a. The date the period of duration expired under the articles;
- b. The date to which the period of duration is extended; and
- c. A statement that the limited liability company has been in continuous operation since before the date of expiration of its original period of duration.

SECTION 87. AMENDMENT. Subsection 3 of section 10-32-132 of the North Dakota Century Code is amended and reenacted as follows:

3. If neither the limited liability company's registered agent nor an officer of the limited liability company can be found at the registered office, or if a limited liability company fails to maintain a registered agent in this state and a manager of the limited liability company cannot be found at the registered office, then the secretary of state is the agent of the limited liability company upon whom the process, notice, or demand may be served. ~~The Service on the secretary of state:~~

- a. Shall be made by registered mail or personal delivery to the secretary of state and not by electronic communication;
- b. Shall include the return of the sheriff, or the affidavit of a person not a party, verifying that ~~ne neither the~~ registered agent ~~or nor a~~ manager can be found at the registered office ~~must be provided to the secretary of state. Service on the secretary of state of any process, notice, or demand is; and~~
- c. Is deemed personal service upon the limited liability company and is made by filing with the secretary of state ~~an~~:
 - (1) An original and two copies of the process, notice, or demand, ~~along~~ with the; and
 - (2) The fees provided for in section 10-32-150.

The secretary of state shall immediately forward, by registered mail, addressed to the limited liability company at its registered office, a copy of the process, notice, or demand. Service on the secretary of state is returnable in not less than thirty days notwithstanding a shorter period specified in the process, notice, or demand.

SECTION 88. AMENDMENT. Subsection 2 of section 10-32-149 of the North Dakota Century Code is amended and reenacted as follows:

2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as prescribed in subsection ~~43~~ 53 of section 10-32-02, the articles, the bylaws, or a resolution approved by the affirmative vote of the required proportion or number of the governors or members entitled to vote. If the limited liability company or foreign limited liability company is in the hands of a receiver or trustee, the annual report must be signed on behalf of the limited liability company or foreign limited liability company by the receiver or trustee. The secretary of state may destroy any annual report provided for in this section after the annual report is on file for six years.

SECTION 89. Section 10-32-153.1 of the North Dakota Century Code is created and enacted as follows:

10-32-153.1. Secretary of state - Exempt records. Any social security number or federal tax identification number disclosed or contained in any document filed with the secretary of state under this chapter is an exempt record as defined by subsection 5 of section 44-04-17.1. The secretary of state shall take reasonable precautions to delete or obscure any social security number or federal tax identification number the secretary of state determines to be a closed record before a copy of any document is released to the public.

SECTION 90. AMENDMENT. Section 10-33-01 of the North Dakota Century Code is amended and reenacted as follows:

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

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

1 registered agent, or name of registered agent, articles of merger, articles of
2 consolidation, articles of abandonment, articles of dissolution, and any annual
3 report in which a registered office or registered agent has been established or
4 changed.

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

8 3. "Authenticated electronic communication" means:

9 a. That the electronic communication is delivered:

10 (1) To the principal place of activity of the corporation; or

11 (2) To an officer or agent of the corporation authorized by the corporation
12 to receive the electronic communication; and

13 b. That the electronic communication sets forth information from which the
14 corporation can reasonably conclude that the electronic communication was
15 sent by the purported sender.

16 4. "Board" means the board of directors of a corporation.

17 ~~4.~~ 5. "Board member" means an individual serving on the board.

18 ~~5.~~ 6. "Bylaws" means the code adopted for the regulation or management of the internal
19 affairs of a corporation, regardless of how designated.

20 ~~6.~~ 7. "Corporation" means a corporation, other than a foreign corporation, that is
21 incorporated under or governed by this chapter.

22 ~~7.~~ 8. "Director" means a member of the board.

23 ~~8.~~ 9. "Domestic organization" means an organization created under the laws of this
24 state.

25 10. "Electronic" means relating to technology having electrical, digital, magnetic,
26 wireless, optical, electromagnetic, or similar capabilities.

27 11. "Electronic communication" means any form of communication, not directly
28 involving the physical transmission of paper:

29 a. That creates a record that may be retained, retrieved, and reviewed by a
30 recipient of the communication; and

- 1 b. That may be directly reproduced in paper form by the recipient through an
2 automated process.
- 3 12. "Electronic record" means a record created, generated, sent, communicated,
4 received, or stored by electronic means.
- 5 13. "Electronic signature" means an electronic sound, symbol, or process attached to
6 or logically associated with a record and executed or adopted by a person with the
7 intent to sign the record.
- 8 14. "Filed with the secretary of state" means except as otherwise permitted by law or
9 rule:
- 10 a. ~~The following have been~~ That a document meeting the applicable
11 requirements of this chapter, together with the fees provided in section
12 10-33-140, was delivered or communicated to the secretary of state by a
13 method or medium of communication acceptable by the secretary of state and
14 ~~have been~~ was determined by the secretary of state to conform to law:
- 15 (1) ~~A signed original or a legible facsimile telecommunication of a signed~~
16 ~~original, of a request for reserved name; or a signed original of all other~~
17 ~~documents, meeting the applicable requirements of this chapter; and~~
- 18 (2) ~~The fees provided for in section 10-33-140; and~~
- 19 b. ~~The~~ That the secretary of state has shall then:
- 20 (1) ~~Endorsed on the original the word "filed", and the month, day, and year~~
21 Record the actual date on which the document is filed, and if different,
22 the effective date of filing; and
- 23 (2) ~~Recorded~~ Record the document in the office of the secretary of state.
- 24 9- 15. "Foreign corporation" means a corporation that is formed under laws other than the
25 laws of this state for a purpose for which a corporation may be organized under
26 this chapter.
- 27 40- 16. "Foreign organization" means an organization created under laws other than the
28 laws of this state for a purpose for which an organization may be created under the
29 laws of this state.
- 30 17. "Good faith" means honesty in fact in the conduct of an act or transaction.

- 1 ~~44.~~ 18. "Intentionally" means the person referred to has a purpose to do or fail to do the
2 act or cause the result specified, or believes the act or failure to act, if successful,
3 will cause that result. A person intentionally violates a statute:
- 4 a. If the person intentionally does the act or causes the result prohibited by the
5 statute; or
- 6 b. If the person intentionally fails to do the act or cause the result required by the
7 statute, even though the person may not know of the existence or
8 constitutionality of the statute or the scope or meaning of the terms used in
9 the statute.
- 10 ~~42.~~ 19. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended
11 from time to time, and successive federal revenue acts.
- 12 ~~43.~~ 20. "Knows" or has "knowledge" means the person has actual knowledge of a fact. A
13 person does not "know" or have "knowledge" of a fact merely because the person
14 has reason to know of the fact.
- 15 ~~44.~~ 21. "Legal representative" means a person empowered to act for another person,
16 including an agent, manager, officer, partner, or associate of an organization; a
17 trustee of a trust; a personal representative; a trustee in bankruptcy; or a receiver,
18 guardian, custodian, or conservator.
- 19 ~~45.~~ 22. "Member" means a person with membership rights in a corporation under its
20 articles or bylaws, regardless of how the person is identified.
- 21 ~~46.~~ 23. "Members with voting rights" means members or a class of members that has
22 voting rights with respect to the purpose or matter involved.
- 23 ~~47.~~ 24. "Nonprofit purpose" or "nonprofit activity" means a purpose or activity not involving
24 pecuniary gain to any officer, director, or member, other than a member that is a
25 nonprofit organization or subdivision, unit, or agency of the United States or a state
26 or local government.
- 27 ~~48.~~ 25. "Notice":
28 a. Is given by a member of a corporation to the corporation or an officer of the
29 corporation ~~when:~~

(1) When in writing and mailed or delivered to the corporation or the officer at the registered office or principal executive office of the corporation;
~~and~~ or

(2) When given by a form of electronic communication consented to by the corporation to which the notice is given:

(a) If by facsimile communication, when directed to a telephone number at which the corporation has consented to receive notice.

(b) If by electronic mail, when directed to an electronic mail address at which the corporation has consented to receive notice.

(c) If by posting on an electronic network on which the corporation has consented to receive notice, together with separate notice to the corporation of the specific posting, upon the later of:

[1] The posting; or

[2] The giving of the separate notice.

(d) If by any other form of electronic communication by which the corporation has consented to receive notice, when directed to the corporation.

b. ~~In~~ Is given, in all other cases, is given to a person:

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

(2) When handed to the person; ~~or~~

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

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

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

(4) When given by a form of electronic communication consented to by the person to whom the notice is given:

- 1 (a) If by facsimile communication, when directed to a telephone
2 number at which the person has consented to receive notice.
3 (b) If by electronic mail, when directed to an electronic mail address
4 at which the person has consented to receive notice.
5 (c) If by posting on an electronic network on which the person has
6 consented to receive notice, together with separate notice to the
7 person of the specific posting, upon the later of:
8 [1] The posting; or
9 [2] The giving of the separate notice.
10 c. Is given by mail when deposited in the United States mail with sufficient
11 postage affixed.
12 d. Is deemed received when it is given.
13 ~~49.~~ 26. "Officer" means an individual who is more than eighteen years of age and who is:
14 a. Elected, appointed, or otherwise designated as an officer by the board or the
15 members; or
16 b. Considered elected as an officer pursuant to section 10-33-52.
17 ~~20.~~ 27. "Organization" means a corporation, whether domestic or foreign, incorporated in
18 or authorized to do business in this state under another chapter of this code;
19 limited liability company; partnership; limited partnership; limited liability
20 partnership; limited liability limited partnership, joint venture; association; business
21 trust; estate; trust; enterprise; or any other legal or commercial entity.
22 ~~24.~~ 28. "Principal executive office" means:
23 a. If the corporation has an elected or appointed president, then an office where
24 the elected or appointed president of the corporation has an office; or
25 b. If the corporation has no elected or appointed president, then the registered
26 office of the corporation.
27 ~~22.~~ 29. "Record" means information that is inscribed on a tangible medium or that is stored
28 in an electronic or other medium and is retrievable in perceivable form.
29 30. "Registered office" means the place in this state designated in the articles of a
30 corporation as the registered office of the corporation.

- 1 ~~23.~~ 31. "Related organization" means an organization that controls, is controlled by, or is
2 under common control with another organization with control existing if an
3 organization:
4 a. Owns, directly or indirectly, at least fifty percent of the shares, membership
5 interests, or other ownership interests of another organization;
6 b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or
7 more of the voting members of the governing body of another organization; or
8 c. Has the power, directly or indirectly, to direct or cause the direction of the
9 management and policies of another organization, whether through the
10 ownership of voting interests, by contract, or otherwise.
- 11 ~~24.~~ 32. "Remote communication" means communication via electronic communication,
12 conference telephone, videoconference, the internet, or such other means by
13 which persons not physically present in the same location may communicate with
14 each other on a substantially simultaneous basis.
- 15 33. "Signed" means ~~the~~:
16 a. That the signature of a person, which may be a facsimile affixed, engraved,
17 printed, placed, stamped with indelible ink, transmitted by facsimile
18 telecommunication or electronically, or in any other manner reproduced on
19 the document, is placed on a document, as provided in ~~subsection 39 of~~
20 under section 41-01-11, 41-01-09; and:
- 21 ~~a.~~ b. With respect to a document required by this chapter to be filed with the
22 secretary of state, ~~means the~~ that:
- 23 (1) The document ~~has been~~ is signed by a person authorized to ~~sign~~ do so
24 by this chapter, the articles, ~~the~~ or bylaws, a resolution approved by the
25 directors as required by section 10-33-42, or the members with voting
26 rights, if any, as required by section 10-33-72; and
- 27 ~~b.~~ ~~With respect to a document not required by this chapter to be filed with the~~
28 ~~secretary of state, the signature may be a facsimile affixed, engraved, printed,~~
29 ~~placed, stamped with indelible ink, transmitted by facsimile~~
30 ~~telecommunication or electronically, or in any other manner reproduced on~~
31 ~~the document.~~

(2) The signature and the document are communicated by a method or medium of communication acceptable by the secretary of state.

~~25.~~ 34. "Subsidiary" of a specified corporation means:

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

~~26.~~ 35. "Surviving corporation" means the domestic or foreign corporation resulting from a merger.

~~27.~~ 36. "Vote" includes authorization by written action.

~~28.~~ 37. "Written action" means:

- a. A written document signed by all of the persons required to take the action; or
- b. The counterparts of a written document signed by any of the persons taking the action.

(1) Each counterpart constitutes the action of the persons signing it; ~~and all~~

(2) All the counterparts are one written action by all of the persons signing them.

SECTION 91. Section 10-33-01.1 of the North Dakota Century Code is created and enacted as follows:

10-33-01.1. Legal recognition of electronic records and electronic signatures.

For purposes of this chapter:

- 1. A record or signature may not be denied legal effect or enforceability solely because it is in electronic form;
- 2. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation;

3. If a provision requires a record to be in writing, an electronic record satisfies the requirement; and

4. If a provision requires a signature, an electronic signature satisfies the requirement.

SECTION 92. AMENDMENT. Section 10-33-10 of the North Dakota Century Code is amended and reenacted as follows:

10-33-10. Corporate name.

1. The corporate name:

- a. Must be in the English language or in any other language expressed in English letters or characters.
- b. Need not contain the word "company", "corporation", "incorporated", "limited", or an abbreviation of one or more of these words.
- c. May not contain a word or phrase that indicates or implies that it may not be incorporated under this chapter.
- d. May not contain the words "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words.
- e. May not contain a word or phrase that indicates or implies that it is incorporated for a purpose other than a legal nonprofit purpose for which a corporation may be incorporated under this chapter.
- f. Unless a document in compliance with subsection 2 ~~of this section~~ is filed with the articles, may not be the same as or deceptively similar to:
 - (1) The name, whether foreign and authorized to ~~do business~~ conduct activities in this state or domestic, of:
 - (a) Another corporation;
 - (b) A corporation incorporated or authorized to do business in this state under another provision of this code;
 - (c) A limited liability company;
 - (d) A limited partnership;
 - (e) A limited liability partnership; or
 - (f) A limited liability limited partnership;

- (2) A name the right to which is, at the time of incorporation, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
 - (3) A fictitious name registered in the manner provided in chapter 45-11; or
 - (4) A trade name registered in the manner provided in chapter 47-25.
 2. If the secretary of state determines that a corporate name is "deceptively similar" to another name for purposes of this chapter, then the corporate name may not be used unless there is filed with the articles:
 - a. The written consent of the holder of the rights to the name the proposed name is determined to be deceptively similar to; or
 - b. A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.

