

# CORPORATIONS

## CHAPTER 97

### HOUSE BILL NO. 1176

(Industry, Business and Labor Committee)  
(At the request of the Securities Commissioner)

## SECURITIES LAWS REVISIONS

AN ACT to amend and reenact section 10-04-02, subsection 1 of section 10-04-03, sections 10-04-05 and 10-04-06, subsections 2 and 3 of section 10-04-07.1, sections 10-04-08 and 10-04-08.3, subsection 2 of section 10-04-08.4, sections 10-04-09 and 10-04-10, subsections 1 and 2 of section 10-04-10.3, sections 10-04-11, 10-04-12, 10-04-15, and 10-04-16, subsection 1 of section 10-04-16.1, section 10-04-17, and subsections 1 and 2 of section 10-04-18 of the North Dakota Century Code, relating to definitions under the securities laws, securities exemptions and exempt transactions, registration and sale of securities, and registration of broker-dealers, agents, investment advisers, and investment adviser representatives; and to repeal section 10-04-07 of the North Dakota Century Code, relating to securities registration by description.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 10-04-02 of the North Dakota Century Code is amended and reenacted as follows:

**10-04-02. Definitions.** When used in this chapter, unless the context or subject matter otherwise requires:

1. "Agent" means ~~any~~ an individual, other than a ~~dealer~~ broker-dealer, who represents a ~~dealer~~ broker-dealer or an issuer or is self-employed in effecting or attempting to effect purchases or sales of securities. "Agent" does not include However, a partner, officer, or director of a broker-dealer, or an individual who represents an issuer in effecting transactions in a covered security as described in section 18(b)(3) and 18(b)(4) of the Securities Act of 1933 or a dealer in effecting transactions in this state limited to those transactions described in section 15(h)(2) of the Securities Act of 1934 having a similar status or performing similar functions is an agent only if the individual otherwise comes within the term.
2. "~~Commissioner~~ Bank" means ~~the securities commissioner of this state;~~
  - a. A bank institution organized under the laws of the United States;
  - b. A member bank of the federal reserve system;
  - c. Any other banking institution, whether or not incorporated, doing business under the laws of a state or of the United States, a substantial portion of the business of which consists of receiving

deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the comptroller of the currency pursuant to section 1 of Public Law 87-722, and which is supervised and examined by a state or federal agency having supervision over banks, and which is not operated for the purpose of evading this chapter; and

d. A receiver, conservator, or other liquidating agent of any institution or firm included in subdivision a, b, or c.

3. ~~"Dealer Broker-dealer"~~ means a person, ~~other than an agent~~, engaged in the business of effecting transactions in securities issued by another person or by such person for the account of others or for the person's own account. The term does not include a:

a. An agent; or

b. A bank or savings institution if its activities as a ~~dealer broker-dealer~~ are limited to those specified in subsections 3(a)(4)(B)(i) through (vi), (viii) through (x), and (xi) if limited to unsolicited transactions; 3(a)(5)(B) and 3(a)(5)(C) of the Securities Exchange Act of 1934 or a bank that satisfies the conditions described in subsection 3(a)(4)(E) of the Securities Exchange Act of 1934.

4. "Commissioner" means the securities commissioner of this state.

5. "Department" means the state securities department.

6. "Depository institution" means:

a. A bank; or

b. A savings institution, trust company, credit union, or similar institution that is organized or chartered under the laws of a state or of the United States, authorized to receive deposits, and supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the federal deposit insurance corporation, the national credit union shares insurance fund, or a successor authorized by federal law. The term does not include:

(1) An insurance company or other organization primarily engaged in the business of insurance;

(2) A Morris plan bank; or

(3) An industrial loan company.

~~5.~~ 7. "Federal covered adviser" means a person who is registered under section 203 of the Investment Advisers Act of 1940.

~~6.~~ 8. "Federal covered security" means ~~any~~ a security that is, or upon completion of a transaction will be, a covered security pursuant to

section 18(b) of the Securities Act of 1933 or rules or regulations adopted under that Act.