This subsection does not affect the right of a domestic corporation existing on August 1, 1997, or a foreign corporation authorized to do business in this state on that date to continue the use of its name.

- 3. The secretary of state shall determine whether a corporate name is "deceptively similar" to another name for purposes of this chapter.
- 4. This section and section 10-33-11 do not:
 - a. Abrogate or limit:
 - (1) The law of unfair competition or unfair practices;
 - (2) Chapter 47-25;
 - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, or service marks; or
 - (4) Any other rights to the exclusive use of names or symbols; or
 - b. Derogate the common law or the principles of equity.
- 5. A corporation that is ~~merged~~ the surviving organization in a merger with ~~another domestic one~~ or foreign corporation, or that is incorporated by the reorganization of one or more domestic or foreign corporations other organizations, or that acquires by sale, lease, or other disposition to or exchange with ~~a domestic corporation~~ an organization all or substantially all of the assets of another domestic

1 ~~or foreign corporation~~ organization including its name, may have the same name,
2 subject to the requirements of subsection 1, as that used in this state by any of the
3 other ~~corporations~~ organizations, if the other ~~corporation was~~ organization whose
4 name is sought to be used:

- 5 a. Was incorporated, organized, formed, or registered under the laws of, ~~or is~~
6 ~~authorized to conduct activities in~~, this state.
7 b. Is authorized to conduct activities or transact business in this state;
8 c. Holds a reserved name in the manner provided in section 10-19.1-14,
9 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
10 d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
11 e. Holds a trade name registered in the manner provided in chapter 47-25.

- 12 6. The use of a name by a corporation in violation of this section does not affect or
13 vitiate its corporate existence, but a court in this state may, upon application of the
14 state or of an interested or affected person, enjoin the corporation from ~~doing~~
15 ~~business~~ conducting activities under a name assumed in violation of this section,
16 although its articles may have been filed with the secretary of state and a
17 certificate of incorporation issued.
18 7. If a corporation's period of existence has expired or is involuntarily dissolved by the
19 secretary of state pursuant to section 10-33-139, the corporation may reacquire
20 the right to use that name by refiling articles of incorporation pursuant to section
21 10-33-08; amending pursuant to section 10-33-118; or reinstating pursuant to
22 section 10-33-139. If the name has been adopted for use or reserved by another
23 person, the filing will be rejected unless the filing is accompanied by a written
24 consent or judgment pursuant to subsection 2. A corporation that cannot reacquire
25 the use of its corporate name must adopt a new corporate name that complies with
26 the provisions of this section.

27 **SECTION 93. AMENDMENT.** Section 10-33-11 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **10-33-11. Reserved name.**

- 30 1. The exclusive right to the use of a corporate name otherwise permitted by section
31 10-33-10 may be reserved by any person.

2. The reservation must be made by filing with the secretary of state a request that the name be reserved, together with the fees provided in section 10-33-140:
 - a. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months.
 - b. The reservation may be renewed for successive twelve-month periods.
3. The right to the exclusive use of a corporate name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee, together with the fees provided in section 10-33-140.
4. The right to the exclusive use of a corporate name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the cancellation, together with the fees provided in section 10-33-140.
5. ~~The secretary of state may accept for filing a legible facsimile copy of the signed original of any request for reserved name.~~
6. The secretary of state may destroy all reserved name requests and index thereof one year after expiration.

SECTION 94. AMENDMENT. Section 10-33-21 of the North Dakota Century Code is amended and reenacted as follows:

10-33-21. General powers.

1. A corporation has the powers set forth in this section, subject to any limitations provided in any other statute of this state or in its articles.
2. A corporation has perpetual duration.
3. A corporation may sue and be sued, complain and defend and participate as a party or otherwise in any legal, administrative, or arbitration proceeding, in its corporate name.
4. A corporation may purchase, lease, or otherwise acquire, own, hold, improve, and use and otherwise deal in and with real or personal property, or any interest in property, wherever situated.

- 1 5. A corporation may sell, convey, mortgage, create a security interest in, lease,
2 exchange, transfer, or otherwise dispose of all or any part of its real or personal
3 property, or any interest in property, wherever situated.
- 4 6. A corporation may purchase, subscribe for, or otherwise acquire, own, hold, vote,
5 use, employ, sell, exchange, mortgage, lend, create a security interest in, or
6 otherwise dispose of, use and deal in and with, securities or other interests in, or
7 obligations of, a person or direct or indirect obligations of any domestic or foreign
8 government or instrumentality.
- 9 7. A corporation may make contracts and incur liabilities, borrow money, issue its
10 securities, and secure any of its obligations by mortgage of or creation of a security
11 interest in all or any of its property, franchises, and income.
- 12 8. A corporation may invest and reinvest its funds.
- 13 9. A corporation may take and hold real and personal property, whether or not of a
14 kind sold or otherwise dealt in by the corporation, as security for the payment of
15 money loaned, advanced, or invested.
- 16 10. A corporation may conduct its ~~business~~ activities, carry on its operations, have
17 offices, and exercise the powers granted by this chapter anywhere in the universe.
- 18 11. Except as otherwise prohibited by law, a corporation may make donations,
19 irrespective of corporate benefit, for:
20 a. The public welfare;
21 b. Social, community, charitable, religious, educational, scientific, civic, literary,
22 and testing for public safety purposes, and for similar or related purposes;
23 c. The purpose of fostering national or international amateur sports competition;
24 and
25 d. The prevention of cruelty to children and animals, and for similar or related
26 purposes.
- 27 12. A corporation may pay pensions, retirement allowances, and compensation for
28 past services and establish employee or incentive benefit plans, trusts, and
29 provisions for the benefit of the corporation and the corporation's related
30 organizations' officers, managers, directors, governors, employees, and agents
31 and, in the case of a related organization that is a limited liability company,

members who provide services to the limited liability company, and the families, dependents, and beneficiaries of any of them. It may indemnify and purchase and maintain insurance for a fiduciary of any of these employee benefit and incentive plans, trusts, and provisions.

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

14. A corporation may provide for its benefit life insurance and other insurance with respect to the services of its officers, directors, employees, and agents, or on the life of a member for the purpose of acquiring, at the death of the member, any membership interests in the corporation owned by the member.

15. A corporation may have, alter at pleasure, and use a corporate seal as provided in section 10-33-22.

16. A corporation may adopt, amend, and repeal bylaws relating to the management of the ~~business~~ activities or the regulation of the affairs of the corporation as provided in section 10-33-26.

17. A corporation may establish committees of the board of directors, elect or appoint persons to the committees, and define their duties as provided in section 10-33-44 and fix their compensation.

18. A corporation may elect or appoint officers, employees, and agents of the corporation, and define their duties and fix their compensation.

19. A corporation may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist persons as provided in section 10-33-82.

20. A corporation may make advances to its directors, officers, and employees and those of its subsidiaries as provided in section 10-33-83.

21. A corporation shall indemnify those persons identified in section 10-33-84 against certain expenses and liabilities only as provided in section 10-33-84 and may indemnify other persons.

- 1 22. A corporation may conduct all or part of its ~~business~~ activities under one or more
2 trade names as provided in chapter 47-25.
- 3 23. A corporation may take, receive, and hold real and personal property, including the
4 principal and interest of money or other fund, that is given, conveyed, bequeathed,
5 devised to, or vested in the corporation in trust when the corporation or a related
6 organization has a vested or contingent interest in the trust.
- 7 24. Except when the trust instrument prescribes otherwise, a corporation may invest
8 trust property or its proceeds in accordance with sections 59-02-08.1 through
9 59-02-08.11.
- 10 25. A corporation may be a member of or the owner of the ownership interest in
11 another domestic or foreign organization.
- 12 26. A corporation may dissolve and wind up.
- 13 27. A corporation may merge and consolidate with other domestic or foreign nonprofit
14 corporations organized for related purposes.
- 15 28. A corporation ~~doing business~~ conducting activities as a hospital may merge with a
16 corporation incorporated for profit and form a corporation under this chapter.
- 17 29. A corporation may acquire an owner's interest in another organization.
- 18 30. A corporation may have and exercise all other powers necessary or convenient to
19 effect any or all of the purposes for which the corporation is incorporated.

20 **SECTION 95. AMENDMENT.** Subsection 3 of section 10-33-23 of the North Dakota
21 Century Code is amended and reenacted as follows:

- 22 3. In a proceeding by the attorney general, as provided in this chapter, to dissolve the
23 corporation or to enjoin the corporation from the transaction of unauthorized
24 ~~business~~ activities.

25 **SECTION 96. AMENDMENT.** Subsection 2 of section 10-33-25 of the North Dakota
26 Century Code is amended and reenacted as follows:

- 27 2. After the issuance of the certificate of incorporation, the incorporators or the
28 directors named in the articles shall, within a reasonable time, either hold an
29 organizational meeting at the call of a majority of the incorporators or of the
30 directors named in the articles, or take written action, for the purposes of
31 ~~transacting business~~ conducting activities and taking actions necessary or

appropriate to complete the organization of the corporation. If a meeting is held, the person or persons calling the meeting shall give at least three days' notice of the meeting to each incorporator or director named, stating the date, time, and place of the meeting. Incorporators and directors may waive notice of an organizational meeting in the same manner that a director may waive notice of meetings of the board pursuant to subsection 5 of section 10-33-39.

SECTION 97. AMENDMENT. Subsection 1 of section 10-33-27 of the North Dakota Century Code is amended and reenacted as follows:

1. The ~~business~~ activities and affairs of a corporation must be managed by or under the direction of a board.
 - a. All directors are entitled to vote and have equal rights and preferences except as otherwise provided in the articles or bylaws.
 - b. The members of the first board may be named in the articles, designated or appointed pursuant to the articles, or elected by the incorporators under section 10-33-25.

SECTION 98. AMENDMENT. Subsections 1 and 2 of section 10-33-39 of the North Dakota Century Code are amended and reenacted as follows:

1. Meetings of the board may be held from time to time as provided in the articles or bylaws at any place within or without the state that the board may select or by any means described in subsection 2.
 - a. Unless the articles or bylaws provide otherwise, a meeting of the board must be held at least once per year.
 - b. If the articles, bylaws, or board fails to select a place for a meeting, the meeting must be held at the principal executive office, ~~unless the articles or bylaws provide otherwise.~~
 - c. The board may determine under subsection 2 that a meeting of the board shall be held solely by means of remote communication.
 - d. Participation in a meeting by either of the means set forth in subsection 2 constitutes presence at the meeting.
2. ~~A board meeting may be conducted by:~~

1 a. ~~A conference among directors using any~~ Any meeting among directors may
2 be conducted:

3 a. Solely by one or more means of remote communication through which all of
4 the directors may ~~simultaneously hear each other during the conference~~
5 ~~constitutes a board~~ participate in the meeting, if:

6 (1) ~~If the same notice is given of the conference as would be required by~~
7 subsection 3 is given for a the meeting; and if

8 (2) ~~If the number of directors participating in the conference~~ meeting is
9 sufficient to constitute a quorum at a meeting. ~~Participation in a~~
10 ~~meeting by this means is personal presence at the meeting; or~~

11 b. ~~Any means of communication through which the director, other directors so~~
12 ~~participating, and all directors physically present at the meeting may~~
13 ~~simultaneously hear each other during the meeting.~~ Participation in a
14 ~~meeting by this means is personal presence at the meeting.~~ By means of
15 conference telephone or, if authorized by the board, by such other means of
16 remote communication, in each case through which that director, other
17 directors so participating, and all directors physically present at the meeting
18 participate with each other during the meeting.

19 **SECTION 99. AMENDMENT.** Subsections 1 and 2 of section 10-33-43 of the North
20 Dakota Century Code are amended and reenacted as follows:

- 21 1. An action required or permitted to be taken at a board meeting may be taken by
22 written action signed, or consented to by authenticated electronic communication,
23 by all of the directors. If the articles so provide, any action, other than an action
24 requiring member approval, may be taken by written action signed, or consented to
25 by authenticated electronic communication, by the number of directors that would
26 be required to take the same action at a meeting of the board at which all directors
27 were present.
- 28 2. The written action is effective when signed, or consented to by authenticated
29 electronic communication, by the required number of directors, unless a different
30 effective time is provided in the written action.

1 **SECTION 100. AMENDMENT.** Subsection 1 of section 10-33-44 of the North Dakota
2 Century Code is amended and reenacted as follows:

- 3 1. A resolution approved by the affirmative vote of a majority of the board may
4 establish committees having the authority of the board in the management of the
5 ~~business~~ activities of the corporation to the extent provided in the resolution.
6 Committees may include a special litigation committee consisting of one or more
7 independent directors or other independent persons to consider legal rights or
8 remedies of the corporation and whether those rights or remedies should be
9 pursued. Committees other than special litigation committees are subject at all
10 times to the direction and control of the board.

11 **SECTION 101. AMENDMENT.** Subsection 1 of section 10-33-50 of the North Dakota
12 Century Code is amended and reenacted as follows:

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

27 **SECTION 102. AMENDMENT.** Subsection 3 of section 10-33-65 of the North Dakota
28 Century Code is amended and reenacted as follows:

- 29 3. An annual meeting of members must be held at the time and place stated in or
30 fixed in accordance with the articles or bylaws. If a place is not stated or if a
31 demand for a meeting is made under subsection 2, the meeting must be held in

the county where the principal executive office of the corporation is located. To the extent authorized in the articles or bylaws, the board may determine that an annual meeting of the members shall be held solely by means of remote communication in accordance with subsection 2 of section 10-33-75.

SECTION 103. AMENDMENT. Subsection 3 of section 10-33-66 of the North Dakota Century Code is amended and reenacted as follows:

3. Special meetings of members may be held in or out of this state at the place stated in or fixed in accordance with the articles, bylaws, or by the president or the board. If a special meeting is demanded by the members, the meeting must be held in the county where the principal executive office of the corporation is located. To the extent authorized in the articles or bylaws, the board may determine that a special meeting of the members shall be held solely by means of remote communication in accordance with subsection 2 of section 10-33-75.

SECTION 104. AMENDMENT. Section 10-33-73 of the North Dakota Century Code is amended and reenacted as follows:

10-33-73. Action without a meeting. An action required or permitted to be taken at a meeting of the members may be taken without a meeting by written action signed, or consented to by authenticated electronic communication, by all of the members entitled to vote on that action.

1. If the articles so provide, any action may be taken by written action signed, or consented to by authenticated electronic communication, by the members who hold voting power equal to the voting power that would be required to take the same action at a meeting of the members at which all members were present.
 - a. When written action is permitted to be taken by less than all members, all members must be notified immediately of its text and effective date.
 - b. Failure to provide the notice does not invalidate the written action.
 - c. A member who does not sign or consent to the written action has no liability for the action or actions taken by the written action.
2. The written action is effective when signed by the required members, unless a different effective time is provided in the written action.

3. ~~When written action is permitted to be taken by less than all members, all members must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A member who does not sign or consent to the written action has no liability for the action or actions taken by the written action.~~
4. When this chapter requires or permits a certificate concerning an action to be filed with the secretary of state, the certificate must indicate ~~that~~ if the action was taken under this section.

SECTION 105. AMENDMENT. Section 10-33-75 of the North Dakota Century Code is amended and reenacted as follows:

10-33-75. ~~Electronic~~ Remote communications for member meetings.

1. ~~A conference among~~ This section shall be construed and applied to:
- a. Facilitate remote communication consistent with the applicable law; and
 - b. Be consistent with reasonable practices concerning remote communication and with continued expansion of these practices.
2. To the extent authorized by the articles or bylaws and determined by the board:
- a. A meeting of the members may be held solely by any one or more means of remote communication through which the participants may simultaneously hear each other during the conference constitutes a regular or special meeting of the members:
 - (1) ~~If the same~~ notice of the meeting is given of the conference as would be required for a meeting to every member entitled to vote; and
 - (2) ~~If the number of voting members participating in the conference would be meeting is~~ sufficient to constitute a quorum at a meeting.
- ~~Participation in a conference by this means constitutes presence at the meeting in person or by proxy if all the other requirements of section 10-33-77 are met.~~
2. b. ~~A member may participate in~~ not physically present at a regular or special meeting of members not described in subsection 1 by any may by means of remote communication through which the member, other participants, and all persons physically present at the participate in a meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means

~~constitutes presence at the meeting in person or by proxy if all the other~~
~~requirements of section 10-33-77 are met~~ of members held at a designated
place.

3. In any meeting of members held solely by means of remote communication under
subdivision a of subsection 2 or in any meeting of members held at a designated
place in which one or more members participate by means of remote
communication under subdivision b of subsection 2:

a. The corporation shall implement reasonable measures:

(1) To verify that each person deemed present and entitled to vote at the
meeting by means of remote communication is a member; and

(2) To provide each member participating by means of remote
communication with a reasonable opportunity to participate in the
meeting, including an opportunity to:

(a) Read or hear the proceedings of the meeting substantially
concurrently with those proceedings;

(b) If allowed by the procedures governing the meeting, have the
member's remarks heard or read by other participants in the
meeting substantially concurrently with the making of those
remarks; and

(c) If otherwise entitled, vote on matters submitted to the members.

b. Participating in a meeting by this means constitutes presence at the meeting
in person or by proxy if all of the other requirements of section 10-33-77 are
met.

4. With respect to notice to members:

a. Any notice to members given by the corporation under any provision of this
chapter, the articles, or the bylaws by a form of electronic communication
consented to by the member to whom the notice is given is effective when
given. The notice is deemed given:

(1) If by facsimile communication, when directed to a telephone number at
which the member has consented to receive notice;

- 1 (2) If by electronic mail, when directed to an electronic mail address at
2 which the member has consented to receive notice;
- 3 (3) If by a posting on an electronic network on which the member has
4 consented to receive notice, together with separate notice to the
5 member of the specific posting, upon the later of:
6 (a) The posting; or
7 (b) The giving of the separate notice; and
- 8 (4) If by any other form of electronic communication by which the member
9 has consented to receive notice, when directed to the member.
- 10 b. An affidavit of the secretary, other authorized officer, or authorized agent of
11 the corporation, that the notice has been given by a form of electronic
12 communication is, in the absence of fraud, prima facie evidence of the facts
13 stated in the affidavit.
- 14 c. Consent by a member to notice given by electronic communication may be
15 given in writing or by authenticated electronic communication. The
16 corporation is entitled to rely on any consent so given until revoked by the
17 member, provided that no revocation affects the validity of any notice given
18 before receipt by the corporation of revocation of the consent.
- 19 5. Any ballot, vote, authorization, or consent submitted by electronic communication
20 under this chapter may be revoked by the member submitting the ballot, vote
21 authorization, or consent so long as the revocation is received by an officer of the
22 corporation at or before the meeting or before an action without a meeting is
23 effective according to section 10-33-73.
- 24 6. Waiver of notice by a member of a meeting by means of authenticated electronic
25 communication ~~described in subsections 1 and 2~~ may be given in the manner
26 provided in subsection 5 of section 10-33-68. Participation in a meeting by means
27 of ~~communications~~ remote communication described in ~~subsections 1 and~~
28 subdivisions a and b of subsection 2 is a waiver of notice of that meeting, except
29 when the member objects:
- 30 a. ~~Objects at~~ At the beginning of the meeting to the transaction of business
31 because the meeting is not lawfully called or convened; or

- 1 b. ~~Objects before~~ Before a vote on an item of business because the item may
2 not lawfully be considered at the meeting and does not participate in the
3 consideration of the item at that meeting.

4 **SECTION 106. AMENDMENT.** Subsection 1 of section 10-33-77 of the North Dakota
5 Century Code is amended and reenacted as follows:

- 6 1. If the articles or bylaws permit proxy voting, a member may ~~appoint a proxy to cast~~
7 or authorize the casting of a vote or otherwise act for the member by signing an:
8 a. Filing a nonelectronic written appointment form either personally or of a proxy
9 signed by the member, with an attorney-in-fact officer of a corporation at or
10 before the meeting at which the appointment is to be effective; or
11 b. Telephonic transmission or authenticated electronic communication whether
12 or not accompanied by written instructions of the member, of an appointment
13 of a proxy with the corporation or the corporation's duly authorized agent at or
14 before the meeting at which the appointment is to be effective.

15 **SECTION 107. AMENDMENT.** Section 10-33-81 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **10-33-81. Equitable remedies.** If a corporation or an officer or director of the
18 corporation violates this chapter, a court in this state, in an action brought by at least fifty
19 members with voting rights or ten percent of the members with voting rights, whichever is less,
20 or by the attorney general, may grant equitable relief it considers just and reasonable in the
21 circumstances and award expenses, including reasonable attorney's fees and disbursements;
22 to the members, and the attorney general is entitled to an award of reasonable attorney's fees,
23 investigation fees, costs, and expenses of any investigation and action brought by the attorney
24 general under this chapter.

25 **SECTION 108. AMENDMENT.** Section 10-33-93 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **10-33-93. Merger of corporation ~~doing business~~ conducting activities as a**
28 **hospital with a corporation organized for profit - Retention of property tax status.**

29 Notwithstanding any provision of chapter 10-19.1 and this chapter, a corporation ~~doing~~
30 ~~business~~ conducting activities as a hospital may merge with a corporation incorporated for
31 profit and form a corporation incorporated under this chapter.

- 1 1. Notwithstanding chapter 57-02 or any other provision of law, any interest in
- 2 property of corporations merging under this section retains the same property tax
- 3 status after the merger as it had in the taxable year before the merger.
- 4 2. Notwithstanding chapter 57-39.2 or 57-40.2 or any other provision of law, the sale,
- 5 purchase, or use of any property by a corporation merging under this section
- 6 retains the same status under the sales and use tax laws after the merger as it
- 7 would have had before the merger.

8 **SECTION 109. AMENDMENT.** Subsection 1 of section 10-33-101 of the North Dakota
9 Century Code is amended and reenacted as follows:

- 10 1. If notice to creditors and claimants is given, it must be given:
- 11 a. By publishing the notice once each week for four successive weeks in an
- 12 official newspaper, as defined in chapter 46-06, in the county or counties
- 13 where the registered office and the principal executive office of the
- 14 corporation are located; and
- 15 b. By giving written notice to known creditors and claimants pursuant to
- 16 subsection ~~48~~ 25 of section 10-33-01.

17 **SECTION 110. AMENDMENT.** Subsections 2 and 3 of section 10-33-103 of the North
18 Dakota Century Code are amended and reenacted as follows:

- 19 2. When the certificate of dissolution has been issued by the secretary of state, or on
- 20 a later date within thirty days after filing if the articles of dissolution so provide, the
- 21 corporation is dissolved.
- 22 3. The secretary of state shall issue to the dissolved corporation, or its legal
- 23 representative, a certificate of dissolution that contains:
- 24 a. The name of the corporation;
- 25 b. The date the articles of dissolution ~~were filed with the secretary of state~~ is
- 26 effective; and
- 27 c. A statement that the corporation was dissolved as of the effective date of
- 28 dissolution.

29 **SECTION 111. AMENDMENT.** Subsection 4 of section 10-33-104 of the North Dakota
30 Century Code is amended and reenacted as follows:

4. Revocation of dissolution proceedings is effective when a notice of revocation is filed with the secretary of state.

a. After the notice is filed, the corporation may resume ~~business~~ its activities.

b. If notice to the attorney general has been given under section 10-33-122, the notice of revocation also must be given to the attorney general on or before the time that it is filed with the secretary of state.

SECTION 112. AMENDMENT. Subsection 1 of section 10-33-107 of the North Dakota Century Code is amended and reenacted as follows:

1. A court may grant equitable relief it considers just and reasonable in the circumstances or may dissolve a corporation and liquidate its assets and ~~business~~ activities:

a. In a supervised voluntary dissolution under section 10-33-106.

b. In an action by a director or at least fifty members with voting rights or ten percent of the members with voting rights, whichever is less, when it is established that:

(1) The directors or the persons having the authority otherwise vested in the board are deadlocked in the management of the corporate affairs, the members cannot break the deadlock, and the corporation or the parties have not provided for a procedure to resolve the dispute;

(2) The directors or those in control of the corporation have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one or more members in their capacities as members, directors, or officers;

(3) The members of the corporation are so divided in voting power that, for a period that includes the time when two consecutive regular meetings were held, they have failed to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors;

(4) The corporate assets are being misapplied or wasted; or

(5) The period of duration as provided in the articles has expired and has not been extended as provided in section 10-33-118.

c. In an action by a creditor when:

- (1) The claim of the creditor has been reduced to judgment and an execution on it has been returned unsatisfied; or
- (2) The corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation cannot pay its debts in the ordinary course of its activities.

d. In an action by the attorney general when it is established that:

- (1) The articles and certificate of incorporation were obtained through fraud;
- (2) The corporation should not have been formed under this chapter;
- (3) The corporation failed to comply with the requirements of sections 10-33-02 through 10-33-19 essential to incorporation under or election to become governed by this chapter;
- (4) The corporation has flagrantly violated a provision of this chapter, has violated a provision of this chapter more than once, or has violated more than one provision of this chapter;
- (5) The corporation has engaged in an unauthorized act, contract, conveyance, or transfer or has exceeded its powers;
- (6) The corporation has acted, or failed to act, in a manner that constitutes surrender or abandonment of the corporate purpose, franchise, privileges, or enterprise;
- (7) The corporation has liabilities and obligations exceeding the corporate assets;
- (8) The period of corporate existence has ended without extension;
- (9) The corporation has failed for a period of ninety days to pay fees, charges, or penalties required by this chapter;
- (10) The corporation has failed for a period of thirty days:
 - (a) To appoint and maintain a registered agent in this state; or
 - (b) After changing its registered office, to file with the secretary of state a statement of the change;

(11) The corporation has answered falsely or failed to answer a reasonable written interrogatory from the secretary of state or the attorney general to the corporation, its officers, or directors;

(12) The corporation has solicited property and has failed to use it for the purpose solicited; or

(13) The corporation has fraudulently used or solicited property.

- e. An action may not be commenced under subdivision d until thirty days after notice to the corporation by the attorney general of the reason for the filing of the action. If the reason for filing the action is an act that the corporation has done, or omitted to do, and the act or omission may be corrected by an amendment of the articles or bylaws or by performance of or abstention from the act, the attorney general shall give the corporation thirty additional days in which to effect the correction before filing the action.

SECTION 113. AMENDMENT. Subsections 1, 2, and 3 of section 10-33-108 of the North Dakota Century Code are amended and reenacted as follows:

1. In dissolution proceedings the court may issue injunctions, appoint receivers with all powers and duties the court directs, take other actions required to preserve the corporate assets wherever situated, and carry on the ~~business~~ activities of the corporation until a full hearing can be held.
2. When a proceeding involving a corporation described in subsection 1 of section 10-33-122 is begun, the court shall order that a copy of the petition be served on the attorney general. In all proceedings under this section, the attorney general has a right to participate as a party.
3. After a full hearing has been held, upon whatever notice the court directs to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a receiver to collect the corporate assets. A receiver has authority, subject to the order of the court, to continue the ~~business~~ activities of the corporation and to sell, lease, transfer, or otherwise dispose of all or any of the property and assets of the corporation either at public or private sale.

SECTION 114. AMENDMENT. Subsection 3 of section 10-33-120 of the North Dakota Century Code is amended and reenacted as follows:

3. If neither the corporation's registered agent nor an officer of the corporation can be found at the registered office, or if a corporation fails to maintain a registered agent in this state and an officer of the corporation cannot be found at the registered office, then the secretary of state is the agent of the corporation upon whom the process, notice, or demand may be served. The Service on the secretary of state:
- a. Shall be made by registered mail or personal delivery to the secretary of state and not by electronic communication;
 - b. Shall include the return of the sheriff, or the affidavit of a person who is not a party, verifying that ~~ne neither the registered agent or nor an~~ officer can be found at the registered office ~~must be provided to the secretary of state.~~
Service on the secretary of state of any process, notice, or demand is; and
 - c. Is deemed personal service upon the corporation and must be made by filing with the secretary of state ~~an~~;
- (1) An original and two copies of the process, notice, or demand, ~~along with the;~~ and
 - (2) The fees provided in section 10-33-140.