9. "Institutional investor" means any of the following, whether acting for itself or for others in a fiduciary capacity:
- a. A depository institution or international banking institution;
  - b. An insurance company;
  - c. A separate account of an insurance company;
  - d. An investment company as defined in the Investment Company Act of 1940;
  - e. A broker-dealer under the Securities Exchange Act of 1934;
  - f. An employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of ten million dollars or its investment decisions are made by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this Act, a depository institution, or an insurance company;
  - g. A plan established and maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of ten million dollars or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this chapter, a depository institution, or an insurance company;
  - h. A trust, if it has total assets in excess of ten million dollars, its trustee is a depository institution, and its participants are exclusively plans of the types identified in subdivision f or g, regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans;
  - i. An organization described in section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts trust or similar business trust, limited liability company, or partnership, not formed for specific purpose of acquiring the securities offered, with total assets in excess of ten million dollars;
  - j. A small business investment company licensed by the small business administration under section 301(c) of the Small Business Investment Act of 1958 with total assets in excess of ten million dollars;

- k. A private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940 with total assets in excess of ten million dollars;
- l. A federal covered investment adviser acting for its own account;
- m. A qualified investment buyer as defined in rule 144A(a)(1), other than rule 144A(a)(1)(i)(H), adopted under the Securities Act of 1933;
- n. A major United States institutional investor as defined in rule 15a-6(b)(4)(i) adopted under the Securities Exchange Act of 1934; or
- o. Any other person, other than an individual, of institutional character with total assets in excess of ten million dollars not organized for the specific purpose of evading this chapter.

~~7.~~ 10. "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. ~~"Investment adviser" also~~ The term includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. ~~"Investment adviser"~~ The term does not include:

- a. An investment adviser representative.
- b. A bank, savings institution, or trust company.
- c. A lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of the person's profession.
- d. ~~A broker or dealer~~ broker-dealer or its agent whose performance of these services is solely incidental to the conduct of business as a ~~broker or dealer~~ broker-dealer and who receives no special compensation for them.
- e. A publisher of any bona fide newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client.
- f. A federal covered adviser.
- g. A person who is ~~exempted~~ excluded by the Investment Advisers Act of 1940 from the federal definition of "investment adviser" under section 202(a)(11) of the Investment Advisers Act of 1940.

- h. Such other persons not within the intent of this subsection as the commissioner may by rule or order designate.

8. 11. a. "Investment adviser representative" means:

- a. ~~With respect to an investment adviser, any partner, officer, director of an investment adviser, or a person occupying a similar status or performing similar functions, or other~~ An individual who is either employed by or associated with an investment adviser ~~who is registered or required to be registered under this chapter or federal covered adviser and who:~~

- (1) Makes any recommendations or otherwise renders advice regarding securities directly to advisory clients;
- (2) Manages the accounts or portfolios of clients;
- (3) Determines which recommendations or advice regarding securities should be given;
- (4) ~~Solicits, offers, or negotiates~~ Provides investment advice or holds out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or sells investment advisory services; or
- (5) Immediately supervises employees in the performance of any of the foregoing.

- b. ~~With respect to a federal covered adviser, any person who is an "investment adviser representative"~~ The term does not include an individual who:

- (1) Is employed by or associated with a federal covered investment adviser, unless the individual has a "place of business" in this state, as those terms are that term is defined by the securities and exchange commission pursuant to section 203A of the Investment Advisers Act of 1940.

- c. ~~"Investment adviser representative" does not include~~

- (2) Is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services.
- (3) Performs only clerical or ministerial personnel acts.

9. 12. "Issuer" means every person who issues or proposes to issue any security, except that:

- a. With respect to certificates of deposit, voting-trust certificates, collateral trust certificates, ~~certificates of interest,~~ or shares in an unincorporated investment trust, ~~whether or not of the fixed, restricted management, or unit type,~~ issuer means the person or persons performing the acts and assuming the duties of depositor

or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued.

- b. With respect to equipment trust certificates or like securities serving the same purpose, issuer means the person by whom the equipment or property is or ~~is to~~ will be used or to which the property or equipment is or will be leased or conditionally sold or that is otherwise contractually responsible for assuring payment of the certificate.
- c. With respect to fractional interests in an oil, gas, or other mineral rights lease or in payments out of production under a lease, right, or royalty, issuer means the owner of any such right or any interest in such rights lease or in payments out of production under a lease, right, or royalty, whether whole or fractional, ~~which are created~~ that creates fractional interests for the purpose of sale.
- d. With respect to a fractional or pooled interest in a viatical settlement contract, issuer means the person who creates, for the purpose of sale, the fractional or pooled interest. The issuer of a viatical settlement contract that is not fractionalized or pooled means the person effecting the transactions with the investors in such contracts.