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

SECTION 115. AMENDMENT. Subsection 1 of section 10-33-128 of the North Dakota Century Code is amended and reenacted as follows:

1. An applicant for the certificate shall file with the secretary of state a certificate of status from the filing office in the jurisdiction in which the foreign corporation is incorporated and an application executed by an authorized person and setting forth:
- a. The name of the foreign corporation and, if different, the name under which it proposes to conduct activities in this state;
 - b. The jurisdiction of its incorporation;

- c. The date of incorporation in the jurisdiction of its incorporation and the period of duration of the foreign corporation;
- d. The address of the principal executive office of the foreign corporation in the jurisdiction where it is incorporated;
- e. The address of the proposed registered office of the foreign corporation in this state;
- f. The name of the proposed registered agent in this state that is:
 - (1) An individual resident of this state;
 - (2) A corporation whether incorporated under this chapter or under another provision of this code; or
 - (3) A foreign corporation having a place of ~~business~~ activity in, and authorized to conduct activities in, this state whether authorized to conduct activities in this state under this chapter or under another provision of this code;
- g. The purpose or purposes of the foreign corporation which it proposes to pursue in conducting its activities in this state;
- h. The names and addresses of the directors and officers of the foreign corporation; and
- i. Any additional information deemed necessary or appropriate by the secretary of state to enable the secretary of state to determine whether the foreign corporation is entitled to a certificate of authority to conduct activities in this state.

SECTION 116. AMENDMENT. Subsection 2 of section 10-33-139 of the North Dakota Century Code is amended and reenacted as follows:

2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as prescribed in subsection ~~24~~ 33 of section 10-33-01 or in the articles or bylaws, or in a resolution approved by the affirmative vote of the required proportion or number of the directors or members entitled to vote. If the corporation or foreign corporation is in the hands of a receiver or trustee, it must be signed on behalf of the corporation or foreign

corporation by the receiver or trustee. The secretary of state may destroy all
annual reports provided for in this section after they have been on file for six years.

SECTION 117. Section 10-33-142.1 of the North Dakota Century Code is created and
enacted as follows:

10-33-142.1. Secretary of state - Exempt records. Any social security number or
federal tax identification number disclosed or contained in any document filed with the secretary
of state under this chapter is an exempt record as defined by subsection 5 of section
44-04-17.1. The secretary of state shall take reasonable precautions to delete or obscure any
social security number or federal tax identification number the secretary of state determines to
be a closed record before a copy of any document is released to the public.

SECTION 118. AMENDMENT. Section 45-10.1-01 of the North Dakota Century Code
is amended and reenacted as follows:

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

1. "Address" means:

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

2. "Authenticated electronic communication" means:

- a. That the electronic communication is delivered:
 - (1) To the principal place of business of the limited partnership; or
 - (2) To a general partner or agent of the limited partnership authorized by
the limited partnership to receive the electronic communication; and
- b. That the electronic communication sets forth information from which the
limited partnership can reasonably conclude that the electronic
communication was sent by the purported sender.

3. "Business" includes every trade, occupation, and profession.

~~3.~~ 4. "Certificate of limited partnership" means the certificate referred to in section
45-10.1-08, and the certificate as amended or restated.

1 4- 5. "Contribution" means any cash, property, services rendered, or a promissory note
2 or other binding obligation to contribute cash or property or to perform services,
3 which a partner contributes to a limited partnership in that partner's capacity as a
4 partner.

5 5- 6. "Distribution" means a transfer of money or other property from a limited
6 partnership to a partner in the partner's capacity as a partner or to the partner's
7 transferee.

8 6- 7. "Domestic organization" means an organization created under the laws of this
9 state.

10 8. "Electronic" means relating to technology having electrical, digital, magnetic,
11 wireless, optical, electromagnetic, or similar capabilities.

12 9. "Electronic communication" means any form of communication, not directly
13 involving the physical transmission of paper:

14 a. That creates a record that may be retained, retrieved, and reviewed by a
15 recipient of the communication; and

16 b. That may be directly reproduced in paper form by the recipient through an
17 automated process.

18 10. "Electronic record" means a record created, generated, sent, communicated,
19 received, or stored by electronic means.

20 11. "Electronic signature" means an electronic sound, symbol, or process attached to
21 or logically associated with a record and executed or adopted by a person with the
22 intent to sign the record.

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

25 7- 13. "Filed with the secretary of state" means except as otherwise permitted by law or
26 rule:

27 a. ~~That a signed original or a legible facsimile telecommunication of a signed~~
28 ~~original of a request for reserved name or a signed original of all other~~
29 ~~documents~~ document meeting the applicable requirements of this chapter
30 together with the fees provided in section 45-10.1-15 was delivered or
31 communicated to the secretary of state by a method or medium of

communication acceptable by the secretary of state and was determined by the secretary of state to conform to law.

b. That the secretary of state shall then:

(1) ~~Endorse on the original the word "filed" and the month, day, and year~~
Record the actual date on which the document is filed, and if different,
the effective date of filing; and

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

~~8.~~ 14. "Foreign limited partnership" means a partnership formed under the laws of any state other than this state and having as partners one or more general partners and one or more limited partners.

~~9.~~ 15. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which an organization may be created under the laws of this state.

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

~~40.~~ 17. "Jurisdiction of origin" means the jurisdiction in which the limited partnership status of the foreign limited partnership is created.

~~44.~~ 18. "Knows" or has "knowledge" means the person has actual knowledge of a fact. A person does not "know" or have "knowledge" of a fact merely because the person has reason to know of the fact.

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

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

~~42.~~ 21. "Limited partnership" and "domestic limited partnership" means a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

~~43.~~ 22. "Notice":

- 1 a. Is given to a limited partnership or to a partner of the limited partnership
2 ~~when:~~
3 (1) When in writing and mailed or delivered to the limited partnership or the
4 partner at the registered office or principal executive office of the limited
5 partnership; or
6 (2) When given by a form of electronic communication consented to by the
7 limited partnership or the partner to which the notice is given:
8 (a) If by facsimile communication, when directed to a telephone
9 number at which the limited partnership or the partner has
10 consented to receive notice;
11 (b) If by electronic mail, when directed to an electronic mail address
12 at which the limited partnership or partner has consented to
13 receive notice;
14 (c) If by posting on an electronic network on which the limited
15 partnership or partner has consented to receive notice, together
16 with separate notice to the limited partnership or partner of the
17 specific posting, upon the later of:
18 [1] The posting; or
19 [2] The giving of the separate notice.
20 (d) If by any other form of electronic communication by which the
21 limited partnership or partner has consented to receive notice,
22 when directed to the limited partnership or partner.
- 23 b. ~~In all other cases, is~~ Is given to a person in all other cases:
24 (1) When mailed to the person at an address designated by the person or
25 at the last-known address of the person;
26 (2) When handed to the person; ~~or~~
27 (3) When left at the office of the person with a clerk or other person in
28 charge of the office; or;
29 (a) If there is no one in charge, when left in a conspicuous place in
30 the office; or

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

(4) When given by a form of electronic communication consented to by the
person to whom the notice is given:

(a) If by facsimile communication, when directed to a telephone
number at which the person has consented to receive notice;

(b) If by electronic mail, when directed to an electronic mail address
at which the person has consented to receive notice.

(c) If by posting on an electronic network on which the person has
consented to receive notice, together with separate notice to the
person of the specific posting, upon the later of:

[1] The posting; or

[2] The giving of the separate notice.

(d) If by any other form of electronic communication by which the
person has consented to receive notice, when directed to the
person.

c. Is given when deposited in the United States mail with sufficient postage
affixed.

d. Is deemed received when it is given.

~~44.~~ 23. "Organization" means:

a. Whether domestic or foreign, a corporation incorporated in or authorized to do
business in this state under this or another chapter of this code, limited
liability company, partnership, limited partnership, limited liability partnership,
limited liability limited partnership, joint venture, association, business trust,
estate, trust, enterprise, and any other legal or commercial entity; but
b. Excludes any nonprofit corporation, whether a domestic nonprofit corporation
which is incorporated under chapter 10-33 or a foreign nonprofit corporation
which is incorporated in another jurisdiction.

24. "Partner" means a general or limited partner.

- 1 ~~45.~~ 25. "Partnership agreement" means any valid agreement, written or oral, of the
2 partners as to the affairs of a limited partnership and the conduct of its business.
- 3 ~~46.~~ 26. "Partnership interest" means a partner's share of the profits and losses of a limited
4 partnership and the right to receive distributions of partnership assets.
- 5 ~~47.~~ 27. "Principal executive office" means:
6 a. An office from which the limited partnership conducts business; or
7 b. If the limited partnership has no office from which it conducts business, then
8 the registered office of the limited partnership.
- 9 ~~48.~~ 28. "Record" means information that is inscribed on a tangible medium or that is stored
10 in an electronic or other medium and is retrievable in perceivable form.
- 11 29. "Signed" means ~~that~~:
12 a. That the signature of a person, which may be a facsimile affixed, engraved,
13 printed, placed, stamped with indelible ink, transmitted by facsimile or
14 electronically, or in any other manner reproduced on the document, is placed
15 on a document, as provided in subsection 39 of under section 41-01-11,
16 41-01-09; and:
- 17 a- b. With respect to a document required by this chapter to be filed with the
18 secretary of state, ~~means the~~ that:
19 (1) The document is signed by a person authorized to sign the document
20 by this chapter or by a resolution approved by the affirmative vote of
21 the required proportion or number of partners; and
- 22 b- ~~With respect to a document not required by this chapter to be filed with the~~
23 ~~secretary of state, means the signature may be a facsimile affixed, engraved,~~
24 ~~printed, placed, stamped with indelible ink, transmitted by facsimile or~~
25 ~~electronically, or in any other manner reproduced on the document.~~
- 26 ~~49.~~ "State" means a state, territory, or possession of the United States, the District of
27 Columbia, or the Commonwealth of Puerto Rico.
- 28 (2) The signature and the document are communicated by a method or
29 medium of communication acceptable by the secretary of state.

30 **SECTION 119.** Section 45-10.1-01.1 of the North Dakota Century Code is created and

31 enacted as follows:

45-10.1-01.1. Legal recognition of electronic records and electronic signatures.

For purposes of this chapter:

1. A record or signature may not be denied legal effect or enforceability solely because it is in electronic form;
2. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation;
3. If a provision requires a record to be in writing, an electronic record satisfies the requirement; and
4. If a provision requires a signature, an electronic signature satisfies the requirement.

SECTION 120. AMENDMENT. Subsection 6 of section 45-10.1-02 of the North Dakota Century Code is amended and reenacted as follows:

6. A limited partnership that is ~~merged~~ the surviving organization in a merger with another domestic one or foreign organization, or that is organized by the reorganization of one or more domestic or foreign organizations, or that acquires by sale, lease, or other disposition to or exchange with a domestic an organization all or substantially all of the assets of another domestic or foreign organization including its name, may include in its name, subject to the requirements of subsection 1, the name of any of the other organizations, if the other organization whose name is sought to be used:
 - a. Was incorporated, organized, formed, or registered under the laws of this state;
 - b. Is authorized to transact business or conduct activities in this state;
 - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
 - d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
 - e. Holds a trade name registered in the manner provided in chapter 47-25.

SECTION 121. AMENDMENT. Section 45-10.1-03 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-03. (103) Reserved name.

- 1 1. The exclusive right to the use of a limited partnership name otherwise permitted by
- 2 section 45-10.1-02 may be reserved by any person.
- 3 2. The reservation must be made by filing with the secretary of state a request that
- 4 the name be reserved, together with the fees provided in section 45-10.1-15:
- 5 a. If the name is available for use by the applicant, the secretary of state shall
- 6 reserve the name for the exclusive use of the applicant for a period of twelve
- 7 months.
- 8 b. The reservation may be renewed for successive twelve-month periods.
- 9 3. The right to the exclusive use of a limited partnership name reserved pursuant to
- 10 this section may be transferred to another person by or on behalf of the applicant
- 11 for whom the name was reserved by filing in the office of the secretary of state a
- 12 notice of the transfer, and specifying the name and address of the transferee,
- 13 together with fees provided in section 45-10.1-15.
- 14 4. The right to the exclusive use of a limited partnership name reserved pursuant to
- 15 this section may be canceled by or on behalf of the applicant for whom the name
- 16 was reserved by filing with the secretary of state a notice of cancellation, together
- 17 with the fees provided in section 45-10.1-15.
- 18 5. ~~The secretary of state may accept for filing a legible facsimile copy of the signed~~
- 19 ~~original of any request for reserved name.~~
- 20 6. The secretary of state may destroy all reserved name requests and index thereof
- 21 one year after expiration.

22 **SECTION 122. AMENDMENT.** Section 45-10.1-07.1 of the North Dakota Century
23 Code is amended and reenacted as follows:

24 **45-10.1-07.1. Registration of general partner.** A general partner must be registered
25 separately with the secretary of state at the time of filing a certificate of limited partnership or
26 the registration of foreign limited partnership whenever that general partner is either a domestic
27 or foreign:

- 28 1. Corporation;
- 29 2. Limited liability company;
- 30 3. Limited ~~liability~~ partnership;
- 31 4. Limited liability partnership;

1 5. Limited liability limited partnership;

2 6. General partnership using a fictitious name; or

3 6- 7. Any other organization that has a registration responsibility with the secretary of
4 state.

5 **SECTION 123. AMENDMENT.** Subsections 7 and 8 of section 45-10.1-09 of the North
6 Dakota Century Code are amended and reenacted as follows:

7 7. A limited partnership must notify the secretary of state in writing whenever a
8 general partner changes the address of its principal place of business. A
9 ~~corporate~~ An annual report filed by the secretary of state that reflects a change of
10 address of a general partner may serve as such notice. This notice is not subject
11 to the amendment fee prescribed in section 45-10.1-15.

12 8. A limited partnership that changes its name and that is the owner of a trademark,
13 or uses a fictitious name registered with the secretary of state, or is a general
14 partner of another limited partnership or limited liability limited partnership on file
15 with the secretary of state, or is a managing partner of a limited liability partnership
16 on file with the secretary of state, must effect a change of name in each of such
17 registrations simultaneously with the filing of the amendments.

18 **SECTION 124. AMENDMENT.** Section 45-10.1-13 of the North Dakota Century Code
19 is amended and reenacted as follows:

20 **45-10.1-13. (206) Secretary of state - Filing in office of secretary of state.**

21 1. A signed ~~copy~~ document of the certificate of limited partnership and of any
22 certificates of amendment or cancellation, or of any judicial decree of amendment
23 or cancellation, must be delivered to the secretary of state. A person who
24 executes a certificate as an agent or fiduciary need not exhibit evidence of that
25 person's authority as a prerequisite to filing. Unless the secretary of state finds
26 that any certificate does not conform to law, upon receipt of all filing fees required
27 by law the secretary of state shall ~~endorse on the copy the word "Filed" and the~~
28 ~~day, month, and year of the filing and shall~~ file the ~~copy~~ document in the office of
29 the secretary of state.

30 2. Upon the filing of a certificate of amendment or judicial decree of amendment in
31 the office of the secretary of state, the certificate of limited partnership is amended

as set forth therein, and upon the effective date of a certificate of cancellation, or a judicial decree thereof, the certificate of limited partnership is canceled.

SECTION 125. AMENDMENT. Section 45-10.1-55 of the North Dakota Century Code is amended and reenacted as follows:

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

1. If any statement in the application for registration of a foreign limited partnership is false when made or any arrangements or other facts described change, making the application inaccurate in any respect, the foreign limited partnership shall promptly file in the office of the secretary of state ~~a certificate~~ an amended registration, signed by a general partner, correcting the statement, and in the case of a change in the name of the foreign limited partnership, a certificate to that effect authenticated by the proper office of the jurisdiction of origin.
2. A foreign limited partnership that changes the foreign limited partnership's name and files ~~a statement~~ an amended registration as provided in subsection 1 and is the owner of a trademark, uses a fictitious name registered with the secretary of state, or is a general partner of another limited partnership or a limited liability limited partnership on file with the secretary of state, or is a managing partner of a limited liability partnership on file with the secretary of state, shall effect a change of name in each of the foregoing registrations which is applicable when the foreign limited partnership files the ~~certificate amending the~~ amended registration of foreign limited partnership.
3. A foreign limited partnership shall file ~~a certificate of amendment~~ an amended registration, signed by a general partner, when a general partner that is a corporation or limited liability company files an amendment changing the general partner's ~~corporate~~ name, or when the general partner files an application for an amended certificate of authority. This ~~certificate of amendment~~ amended registration must be filed simultaneously with the amendment to the articles of incorporation, articles of organization, or application for an amended certificate of authority.
4. A foreign limited partnership shall notify the secretary of state in writing when a general partner changes the address of the general partner's principal place of

business. A ~~corporate~~ general partner's annual report filed by the secretary of state that reflects a change of address of a general partner may serve as a notice under this subsection. This notice is not subject to the amendment fee prescribed in section 45-10.1-15.

SECTION 126. AMENDMENT. Section 45-10.1-56 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-56. (906) Foreign limited partnership - Cancellation of registration. A foreign limited partnership may cancel its registration by filing with the secretary of state a certificate of cancellation signed ~~and sworn to~~ by a general partner. A cancellation does not terminate the authority of the secretary of state to accept service of process on the foreign limited partnership with respect to claims for relief arising out of the transactions of business in this state.

SECTION 127. Section 45-10.1-63 of the North Dakota Century Code is created and enacted as follows:

45-10.1-63. Service of process on a limited partnership.

1. A process, notice, or demand required or permitted by law to be served on a limited partnership may be served on the registered agent or on any responsible person found at the registered office or on the secretary of state as provided in this section.
2. If neither the registered agent nor a responsible person can be found at the registered office and if a responsible person affiliated with the limited partnership cannot be found at the principal place of business in this state, the secretary of state is the agent of the limited partnership on whom the process, notice, or demand may be served. Service on the secretary of state:
 - a. Shall be made by registered mail or personal delivery to the secretary of state and not by electronic communication.
 - b. Shall include the return of the sheriff or affidavit of a person not a party, verifying that neither a registered agent nor a responsible person can be found at the registered office or at the principal place of business in this state.
 - c. Is deemed personal service on the limited partnership and may be made by filing with the secretary of state:

(1) An original and two copies of the process, notice, or demand; and

(2) The fees provided in section 45-22-22.

d. The secretary of state immediately shall forward, by certified mail addressed to the limited partnership at the limited partnership's registered office or principal place of business in this state, a copy of the process, notice, or demand.

e. Service on the secretary of state is returnable in not less than thirty days, notwithstanding a shorter period specified in the process, notice, or demand.

3. The secretary of state shall maintain a record of every process, notice, and demand served on the secretary of state under this section, including the date of service and the action taken with reference to the process, notice, or demand.

4. This section does not limit the right of a person to serve process, notice, or demand required or permitted by law to be served on a limited partnership in any other manner permitted by law.

SECTION 128. Section 45-10.1-64 of the North Dakota Century Code is created and enacted as follows:

45-10.1-64. Secretary of state - Annual report of limited partnership and foreign limited partnership.

1. Each limited partnership, and each foreign limited partnership authorized to transact business in this state, shall file, within the time prescribed by subsection 3, an annual report setting forth:

a. The name of the limited partnership or foreign limited partnership and the jurisdiction of origin.

b. The address of the registered office of the limited partnership or foreign limited partnership in this state and the name of the limited partnership's or foreign limited partnership's registered agent in this state at that address.

c. The address of the limited partnership's or foreign limited partnership's principal executive office.

d. A brief statement of the character of the business in which the limited partnership or foreign limited partnership is actually engaged in this state.

e. The name and respective address of every general partner of the limited partnership or foreign limited partnership.

2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided in the annual report must be accurate as of the time of filing the report. The annual report must be signed as prescribed in subsection 29 of section 45-10.1-01 or a resolution approved by the affirmative vote of the required proportion or number of partners. If the limited partnership or foreign limited partnership is in the hands of a receiver or trustee, the annual report must be signed on behalf of the limited partnership or foreign limited partnership by the receiver or trustee. The secretary of state may destroy any annual reports provided for in this section after the annual report is on file for six years.

3. The annual report of a limited partnership or foreign limited partnership must be delivered to the secretary of state before April first of each year, except the first annual report of a limited partnership or foreign limited partnership must be delivered before April first of the year following the calendar year in which the registration was filed by the secretary of state. A limited partnership existing before July 1, 1999, or a foreign limited partnership registered before July 1, 1999, shall file the limited partnership's or foreign limited partnership's first annual report before April first in the year of the expiration of the limited partnership's or foreign limited partnership's registration or renewal registration in effect on December 31, 1999.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 129. Section 45-10.1-65 of the North Dakota Century Code is created and enacted as follows:

45-10.1-65. Secretary of state - Fees for filing documents. The secretary of state shall charge and collect for:

1. Filing a limited partnership, one hundred dollars.

2. Filing a limited partnership amendment, forty dollars.

3. Filing a limited partnership dissolution, twenty-five dollars.

4. Filing a limited partnership cancellation, twenty-five dollars.

5. Filing a reservation of name, ten dollars.

6. Filing a notice of transfer of a reserved limited partnership name, ten dollars.

7. Filing a cancellation of a reserved limited partnership name, ten dollars.

8. Filing a consent to use a deceptively similar name, ten dollars.

9. Filing a statement of change of address of registered office or change of registered agent, or both, ten dollars.

10. Filing a statement of change of address of registered office by registered agent, ten dollars for each limited partnership affected by the change.

11. Filing a registered agent's consent to serve in the capacity of registered agent, ten dollars.

12. Filing a resignation as registered agent, ten dollars.
13. Filing a registration of foreign limited partnership, one hundred dollars.
14. Filing a certified statement of amendment of foreign limited partnership, forty dollars.
15. Filing a certified statement of dissolution of foreign limited partnership, twenty-five dollars.
16. Filing a certified statement of cancellation of foreign limited partnership, twenty-five dollars.
17. Filing a statement of withdrawal of foreign limited partnership, twenty-five dollars.
18. Filing an annual report of a limited partnership or foreign limited partnership, twenty-five dollars. The secretary of state shall charge and collect additional fees for late filing of an annual report as follows:
 - a. After the date prescribed in subsection 3 of section 45-10.1-14, twenty dollars; and
 - b. After the termination of the limited partnership or the revocation of the registration of a foreign limited partnership, the reinstatement fee of one hundred dollars.
19. Any document submitted for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the document.
20. Filing any process, notice, or demand for service, twenty-five dollars.

SECTION 130. Section 45-10.1-66 of the North Dakota Century Code is created and enacted as follows:

45-10.1-66. Secretary of state - Duties. The secretary of state shall maintain an alphabetical index of all limited partnerships and foreign limited partnerships on file with that office. Except for annual reports, all documents filed with the secretary of state under this chapter must be retained in that office until the documents have been committed to microcopy, at which time the documents may be destroyed.

SECTION 131. Section 45-10.1-67 of the North Dakota Century Code is created and enacted as follows:

45-10.1-67. Secretary of state - Powers - Enforcement - Penalty - Appeal.

1. The secretary of state shall administer this chapter.

- 1 2. The secretary of state may propound to any limited partnership subject to this
2 chapter and to any partner any interrogatory reasonably necessary and proper to
3 ascertain whether the partnership has complied with this chapter.
- 4 a. Any interrogatory must be answered within thirty days after mailing or within
5 any additional time fixed by the secretary of state. Every answer to the
6 interrogatory must be full and complete and be made in writing and under
7 oath.
- 8 b. If an interrogatory is directed:
- 9 (1) To an individual, the interrogatory must be answered by that individual;
10 (2) To a domestic limited partnership, the interrogatory must be answered
11 by a general partner; or
12 (3) To a foreign limited partnership, the interrogatory must be answered by
13 a resident partner or, if no partner is a resident partner, a partner
14 designated by the foreign limited partnership.
- 15 c. The secretary of state need not file any document to which an interrogatory
16 relates until the interrogatory is answered, except if the answers disclose the
17 document is not in conformity with this 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 that
20 disclose a violation of this chapter.
- 21 e. Each general partner of a domestic limited partnership or a resident partner or
22 designated partner of a foreign limited partnership who fails or refuses within
23 the time provided by this section to answer truthfully and fully every
24 interrogatory propounded to that person by the secretary of state is guilty of
25 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 fact or information obtained from an interrogatory
29 except to the extent permitted by law or required for evidence in any criminal
30 proceeding or other action 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 shall give written notice of the rejection to the person who delivered the
4 document, specifying the reasons for rejection. That person may appeal to the
5 district court of the county in which the registered office of the domestic limited
6 partnership or foreign limited partnership is, or is proposed to be, situated by filing
7 with the clerk of that court a petition setting forth a copy of the document sought to
8 be filed and a copy of the written rejection of the document by the secretary of
9 state. The court shall try the matter de novo. The court shall sustain the action of
10 the secretary of state or direct the secretary of state to take any action the court
11 determines proper.
- 12 4. If the secretary of state revokes the registration of any foreign limited partnership,
13 the foreign limited partnership may appeal to district court of the county where the
14 registered office of the foreign limited partnership in this state is situated by filing
15 with the clerk of that court a petition setting forth a copy of the foreign limited
16 partnership's registration and a copy of the notice of revocation given by the
17 secretary of state. The court shall try the matter de novo. The court shall sustain
18 the action of the secretary of state or direct the secretary of state to take any action
19 the court determines proper.
- 20 5. The attorney general may maintain an action to restrain a foreign limited
21 partnership from transacting business in this state in violation of this chapter.

22 **SECTION 132.** Section 45-10.1-68 of the North Dakota Century Code is created and
23 enacted as follows:

24 **45-10.1-68. Secretary of state - Certificates and certified copies to be received in**
25 **evidence.**

- 26 1. All copies of documents filed in accordance with this chapter, when certified by the
27 secretary of state, must be taken and received in all courts, public offices, and
28 official bodies as prima facie evidence of the facts stated.
- 29 2. A certificate by the secretary of state under the great seal of this state, as to the
30 existence or nonexistence of the facts relating to domestic limited partnerships or
31 foreign limited partnerships which would not appear from a certified copy of any of

1 the foregoing documents or certificates, must be taken and received in all courts,
2 public offices, and official bodies as prima facie evidence of the existence or
3 nonexistence of the facts stated.

4 **SECTION 133.** Section 45-10.1-69 of the North Dakota Century Code is created and
5 enacted as follows:

6 **45-10.1-69. Secretary of state - Exempt records.** Any social security number or
7 federal tax identification number disclosed or contained in any document filed with the secretary
8 of state under this chapter is an exempt record as defined by subsection 5 of section
9 44-04-17.1. The secretary of state shall take reasonable precautions to delete or obscure any
10 social security number or federal tax identification number the secretary of state determines to
11 be a closed record before a copy of any document is released to the public.

12 **SECTION 134.** Section 45-10.1-70 of the North Dakota Century Code is created and
13 enacted as follows:

14 **45-10.1-70. Secretary of state - Forms to be furnished by the secretary of state.**
15 Every annual report must be made on forms prescribed by the secretary of state. Upon
16 request, the secretary of state may furnish forms for all other documents to be filed in the office
17 of the secretary of state. However, the use of these documents, unless otherwise specifically
18 required by law, is not mandatory.

19 **SECTION 135.** Section 45-10.1-71 of the North Dakota Century Code is created and
20 enacted as follows:

21 **45-10.1-71. Audit reports and audit of limited partnerships receiving state**
22 **subsidies for production of alcohol or methanol for combination with gasoline.** Any
23 limited partnership that produces agricultural ethyl alcohol or methanol within this state and
24 which receives a production subsidy from the state, whether in the form of reduced taxes or
25 otherwise, shall submit an annual audit report, prepared by a certified public accountant based
26 on an audit of all records and accounts of the limited partnership, to the legislative audit and
27 fiscal review committee. The audit must be submitted within ninety days of the close of the
28 taxable year of the limited partnership. Upon request of the legislative audit and fiscal review
29 committee, the state auditor shall conduct an audit of the records and accounts of any limited
30 partnership required to submit an annual report under this section.

1 **SECTION 136.** Section 45-10.1-72 of the North Dakota Century Code is created and
2 enacted as follows:

3 **45-10.1-72. Foreign trade zones.**

4 1. As used in this section, unless the context otherwise requires:

5 a. "Act of Congress" means the Act of Congress approved June 18, 1934,
6 entitled an act to provide for the establishment, operation, and maintenance
7 of foreign trade zones and ports of entry of the United States, to expedite and
8 encourage foreign commerce and for other purposes, as amended, and
9 commonly known as the Foreign Trade Zone Act of 1934 [48 Stat. 998;
10 19 U.S.C. 81a et seq.], as amended.

11 b. "Private limited partnership" means a domestic limited partnership or foreign
12 limited partnership, one of the purposes of which is to establish, operate, and
13 maintain a foreign trade zone by itself or in conjunction with a public
14 corporation.

15 c. "Public corporation" means this state, any political subdivision of this state,
16 any public agency of this state or any political subdivision of this state, or any
17 corporate instrumentality of this state.