40. 13. "Offer for sale" or "offer to sell" means every attempt or offer to dispose of, or solicitation of an order or offer to buy, a security or interest in a security for value. ~~Every sale or offer for sale of a warrant or right to subscribe to another security of the same issuer or of another issuer, and every sale or offer for sale of a security which gives the holder thereof a present or future right or privilege to convert such security into another security of the same issuer or of another issuer, must be deemed an offer to sell the security to be acquired by subscription or conversion. The offer or grant of an option to purchase securities may not be deemed an offer to sell the securities to be purchased if:~~

- a. ~~The offer or grant is an offer or grant limited to directors, officers, or employees of the issuer or a parent or subsidiary of the issuer;~~
- b. ~~No money or other tangible property is given for the option; and~~
- c. ~~The option, by its terms or by the terms of a supplemental agreement, is nontransferable except by will or the laws of descent and distribution.~~

44. 14. "Person" means an individual, a corporation, a limited liability company, a partnership, an association, a ~~joint-stock joint company~~ joint venture, a trust, a government, governmental subdivision, agency, or instrumentality, or any other ~~unincorporated organization~~ legal or commercial entity.

42. "Registered agent" means an agent registered under this chapter.

43. "Registered dealer" means a dealer registered under this chapter.

44. 15. "Place of business" of a broker-dealer, an investment adviser, or a federal covered investment adviser means:

- a. An office at which the broker-dealer, investment adviser, or federal covered investment adviser regularly provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients; or
- b. Any other location that is held out to the general public as a location at which the broker-dealer, investment adviser, or federal covered investment adviser provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients.

16. "Principal place of business" of a broker-dealer or an investment adviser means the executive office of the broker-dealer or investment adviser from which the officers, partners, or managers of the broker-dealer or investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser.

17. "Record" except in phrases "of record", "official record", and "public 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.

18. "Sale" or "sell" means every sale, contract to sell, or other disposition of a security or interest in a security for value, and every contract to make any such sale or disposition. The term includes:

- a. Any security given or delivered with, or as a bonus on account of any purchase of securities or any other thing, must be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value.
- b. A sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security.

45- 19. "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; viatical settlement contract or a fractionalized or pooled interest therein; program, contract, or other arrangement in which persons invest in a common enterprise the returns of which depend to any extent upon inducing other persons to participate or invest in the enterprise; investment of money or money's worth including goods furnished or services performed in the risk capital of a venture with the expectation of profit or some other form of benefit to the investor when the investor has no direct control over the investment or policy decisions of the venture; voting-trust certificate; certificate of deposit for a security; foreign currency commodity contract, as used in chapter 51-23; or beneficial interest in title to property, profits, or earnings; or, in general, any interest or instrument commonly known as a "security"; or any certificate of interest or participation in, temporary

or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

~~46-~~ 20. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

21. "Viatical settlement contract" means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of any portion of the death benefit or ownership of a life insurance policy or certificate, for consideration that is less than the expected death benefit of the life insurance policy or certificate. "Viatical settlement contract" does not include:

- a. The assignment, transfer, sale, devise, or bequest of a death benefit, life insurance policy, or certificate of insurance by the viator to the viatical settlement provider pursuant to chapter 26.1-33.2;
- b. The assignment of a life insurance policy to a bank, ~~savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan~~ or depository institution; or
- c. The exercise of accelerated benefits pursuant to the terms of a life insurance policy issued in accordance with the insurance laws of this state.

**SECTION 2. AMENDMENT.** Subsection 1 of section 10-04-03 of the North Dakota Century Code is amended and reenacted as follows:

1. The state securities department is under the supervision of a chief officer designated as the securities commissioner. The securities commissioner must be appointed by the governor and confirmed by the senate and shall hold office for a term of four years, beginning on the first day of July following a national presidential election and continuing until a successor has been appointed, confirmed by the senate, and has qualified, unless removed as herein provided. If the senate is not in session, the governor may make an interim appointment, and the interim appointee shall hold office until the senate confirms or rejects the appointment. The commissioner must be skilled in securities and may not be an incumbent of any other public office in the state. The commissioner may not own or control any security required to be registered under this chapter ~~and, or any security which is exempt based on the approval of the securities department.~~ The commissioner may not be an officer, director, or employee of any dealer broker-dealer, salesman agent, investment adviser, or investment adviser representative required to be registered under this chapter, or of a federal covered adviser required to be notice-filed under this chapter. The governor may remove from office any commissioner who fails to discharge faithfully the duties of office or who becomes disqualified under the provisions of this section.