18 2. Any private limited partnership or public corporation may apply to the proper
19 authorities of the United States for a grant of the privilege of establishing,
20 operating, and maintaining foreign trade zones and foreign trade subzones and to
21 do all things necessary and proper to carry into effect the establishment, operation,
22 and maintenance of such zones, in accordance with the Act of Congress and other
23 applicable laws and rules.

24 **SECTION 137. AMENDMENT.** Section 45-13-01 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **45-13-01. (101) Definitions.** In chapters 45-13 through 45-21 unless the context or
27 subject matter otherwise requires:

28 1. "Address" means:

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

- 1 b. In any other case, the mailing address, including the zip code.
- 2 2. "Authenticated electronic communication" means:
- 3 a. That the electronic communication is delivered:
- 4 (1) To the principal place of business of the partnership; or
- 5 (2) To a partner or agent of the partnership authorized by the partnership
- 6 to receive the electronic communication; and
- 7 b. That the electronic communication sets forth information from which the
- 8 partnership can reasonably conclude that the electronic communication was
- 9 sent by the purported sender.
- 10 3. "Business" includes every trade, occupation, and profession.
- 11 ~~2. "Chief executive office" means an office from which the partnership conducts~~
- 12 ~~business.~~
- 13 ~~3.~~ 4. "Debtor in bankruptcy" means a person who is the subject of:
- 14 a. An order for relief under title 11 of the United States Code or a comparable
- 15 order under a successor statute of general application; or
- 16 b. A comparable order under federal, state, or foreign law governing insolvency.
- 17 ~~4.~~ 5. "Distribution" means a transfer of money or other property from a partnership to a
- 18 partner in the partner's capacity as a partner or to the partner's transferee.
- 19 ~~5.~~ 6. "Domestic organization" means an organization created under the laws of this
- 20 state.
- 21 7. "Electronic" means relating to technology having electrical, digital, magnetic,
- 22 wireless, optical, electromagnetic, or similar capabilities.
- 23 8. "Electronic communication" means any form of communication, not directly
- 24 involving the physical transmission of paper:
- 25 a. That creates a record that may be retained, retrieved, and reviewed by a
- 26 recipient of the communication; and
- 27 b. That may be directly reproduced in paper form by the recipient through an
- 28 automated process.
- 29 9. "Electronic record" means a record created, generated, sent, communicated,
- 30 received, or stored by electronic means.

1 10. "Electronic signature" means an electronic sound, symbol, or process attached to
2 or logically associated with a record and executed or adopted by a person with the
3 intent to sign the record.

4 11. "Filed with the secretary of state" means, except as otherwise permitted by law or
5 rule:

6 a. ~~A signed original or a legible facsimile telecommunication of a signed original~~
7 ~~of a request for reserved name or the signed original of all other documents~~
8 That a document meeting the applicable requirements of this chapter together
9 with the fees provided in section 45-13-05 was delivered or communicated to
10 the secretary of state by a method or medium of communication acceptable
11 by the secretary of state and was determined by the secretary of state to
12 conform to law.

13 b. ~~The~~ That the secretary of state shall then ~~endorse on the original the word~~
14 ~~"filed" and the month, day, and year, and record the document in the office of~~
15 ~~the secretary of state;~~

16 (1) Record the actual date on which the documents are filed, and if
17 different, the effective date of filing; and

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

19 6- 12. "Foreign limited liability partnership" means a partnership that is formed under laws
20 other than the laws of this state and has the status of a limited liability partnership
21 under those laws.

22 7- 13. "Foreign organization" means an organization created under laws other than the
23 laws of this state for a purpose for which an organization may be created under the
24 laws of this state.

25 14. "Limited liability partnership" means a partnership that filed a registration under
26 chapter 45-22 and does not have a similar statement in effect in any other
27 jurisdiction.

28 8- 15. "Managing partner" means one of the partners charged with the management of
29 the partnership in this state and if no partners are specifically so designated, then
30 all partners.

31 16. "Notice":

- 1 a. Is given to a partnership or to a partner of a partnership ~~when~~:
- 2 (1) When in writing and mailed or delivered to the partnership or to the
- 3 partner at the ~~chief~~ principal executive office of the partnership; or
- 4 (2) When given by a form of electronic communication consented to by the
- 5 partnership or a partner to which the notice is given:
- 6 (a) If by facsimile communication, when directed to a telephone
- 7 number at which the partnership or a partner has consented to
- 8 receive notice.
- 9 (b) If by electronic mail, when directed to an electronic mail address
- 10 at which the partnership or a partner has consented to receive
- 11 notice.
- 12 (c) If by posting on an electronic network on which the partnership or
- 13 a partner has consented to receive notice, together with separate
- 14 notice to the partnership or a partner if the specific posting, upon
- 15 the later of:
- 16 [1] The posting; or
- 17 [2] The giving of the separate notice.
- 18 (d) If by any other form of electronic communication by which the
- 19 partnership or a partner has consented to receive notice, when
- 20 directed to the partnership.
- 21 b. ~~In~~ Is given, in all other cases is given to a person:
- 22 (1) When mailed to the person at an address designated by the person or
- 23 at the last-known address of the person;
- 24 (2) When handed to the person; ~~or~~
- 25 (3) When left at the office of the person with a clerk or other person in
- 26 charge of the office ~~or, if~~:
- 27 (a) If there is no one in charge, when left in a conspicuous place in
- 28 the office; ~~or, if~~
- 29 (b) If the office is closed or the person to be notified has no office,
- 30 when left at the dwelling, house, or other usual place of abode of

the person with some person of suitable age and discretion
residing there; or

(4) When given by a form of electronic communication consented to by the
person to whom the notice is given:

(a) If by facsimile communication, when directed to a telephone
number at which the person has consented to receive notice.

(b) If by electronic mail, when directed to an electronic mail address
at which the person has consented to receive notice.

(c) If by posting on an electronic network on which the person has
consented to receive notice, together with separate notice to the
person of the specific posting, upon the later of:

[1] The posting; or

[2] The giving of the separate notice.

(d) If by any other form of electronic communication by which the
person has consented to receive notice, when directed to the
person.

c. Is given when deposited in the United States mail with sufficient postage
affixed.

d. Is deemed received when it is given.

~~9-~~ 17. "Organization" means:

a. Whether domestic or foreign, a corporation incorporated in or authorized to do
business in this state under this or another chapter of this code, limited
liability company, partnership, limited partnership, limited liability partnership,
limited liability limited partnership, joint venture, association, business trust,
estate, trust, enterprise, and any other legal or commercial entity; but
b. Excludes any nonprofit corporation, whether a domestic nonprofit corporation
which is incorporated under chapter 10-33 or a foreign nonprofit corporation
which is incorporated in another jurisdiction.

~~40-~~ 18. "Partnership" means an association of two or more persons to carry on as
coowners a business for profit formed under section 45-14-02, predecessor law, or
comparable law of another jurisdiction.

19. "Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

44- 20. "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

~~42.~~ 21. "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.

43- 22. "Principal executive office" means an office from which the partnership conducts
business.

23. "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

44. 24. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

25. "Signed" means the:

a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the document, is placed on a document, as provided in ~~subsection 39 of~~ under section ~~41-01-11, 41-01-09;~~ and:

a- b. With respect to a document required by this chapter to be filed with the secretary of state, ~~means the~~ that:

(1) The document is signed by a person authorized to do so by this chapter or by a resolution approved by the affirmative vote of the required proportion or number of partners; and

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

(2) The signature and the document are communicated by a method or medium of communication acceptable by the secretary of state.

~~45-~~ 26. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

~~46-~~ 27. "Statement" means a:

a. A statement of partnership authority under section 45-15-03; a;

b. A statement of denial under section 45-15-04; a;

c. A statement of dissociation under section 45-19-04; a;

d. A statement of dissolution under section 45-20-05; a;

e. A statement of merger under section 45-21-07; i or an

f. An amendment or cancellation of any of the foregoing.

~~47-~~ 28. "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

SECTION 138. Section 45-13-01.1 of the North Dakota Century Code is created and enacted as follows:

45-13-01.1. Legal recognition of electronic records and electronic signatures.

For purposes of this chapter:

1. A record or signature may not be denied legal effect or enforceability solely because it is in electronic form;

2. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation;

3. If a provision requires a record to be in writing, an electronic record satisfies the requirement; and

4. If a provision requires a signature, an electronic signature satisfies the requirement.

SECTION 139. AMENDMENT. Subsections 5 and 6 of section 45-13-04.1 of the North Dakota Century Code are amended and reenacted as follows:

5. A partnership that is ~~merged~~ the surviving organization in a merger with another partnership ~~one or domestic or foreign limited partnership, or that is formed by the reorganization of one or more partnerships or domestic or foreign limited~~

~~partnerships~~ other organizations, or that acquires by sale, lease, or other disposition to or exchange with ~~a partnership~~ an organization all or substantially all of the assets of another ~~partnership or domestic or foreign limited partnership~~ organization including ~~the partnership's or limited partnership's~~ its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other ~~partnership or domestic or foreign limited partnership organizations~~ if the other ~~partnership or domestic or foreign limited partnership organization~~ whose name is sought to be used:

- a. Is formed under the laws of this state;
- b. Is authorized to transact business or conduct activities in this state;
- c. Holds a reserved name in the manner provided in section 45-10.1-03;
- d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
- e. Holds a trade name registered in the manner provided in chapter 47-25.

6. The use of a name by a partnership in violation of this section does not affect or vitiate the ~~partnership's~~ partnership existence of the partnership. However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the partnership from doing business under a name assumed in violation of this section, although a statement may have been filed with the secretary of state.

SECTION 140. AMENDMENT. Section 45-13-04.2 of the North Dakota Century Code is amended and reenacted as follows:

45-13-04.2. Reserved name.

1. The exclusive right to the use of a partnership name otherwise permitted by section 45-13-04.1 may be reserved by any person.
2. The reservation is made by filing with the secretary of state a request that the name be reserved together with the fees provided in section 45-13-05.
 - a. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months.
 - b. The reservation may be renewed for successive twelve-month periods.

1 3. The right to the exclusive use of a partnership name reserved pursuant to this
2 section may be transferred to another person by or on behalf of the applicant for
3 whom the name was reserved by filing with the secretary of state a notice of the
4 transfer and specifying the name and address of the transferee together with the
5 fees provided in section 45-13-05.

6 4. The right to the exclusive use of a partnership name reserved pursuant to this
7 section may be canceled by or on behalf of the applicant for whom the name was
8 reserved by filing with the secretary of state a notice of the cancellation together
9 with the fees provided in section 45-13-05.

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

12 6- The secretary of state may destroy any reserved name request and any index of
13 reserved names one year after expiration.

14 **SECTION 141. AMENDMENT.** Subsections 6 and 7 of section 45-13-05 of the North
15 Dakota Century Code are amended and reenacted as follows:

16 6. Any statement filed under this section must be renewed every five years from the
17 date of the initial filing. A statement of renewal must be executed by the
18 partnership on a form furnished by the secretary of state which is sent to the
19 address of the ~~chief principal~~ executive office at least sixty days before the
20 deadline for filing. If the secretary of state finds that the statement of renewal
21 conforms to the requirements of this section, and the proper filing fee has been
22 paid, the secretary of state shall file the statement of renewal. If the secretary of
23 state finds that the statement of renewal does not so conform, the secretary of
24 state shall return the statement of renewal to the partnership for any necessary
25 corrections. If the statement of renewal is not returned corrected within thirty days
26 after the statement of renewal was returned for correction, the statement of
27 renewal is subject to cancellation. If any partnership fails to file the statement of
28 renewal, the secretary of state shall cancel the initial statement and shall mail
29 notice of the cancellation to the address of the ~~chief principal~~ executive office.

30 7. A partnership shall notify the secretary of state in writing upon a change in address
31 of the partnership's ~~chief principal~~ executive office. A statement of renewal filed by

the secretary of state which reflects a change of address of the ~~chief principal~~
executive office of the partnership may serve as a notice under this subsection.

SECTION 142. AMENDMENT. Subsection 1 of section 45-13-06 of the North Dakota
Century Code is amended and reenacted as follows:

1. Except as otherwise provided in subsection 2, the law of the jurisdiction in which a
partnership has the ~~partnership's chief principal~~ executive office of the partnership
is located governs relations among the partners and between the partners and the
partnership.

SECTION 143. AMENDMENT. Subsection 1 of section 45-15-03 of the North Dakota
Century Code is amended and reenacted as follows:

1. A partnership may file with the secretary of state, along with the fees provided in
section 45-13-05, a statement of partnership authority which:
 - a. Must include:
 - (1) The name of the partnership;
 - (2) The street address of the partnership's ~~chief principal~~ executive office
and of one office in this state, if there is one;
 - (3) The name and mailing address of each partner;
 - (4) The address of the registered office of the partnership and the name of
the registered agent at that address;
 - (5) The name of each partner authorized to execute an instrument
transferring real property held in the name of the partnership; and
 - (6) The nature of business to be transacted.
 - b. May state the authority, or limitations on the authority, of some or all of the
partners to enter into other transactions on behalf of the partnership and any
other matter.

SECTION 144. AMENDMENT. Subsection 1 of section 45-15-03.1 of the North
Dakota Century Code is amended and reenacted as follows:

1. A partnership that files and maintains a statement of partnership authority shall
continuously maintain a registered office in this state. A registered office need not
be the same as the principal place of business or the ~~chief principal~~ executive
office of the partnership.

1 **SECTION 145. AMENDMENT.** Subsection 2 of section 45-15-03.2 of the North
2 Dakota Century Code is amended and reenacted as follows:

- 3 2. A registered agent of a partnership may resign by filing with the secretary of state
4 a signed written notice of resignation, including a statement that a signed copy of
5 the notice was given to the partnership at the partnership's ~~chief principal~~
6 executive office, or to a legal representative of the partnership. The appointment
7 of the agent terminates thirty days after notice is filed with the secretary of state.

8 **SECTION 146. AMENDMENT.** Section 45-15-04 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **45-15-04. (304) Statement of denial.** A partner or other person named as a partner in
11 a filed statement of partnership authority may file with the secretary of state, along with the fees
12 provided in section 45-13-05, a statement of denial stating the name of the partnership and the
13 fact that is being denied, which may include denial of a person's authority or status as a
14 partner. A statement of denial is a limitation on authority as provided in subsections 3 and 4 of
15 section 45-15-03.

16 **SECTION 147.** Section 45-16-07 of the North Dakota Century Code is created and
17 enacted as follows:

18 **45-16-07. Action without a meeting.** An action required or permitted to be taken at a
19 meeting of the partners may be taken without a meeting by written action signed, or consented
20 to by authenticated electronic communication, by all of the partners entitled to vote on the
21 action.

- 22 1. If the partnership agreement so provides, any action may be taken by written
23 action signed by the partners who own voting power equal to the voting power that
24 would be required to take the same action at a meeting of the partners at which all
25 partners were present.
- 26 a. When written action is permitted to be taken by less than all partners, all
27 partners must be notified immediately of its text and effective date.
- 28 b. Failure to provide the notice does not invalidate the written action.
- 29 c. A partner who does not sign or consent to the written action has no liability for
30 the action or actions taken by the written actions.

2. The written action is effective when it has been signed, or consented to by authenticated electronic communication, by the required partners, unless a different effective time is provided in the written action.
3. When this chapter requires or permits a certificate concerning an action to be filed with the secretary of state, the partner signing the certificate must so indicate if the action was taken under this section.

SECTION 148. Section 45-16-08 of the North Dakota Century Code is created and enacted as follows:

45-16-08. Remote communications for partner meetings.

1. This section shall be construed and applied to:
 - a. Facilitate remote communication consistent with other applicable law; and
 - b. Be consistent with reasonable practices concerning remote communication and with the continued expansion of those practices.
2. To the extent authorized in the partnership agreement:
 - a. A meeting of the partners may be held solely by any combination of means of remote communication through which the participants may participate in the meeting:
 - (1) If the notice of the meeting is given to every partner entitled to vote;
and
 - (2) If the partnership interests held by the partners participating in the meeting would be sufficient to constitute a quorum at a meeting.
 - b. A partner not physically present at a meeting of partners may by means of remote communication participate in a meeting of partners held at a designated place.
3. In any meeting of partners held solely by means of remote communication under subdivision a of subsection 2, or in any meeting partners held at a designated place in which one or more partners participate by means of remote communication under subdivision b of subsection 2:
 - a. The partnership shall implement reasonable measures:
 - (1) To verify that each person deemed present and entitled to vote at the meeting by means of remote communication is a partner; and

(2) To provide each partner participating by means of remote communication with a reasonable opportunity to participate in the meeting, including an opportunity to:

(a) Read or hear the proceedings of the meeting substantially concurrently with those proceedings;

(b) If allowed by the procedures governing the meeting, have the partner's remarks heard or read by other participants in the meeting substantially concurrently with the making of those remarks; and

(c) If otherwise entitled, vote on matters submitted to the partners.

b. Participation in a meeting by this means constitutes presence at the meeting.

4. With respect to notice to partners:

a. Any notice to partners given by the partnership under any provision of this chapter or the partnership agreement by a form of electronic communication consented to by the partner to whom the notice is given is effective when given. The notice is deemed given:

(1) If by facsimile communication, when directed to a telephone number at which the partner has consented to receive notice;

(2) If by electronic mail, when directed to an electronic mail address at which the partner has consented to receive notice;

(3) If by posting on an electronic network, on which the partner has consented to receive notice, together with separate notice to the partner of the specific posting, upon the later of:

(a) The posting; or

(b) The giving of the separate notice; or

(4) If by any other form of electronic communication by which the partners have consented to receive notice, when directed to the partner.

b. An affidavit of the managing partner, other authorized partner, or authorized agent of the partnership, that the notice has been given by a form of electronic communication is, in the absence of fraud, prima facie evidence of the facts stated in the affidavit.

1 c. Consent by a partner to notice given by electronic communication may be
2 given in writing or by authenticated electronic communication. The
3 partnership is entitled to rely on any consent so given until revoked by the
4 partner. However, no revocation affects the validity of any notice given before
5 receipt by the partnership of revocation of the consent.

6 5. Any ballot, vote, authorization or consent submitted by electronic communication
7 under this chapter may be revoked by the partner submitting the ballot, vote,
8 authorization, or consent so long as the revocation is received by the other
9 partners of the partnership at or before the meeting or before an action without a
10 meeting is effective according to section 10-16-07.

11 6. Waiver of notice by a partner at a meeting by means of authenticated electronic
12 communication may be given in the manner provided in the partnership
13 agreement. Participation in a meeting by means of remote communication
14 described in subdivisions a and b of subsection 2 is a waiver of notice of that
15 meeting, except when the partner objects:

16 a. At the beginning of the meeting to the transaction of business because the
17 meeting is not lawfully called or conveyed; or

18 b. Before a vote on an item of business because the item may not lawfully be
19 considered at the meeting and does not participate in the consideration of the
20 item at that meeting.

21 **SECTION 149. AMENDMENT.** Subsection 1 of section 45-19-04 of the North Dakota
22 Century Code is amended and reenacted as follows:

23 1. A dissociated partner or the partnership may file with the secretary of state, along
24 with the fees provided in section 45-13-05, a statement of dissociation stating the
25 name of the partnership and that the partner is dissociated from the partnership.

26 **SECTION 150. AMENDMENT.** Subsections 1 and 2 of section 45-21-05 of the North
27 Dakota Century Code are amended and reenacted as follows:

28 1. Pursuant to a plan of merger approved as provided in subsection 3, a partnership
29 may be merged with one or more ~~partnerships or limited partnerships~~ other
30 organizations.

31 2. The plan of merger must set forth:

a. The name of ~~each~~;

(1) ~~The partnership or limited partnership that is a party to the merger;~~

(2) Each other organization proposing to merge; and

(3) The surviving organization into which the other organizations will
merge.

~~b. The name of the surviving entity into which the other partnerships or limited
partnerships will merge;~~

~~e. Whether the surviving entity is a partnership or a limited partnership and the
The status of each partner;~~

~~c.~~ c. The terms and conditions of the merger;

~~d.~~ d. The manner and basis of converting the interests of each party to the merger
into interests or obligations of the surviving ~~entity~~ organization, or into money
or other property in whole or part; and

~~f.~~ e. The street address of the ~~surviving entity's chief~~ principal executive office of
the surviving organization.

SECTION 151. AMENDMENT. Subsection 2 of section 45-21-06 of the North Dakota
Century Code is amended and reenacted as follows:

2. The secretary of state of this state is the agent for service of process in an action
or proceeding against a surviving foreign partnership or limited partnership to
enforce an obligation of a domestic partnership or limited partnership that is a party
to a merger. The surviving entity shall promptly notify the secretary of state of the
mailing address of its ~~chief~~ principal executive office and of any change of
address. Upon receipt of process, the secretary of state shall mail a copy of the
process to the surviving foreign partnership or limited partnership.

SECTION 152. AMENDMENT. Subsections 1 and 2 of section 45-21-07 of the North
Dakota Century Code are amended and reenacted as follows:

1. After a merger, the surviving ~~partnership or limited partnership~~ organization may
file a statement that one or more partnerships or limited partnerships have merged
into the surviving ~~entity~~ organization.
2. A statement of merger must contain:
- a. The name of ~~each~~;

(1) ~~The partnership or limited partnership that is a party to the merger;~~

(2) ~~Each other organization that is a party to the merger; and~~

(3) ~~The surviving organization into which the other organizations were merged.~~

b. ~~The name of the surviving entity into which the other partnerships or limited partnership were merged;~~

e. ~~The street address of the surviving entity's chief principal executive office of the surviving organization and of an office in this state, if any; and~~

d. ~~Whether the surviving entity is a partnership or a limited partnership.~~

SECTION 153. AMENDMENT. Section 45-22-01 of the North Dakota Century Code is amended and reenacted as follows:

45-22-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Address" means:

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

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

2. "Authenticated electronic communication" means:

a. That the electronic communication is delivered:

(1) To the principal place of business of the limited liability partnership; or

(2) To a partner or agent of the limited liability partnership authorized by the limited liability partnership to receive the electronic communication;
and

b. That the electronic communication sets forth information from which the limited liability partnership can reasonably conclude that the electronic communication was sent by the purported sender.

3. "Domestic limited liability partnership" means a partnership that is organized under the laws of this state with a registration in effect and which is not a foreign limited liability partnership.

~~3.~~ 4. "Domestic organization" means an organization created under the laws of this state.

- 1 5. "Electronic" means relating to technology having electrical, digital, magnetic,
2 wireless, optical, electromagnetic, or similar capabilities.
- 3 6. "Electronic communication" means any form of communication, not directly
4 involving the physical transmission of paper:
- 5 a. That creates a record that may be retained, retrieved, and reviewed by a
6 recipient of the communication; and
- 7 b. That may be directly reproduced in paper form by the recipient through an
8 automated process.
- 9 7. "Electronic record" means a record created, generated, sent, communicated,
10 received, or stored by electronic means.
- 11 8. "Electronic signature" means an electronic sound, symbol, or process attached to
12 or logically associated with a record and executed or adopted by a person with the
13 intent to sign the record.
- 14 9. "Filed with the secretary of state" means, except as otherwise permitted by law or
15 rule:
- 16 a. ~~That a signed original or a legible facsimile telecommunication of a signed~~
17 ~~original of a request for reserved name; or a signed original of all other~~
18 ~~documents~~ document meeting the applicable requirements of this chapter,
19 together with the fees provided in section 45-22-23, ~~was~~ has been delivered
20 or communicated to the secretary of state by a method or medium of
21 communication acceptable by the secretary of state and was has been
22 determined by the secretary of state to conform to law.
- 23 b. That the secretary of state shall then:
- 24 (1) ~~Endorse on the original the word "filed" and the month, day, and year~~
25 Record the actual date on which the document is filed, and if different,
26 the effective date of filing; and
- 27 (2) Record the document in the office of the secretary of state.
- 28 4. 10. "Foreign limited liability partnership" means a partnership organized as a limited
29 liability partnership under laws other than the laws of this state which is in good
30 standing in the partnership's jurisdiction of origin.

5- 11. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which an organization may be created under the laws of this state.

12. "Jurisdiction of origin" means the jurisdiction in which the limited liability partnership status of the foreign limited liability partnership was created.

6- 13. "Limited liability partnership" means a domestic limited liability partnership or a foreign limited liability partnership.

7- 14. "Managing partner" means one of the partners charged with the management in ~~this state~~ of the limited liability partnership or foreign limited liability partnership in this state and if no partners are so specifically designated, then all partners.

8- 15. "Notice":

a. Is given to a limited liability partnership or to a partner of the limited liability partnership when:

(1) When in writing and mailed or delivered to the limited liability partnership or the partner at the registered office or principal executive office of the limited liability partnership; or

(2) When given by a form of electronic communication consented to by the limited liability partnership or the partner to which the notice is given:

(a) If by facsimile communication, when directed to a telephone number at which the limited liability partnership or the partner has consented to receive notice.

(b) If by electronic mail, when directed to an electronic mail address at which the limited liability partnership or the partner has consented to receive notice.

(c) If by posting on an electronic network on which the limited liability partnership or the partner has consented to receive notice, together with separate notice to the limited liability partnership or the partner if the specific posting, upon the later of:

[1] The posting; or

[2] The giving of the separate notice.

- 1 (d) If by any other form of electronic communication by which the
2 limited liability partnership or a partner has consented to receive
3 notice, when directed to the limited liability partnership.
- 4 b. ~~In~~ Is given, in all other cases, ~~is given to a person:~~
- 5 (1) When mailed to the person at an address designated by the person or
6 at the last-known address of the person;
- 7 (2) When handed to the person; ~~or~~
- 8 (3) When left at the office of the person with a clerk or other person in
9 charge of the office or:
- 10 (a) If there is no one in charge, when left in a conspicuous place in
11 the office; or
- 12 (b) If the office is closed or the person to be notified has no office,
13 when left at the dwelling house or usual place of abode of the
14 person with some person of suitable age and discretion then
15 residing ~~therein:~~ there; or
- 16 (4) When given by a form of electronic communication consented to by the
17 person to whom the notice is given:
- 18 (a) If by facsimile communication, when directed to a telephone
19 number at which the person has consented to receive notice.
- 20 (b) If by electronic mail, when directed to an electronic mail address
21 at which the person has consented to receive notice.
- 22 (c) If by posting on an electronic network on which the person has
23 consented to receive notice, together with separate notice to the
24 person of the specific posting, upon the later of:
- 25 [1] The posting; or
- 26 [2] The giving of the separate notice.
- 27 (d) If by any other form of electronic communication by which the
28 person has consented to receive notice, when directed to the
29 person.
- 30 c. Is given when deposited in the United States mail with sufficient postage
31 affixed.

d. Is deemed received when given.

~~9.~~ 16. "Organization" means:

- a. Whether domestic or foreign, a corporation incorporated in or authorized to do business in this state under this or another chapter of this code, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity; but
- b. Excludes any nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under chapter 10-33 or a foreign nonprofit corporation which is incorporated in another jurisdiction.

17. "Originally registered" and "original registration" means the document establishing the limited liability partnership status of the foreign limited liability partnership in the foreign limited liability partnership's jurisdiction of origin.

~~40.~~ 18. "Partnership" means an association of two or more persons to carry on as coowners of a business for profit formed under chapters 45-13 through 45-21, predecessor law, or comparable law of another jurisdiction.

~~44.~~ 19. "Principal executive office" means:

- a. An office from which the limited liability partnership conducts business; or
- b. If the limited liability partnership has no office from which the limited liability partnership conducts business, the registered office of the limited liability partnership.

~~42.~~ 20. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

21. "Register" means the act of filing with the secretary of state which causes:

- a. A domestic limited liability partnership to be created; or
- b. A foreign limited liability partnership to be authorized to transact business in this state.

~~43.~~ 22. "Registered office" means the place in this state designated as the registered office of the limited liability partnership.

~~44.~~ 23. "Registration" means the document which, when filed with the secretary of state, causes:

- a. A domestic limited liability partnership to be created; or
- b. A foreign limited liability partnership to be authorized to do business in this state.

~~45-~~ 24. "Signed" means:

- a. That the signature of a person which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by telecommunication or electronically, or in any other manner reproduced on the document, is placed on a document, as provided in subsection 39 of under section 41-01-11. 41-01-09; and

- ~~a.~~ b. With respect to a document required by this chapter to be filed with the secretary of state, ~~the term~~ means ~~the~~ that:

- (1) The document is signed by a person authorized to do so by this chapter, or by or pursuant to an agreement among the partners, or by a resolution approved by the affirmative vote of the required proportion or number of partners.