It is the prime duty of the commissioner to administer the provisions of this chapter. The commissioner shall receive a salary within the amount appropriated for salaries by the legislative assembly. The commissioner shall use a seal with the words "securities commissioner,



North Dakota" and such design as the commissioner may prescribe engraved thereon by which seal the commissioner may authenticate documents used in the administration of this chapter. The commissioner may employ such employees as are necessary for the administration of this chapter. In the absence or disability of the commissioner, the deputy or designee of the commissioner shall administer the provisions of this chapter as acting commissioner.

<sup>68</sup> **SECTION 3. AMENDMENT.** Section 10-04-05 of the North Dakota Century Code is amended and reenacted as follows:

**10-04-05. Exempt securities.** Sections 10-04-04, ~~10-04-07~~, 10-04-07.1, 10-04-08, and 10-04-08.4 do not apply to any of the following securities:

1. ~~Securities~~ A security, including a revenue obligation or a separate security as defined in rule 131 adopted under the Securities Act of 1933, issued, insured, or guaranteed by the United States of America, or by any a state, territory, or insular possession thereof, or by any a political subdivision of any such a state, territory, or insular possession, or by the District of Columbia, or by any a public authority, agency, or instrumentality of one or more of any of the foregoing, or payable from assessments for improvements or revenues of publicly owned utilities therein; states, by a political subdivision of one or more states, or by a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by the Congress, or a certificate of deposit for any of the foregoing, ~~but except that this exemption does not include any a municipal security with respect to the offer or sale in this state if the security is payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise, unless the security is insured such payments are made or unconditionally guaranteed by; or the revenues are derived from, a person whose securities are exempt from registration under this section or the issuer first files a notice in a record specifying the terms of the proposed offer or sale and pays a nonrefundable filing fee of one hundred dollars.~~
2. Securities issued by and representing or that will represent an interest in or a ~~debt~~ direct obligation of, or ~~be~~ guaranteed by, a national bank or a national bank and trust company or bank or credit or loan or savings association or savings and loan association or credit union organized pursuant to an Act of Congress and supervised by the United States, or any agency thereof, a banking institution organized under the laws of the United States, a member bank of the federal reserve system, or a depository institution a substantial portion of the business of which consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the federal deposit insurance corporation, the national credit union share insurance fund, or a successor authorized by federal law or exercising fiduciary powers that are similar to those permitted for national banks under the authority of the comptroller of currency pursuant to section 1 of Public

<sup>68</sup> Section 10-04-05 was also amended by section 2 of Senate Bill No. 2032, chapter 151.

Law 87-722 or issued or guaranteed as to both principal and interest by an international bank of which the United States is a member; ~~or issued by and representing an interest in or a debt of, or guaranteed by, a state bank, trust company, savings bank, savings institution, or credit union organized and supervised under the laws of any state, and securities of any person subject to examination by the commissioner of financial institutions of North Dakota.~~

3. Securities issued by a building and loan association subject to supervision by an agency of the state of North Dakota, or policy contracts, including variable annuity contracts, of an insurance company subject to supervision by an agency of the state of North Dakota.
4. ~~Securities issued or guaranteed as to principal, interest, or dividends by a corporation or limited liability company owning or operating a railroad or, other common carrier, public service utility, if the corporation or limited liability company is subject to regulation or supervision either as or public utility holding company that is regulated in respect to its rates and charges or as to the issue of its securities by a public service commission, or by a board, body, or official having like powers, of by the United States or of any state, territory, or insular possession thereof, or of any municipality located therein, or of the District of Columbia, or of the Dominion of Canada, or any province thereof a state, regulated in respect to the issuance or guarantee of the security by the United States, a state, Canada, or a Canadian province or territory, or a public utility holding company registered under the Public Utility Holding Company Act of 1935 or a subsidiary of such a registered holding company within the meaning of that Act.~~
5. Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, fraternal, charitable, social, or reformatory purposes; provided that prior to any offer of such security each person must meet the following conditions:
  - a. Apply for and obtain the written approval of the commissioner.
  - b. File an application, offering disclosure document, and pay a nonrefundable filing fee of one hundred fifty dollars, which document and fee must accompany the application.
  - c. File a notice identifying the basis of its qualification under this exemption with such additional information as the commissioner may require.
  - d. Provide a copy of the offering disclosure document to each person to whom an offer to sell or sale is made.