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

- (2) The signature and the document are communicated by a method or medium of communication acceptable by the secretary of state.

SECTION 154. Section 45-22-01.1 of the North Dakota Century Code is created and enacted as follows:

45-22-01.1. Legal recognition of electronic records and electronic signatures.

For purposes of this chapter:

1. A record of signature may not be denied legal effect or enforceability solely because it is in electronic form;
2. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation;
3. If a provision requires a record to be in writing, an electronic record satisfies the requirement; and

- 1 4. If a provision requires a signature, an electronic signature satisfies the
2 requirement.

3 **SECTION 155. AMENDMENT.** Subsection 3 of section 45-22-03 of the North Dakota
4 Century Code is amended and reenacted as follows:

- 5 3. A registration, signed by a managing partner, must contain:

- 6 a. With respect to a domestic limited liability partnership:

- 7 (1) The name of the domestic limited liability partnership.
8 (2) The nature of the business to be transacted in this state.
9 (3) The address of the principal executive office of the domestic limited
10 liability partnership.
11 (4) The address of the registered office of the domestic limited liability
12 partnership and the name of the registered agent at that address.
13 (5) The name and address of each managing partner.
14 (6) A statement that the partnership elects to be a limited liability
15 partnership.
16 (7) A deferred effective date, if any.

- 17 b. With respect to a foreign limited liability partnership:

- 18 (1) The name of the foreign limited liability partnership and, if different, the
19 name under which the foreign limited liability partnership proposes to
20 transact business in this state.
21 (2) The jurisdiction of origin.
22 (3) The date on which the foreign limited liability partnership expires in the
23 jurisdiction of origin.
24 (4) The nature of the business to be transacted in this state.
25 (5) The address of the principal executive office of the foreign limited
26 liability partnership.
27 (6) The address of the registered office of the foreign limited liability
28 partnership and the name of the foreign limited liability partnership's
29 registered agent at that address.
30 (7) The name and address of each managing partner.

(8) An acknowledgment that the status of the foreign limited liability partnership in this state will automatically expire unless the foreign limited liability partnership continuously maintains limited liability partnership status in the jurisdiction of origin.

- c. The registration must be accompanied by payment of the fees provided in section 45-22-22 together with a certificate of good standing or certificate of existence authenticated by the registering officer of the state or country where the foreign limited liability partnership is originally registered and the consent of the designated registered agent for service of process to serve in that capacity.

SECTION 156. AMENDMENT. Subsection 5 of section 45-22-04 of the North Dakota Century Code is amended and reenacted as follows:

5. A limited liability partnership that is ~~merged~~ the surviving organization in a merger with a domestic one or foreign organization, that is registered by the reorganization of one or more domestic or foreign organizations, or that acquires by sale, lease, or other disposition to or exchange with a domestic organization all or substantially all of the assets of another ~~domestic or foreign~~ organization including the ~~organization's~~ its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations, if the other organization whose name is sought:
- a. Is incorporated, organized, formed, or registered under the laws of this state;
 - b. Is authorized to transact business or conduct activities in this state;
 - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
 - d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
 - e. Holds a trade name registered in the manner provided in chapter 47-25.

SECTION 157. AMENDMENT. Section 45-22-05 of the North Dakota Century Code is amended and reenacted as follows:

45-22-05. Reserved name.

1. The exclusive right to the use of a limited liability partnership name otherwise permitted by section 45-22-04 may be reserved by any person.

2. The reservation is made by filing with the secretary of state a request that the name be reserved together with the fees provided in section 45-22-22.
 - a. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months.
 - b. The reservation may be renewed for successive twelve-month periods.
3. The right to the exclusive use of a limited liability partnership name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee together with the fees provided in section 45-22-22.
4. The right to the exclusive use of a limited liability partnership name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of cancellation together with the fees provided in section 45-22-22.
5. ~~The secretary of state may accept for filing a legible facsimile copy of the signed original of any request for a reserved name.~~
6. The secretary of state may destroy any reserved name request and name request index one year after expiration.

SECTION 158. AMENDMENT. Subsection 2 of section 45-22-17 of the North Dakota Century Code is amended and reenacted as follows:

2. If neither the registered agent nor a responsible person can be found at the registered office and if a responsible person affiliated with the limited liability partnership cannot be found at the principal place of business in this state, the secretary of state is the agent of the limited liability partnership on whom the process, notice, or demand may be served. Service on the secretary of state:
 - a. ~~The~~ Shall be made by registered mail or personal delivery to the secretary of state and not by electronic communication;
 - b. Shall include the return of the sheriff or affidavit of a person not a party, verifying that neither a registered agent ~~or~~ nor a responsible person ~~cannot~~ can be found at the registered office or at the principal place of business in

1 this state is conclusive evidence the limited liability partnership has no
2 registered agent or responsible person at the limited liability partnership's
3 registered office or at the limited liability partnership's principal place of
4 business in this state.

5 b- c. ~~Service on the secretary of state of any process, notice, or demand is~~ Is
6 deemed personal service on the limited liability partnership and may be made
7 by filing with the secretary of state ~~one~~;

8 (1) An original and two copies of the process, notice, or demand ~~together~~
9 with the; and

10 (2) The fees provided in section 45-22-22.

11 e- d. The secretary of state immediately shall forward, by certified mail addressed
12 to the limited liability partnership at the limited liability partnership's registered
13 office or principal place of business in this state, a copy of the process, notice,
14 or demand.

15 e- e. Service on the secretary of state is returnable in not less than thirty days,
16 notwithstanding a shorter period specified in the process, notice, or demand.

17 **SECTION 159. AMENDMENT.** Subsection 2 of section 45-22-21.1 of the North
18 Dakota Century Code is amended and reenacted as follows:

- 19 2. The annual report must be submitted on forms prescribed by the secretary of state.
20 The information provided must be given as of the date of the execution of the
21 report. The annual report must be signed as prescribed in subsection ~~46~~ 24 of
22 section 45-22-01, the partnership agreement, or in a resolution approved by the
23 affirmative vote of the required proportion or number of partners. If the limited
24 liability partnership is in the hands of a receiver or trustee, the annual report must
25 be signed on behalf of the limited liability partnership by the receiver or trustee.
26 The secretary of state may destroy any annual report provided for in this section
27 after the annual report is on file for six years.

28 **SECTION 160. AMENDMENT.** Section 45-23-01 of the North Dakota Century Code is
29 amended and reenacted 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. "Authenticated electronic communication" means:
- 5 a. That the electronic communication is delivered:
- 6 (1) To the principal place of business of the limited liability limited
- 7 partnership; or
- 8 (2) To a partner or agent of the limited liability limited partnership
- 9 authorized by the limited liability limited partnership to receive the
- 10 electronic communication; and
- 11 b. That the electronic communication sets forth information from which the
- 12 limited liability limited partnership can reasonably conclude that the electronic
- 13 communication was sent by the purported sender.
- 14 3. "Domestic limited liability limited partnership" means a limited liability limited
- 15 partnership that is formed under this chapter.
- 16 ~~3.~~ 4. "Domestic organization" means an organization created under the laws of this
- 17 state.
- 18 5. "Electronic" means relating to technology having electrical, digital, magnetic,
- 19 wireless, optical, electromagnetic, or similar capabilities.
- 20 6. "Electronic communication" means any form of communication, not directly
- 21 involving the physical transmission of paper:
- 22 a. That creates a record that may be retained, retrieved, and reviewed by a
- 23 recipient of the communication; and
- 24 b. That may be directly reproduced in paper form by the recipient through an
- 25 automated process.
- 26 7. "Electronic record" means a record created, generated, sent, communicated,
- 27 received, or stored by electronic means.
- 28 8. "Electronic signature" means an electronic sound, symbol, or process attached to
- 29 or logically associated with a record and executed or adopted by a person with the
- 30 intent to sign the record.

9. "Filed with the secretary of state", ~~except as otherwise permitted by law or rule,~~
means, ~~except as otherwise permitted by law or rule:~~

a. That a ~~signed original or legible facsimile telecommunication of a signed~~
~~original of a request for reserved name or a signed original of all of the~~
~~documents~~ document meeting the applicable requirements of this chapter,
together with the fees provided in section 45-23-08, was delivered or
communicated to the secretary of state by a method or medium of
communication acceptable by the secretary of state and was determined by
the secretary of state to conform to law.

b. That the secretary of state shall then ~~endorse on the original the word "filed"~~
~~and the month, day, and year:~~

(1) Record the actual date on which the document is filed, and if different,
the effective date of filing; and record

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

4. 10. "Foreign limited liability limited partnership" means a limited liability limited
partnership that is:

a. Organized under the laws other than the laws of this state for a purpose or
purposes for which a limited liability limited partnership may be organized
under this chapter; and

b. In good standing in the jurisdiction of origin.

5. 11. "Foreign limited partnership" means a limited partnership that is:

a. Organized under laws other than the laws of this state for a purpose for which
a limited partnership may be organized under chapter 45-10.1; and

b. Authorized to transact business in this state as provided in chapter 45-10.1.

6. 12. "Foreign organization" means an organization created under laws other than the
laws of this state for a purpose for which an organization may be created under the
laws of this state.

13. "Jurisdiction of origin" refers to the jurisdiction in which the limited liability limited
partnership status of a foreign limited liability limited partnership was created.

7. 14. "Limited liability limited partnership" means a domestic limited liability limited
partnership.

8- 15. "Limited partnership" means a limited partnership formed under chapter 45-10.1.

9- 16. "Notice":

a. Is given to a limited liability limited partnership or to a partner of the limited liability limited partnership ~~when~~:

(1) When in writing and mailed or delivered to the limited liability limited partnership or to the partner at the registered office or principal executive office of the partnership; or

(2) When given by a form of electronic communication consented to by the limited liability limited partnership or a partner to which the notice is given:

(a) If by facsimile communication, when directed to a telephone number at which the limited liability limited partnership or a partner has consented to receive notice.

(b) If by electronic mail, when directed to an electronic mail address at which the limited liability limited partnership or a partner has consented to receive notice.

(c) If by posting on an electronic network on which the limited liability limited partnership or a partner has consented to receive notice, together with separate notice to the limited liability limited partnership or a partner if the specific posting, upon the later of:

[1] The posting; or

[2] The giving of the separate notice.

(d) If by any other form of electronic communication by which the partnership or a partner has consented to receive notice, when directed to the partnership.

b. ~~In all other cases, is~~ Is given to a person in all other cases:

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

(2) When handed to the person; ~~or~~

(3) When left at the office of the person with a clerk or other person in charge of the office, or if there is no one in charge, when left in a

conspicuous place in the office and if the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion residing ~~in that house or abode~~ there; or

(4) When given by a form of electronic communication consented to by the person to whom the notice is given:

(a) If by facsimile communication, when directed to a telephone number at which the person has consented to receive notice.

(b) If by electronic mail, when directed to an electronic mail address at which the person has consented to receive notice.

(c) If by posting on an electronic network on which the person has consented to receive notice, together with separate notice to the person of the specific posting, upon the later of:

[1] The posting; or

[2] The giving of the separate notice.

(d) If by any other form of electronic communication by which the person has consented to receive notice, when directed to the person;

c. Is given when deposited in the United States mail with sufficient postage affixed; and

d. Is deemed received when given.

~~40.~~ 17. "Organization" means:

a. Whether domestic or foreign, a corporation incorporated in or authorized to do business in this state under this or another chapter of this code, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity; but

b. Excludes any nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under chapter 10-33 or a foreign nonprofit corporation which is incorporated in another jurisdiction.

18. "Principal executive office" means:

a. An office from which the limited liability limited partnership conducts business;
or

b. If the limited liability limited partnership has no office from which the limited liability limited partnership conducts business, then the registered office of the limited liability limited partnership.

~~44.~~ 19. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

20. "Registered office" means the place in this state designated as the registered office of the limited liability limited partnership.

~~42.~~ 21. "Remote communication" means communication via electronic communication, conference telephone, videoconference, the internet, or such other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.

22. "Signed" means:

a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically, or in any other manner reproduced on the document, is placed on a document, as provided in under section ~~41-01-14.~~ 41-01-09; and

~~a.~~ b. With respect to a document required by this chapter to be filed with the secretary of state, ~~means the~~ that:

(1) The document is signed by a person authorized to sign by this chapter, or pursuant to an agreement among the partners, or by a resolution approved by the affirmative vote of the required proportion or number of partners; and

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

(2) The signature and the document are communicated by a method or medium acceptable by the secretary of state.

SECTION 161. Section 45-23-01.1 of the North Dakota Century Code is created and enacted as follows:

45-23-01.1. Legal recognition of electronic records and electronic signatures.

For purposes of this chapter:

1. A record or signature may not be denied legal effect or enforceability solely because it is in electronic form;
2. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation;
3. If a provision requires a record to be in writing, an electronic record satisfies the requirement; and
4. If a provision requires a signature, an electronic signature satisfies the requirement.

SECTION 162. AMENDMENT. Subsection 5 of section 45-23-03 of the North Dakota Century Code is amended and reenacted as follows:

5. A limited liability limited partnership that is ~~merged~~ the surviving organization in a merger with another domestic one or foreign organization, that is organized by the reorganization of one or more domestic or foreign organizations, or that acquires by sale, lease, or other disposition to or exchange with ~~a domestic~~ an organization all or substantially all of the assets of another ~~domestic or foreign~~ organization, including ~~the organization's~~ its name, may include in the limited liability limited partnership's name, subject to the requirements of subsection 1, the name of any of the other organizations, if the other organization whose name is sought to be used:
 - a. Is incorporated, organized, formed, or registered under the laws of this state;
 - b. Is authorized to transact business or conduct activities in this state;
 - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
 - d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
 - e. Holds a trade name registered in the manner provided in chapter 47-25.

SECTION 163. Section 45-23-07 of the North Dakota Century Code is created and enacted as follows:

1 **45-23-07. Secretary of state - Exempt records.** Any social security number or
2 federal tax identification number disclosed or contained in any document filed with the secretary
3 of state under this chapter is an exempt record as defined by subsection 5 of section
4 44-04-17.1. The secretary of state shall take reasonable precautions to delete or obscure any
5 social security number or federal tax identification number the secretary of state determines to
6 be a closed record before a copy of any document is released to the public.

7 **SECTION 164. REPEAL.** Sections 45-10.1-14, 45-10.1-15, and 45-10.1-16 of the
8 North Dakota Century Code are repealed.