The approval is effective for a period of one year from the date of approval. At least thirty days prior to the expiration date, there must be filed an application, offering disclosure document, and a nonrefundable fee of one hundred dollars for the renewal of the filing for additional periods of one year.

6. Any note, draft, bill of exchange, or bankers' acceptance which arises out of a current transaction or the proceeds of which have been or are to

be used for current transactions, is not the subject of a public offering, is prime quality negotiable commercial paper which has at the time of issuance a definite maturity of not exceeding nine months, is payable in cash only, and is not convertible into and does not carry an option or right to receive payment or any bonus in any other security.

7. Securities, other than common stock, providing for a fixed return, which have been outstanding and in the hands of the public for not less than five years and upon which no default has occurred during the five years next preceding the date of sale.
8. Securities, including patronage dividends or refunds, issued by any cooperative organized under the statutes of this state.
9. ~~Any An equipment security based on a chattel mortgage, lease, or agreement for the conditional sale of cars, motive power, or other rolling stock mortgaged, trust certificate with respect to equipment leased, or conditionally sold to, or furnished for the use of a railroad or other public service utility corporation or limited liability company, and any equipment security when the ownership of or title to such equipment is pledged or retained in accordance with the provisions of the laws of the United States or of any state thereof, or of the Dominion of Canada, to secure the payments of such equipment security whether it be an equipment trust certificate, bond, or note~~ a person, if any security issued by the person would be exempt under this section or would be a federal covered security under section 18(b)(1) of the Securities Act of 1933.
10. Any bond, note, or other evidence of debt issued by a holding corporation or limited liability company and secured by collateral consisting of any of the securities described in subsections 4 and 9, if the collateral securities equal in fair value at least one hundred twenty-five percent of the par value of the bonds, notes, or other evidences of debts secured thereby.
11. The execution of orders for purchase of securities by a registered ~~dealer broker-dealer~~ provided such dealer broker-dealer acts as agent for the purchaser, has made no solicitation of the order to purchase such securities, has no direct material interest in the sale or distribution of the securities ordered, receives no commission, profit, or other compensation other than the commissions involved in the purchase and sale of the securities and delivery to the purchaser of written confirmation of the order which clearly itemizes the commissions paid to the registered dealer broker-dealer. Clear and complete records of all transactions exempted under this subsection shall be maintained by the registered dealer or broker broker-dealer.
12. Any security issued by a venture capital corporation or limited liability company organized under and operating in compliance with chapter 10-30.1; provided that prior to any offer of such security, the issuer must meet each of the following conditions:
  - a. Apply for and obtain written approval by the commissioner.
  - b. File an application, offering disclosure document, and pay a nonrefundable filing fee of one hundred fifty dollars. The document and fee must accompany the application.

- c. File such additional information as the commissioner requires by rule or order or may subsequently request.
- d. Provide a copy of the offering disclosure document to each person to whom an offer to sell or sale is made.
- e. Not use public advertising matter or general solicitation, except tombstone advertisements approved by the commissioner, in connection with any offer or sale.
- f. File a report of all offers and sales made in this state within thirty days after the completion of the offering.

The approval is effective for a period of one year from the date of approval. There must be filed, at least thirty days prior to the expiration date, an application, disclosure document, and a nonrefundable fee of one hundred dollars for the renewal of the filing for additional periods of one year.

13. Any security issued, insured, or guaranteed by ~~Canada, any Canadian province, any political subdivision of any such province, or any agency or corporate or other instrumentality of one or more of the foregoing, or any other~~ a foreign government with which the United States currently maintains diplomatic relations, or any of its political subdivisions, if the security is recognized as a valid obligation by the issuer, insurer, or guarantor. ~~This exemption does not include any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise.~~
14.
  - a. Any security, other than a security that is a A federal covered security pursuant to specified in section 18(b)(1) of the Securities Act of 1933 and therefore not subject to any filing or registration requirements under this chapter, or by rule adopted under that provision or a security listed or designated, or approved for listing or designation upon notice of issuance on:
    - (1) The New York stock exchange;
    - (2) The American stock exchange;
    - (3) The national association of securities dealers automated quotation national market system;
    - (4) Tier I of the Philadelphia stock exchange, incorporated;
    - (5) Tier I of the Pacific ~~stock~~ exchange, incorporated;
    - (6) Chicago board options exchange, incorporated; or
    - (7) Any other stock exchange or automated quotation system which the ~~commissioner~~ securities and exchange commission approves by rule;
  - b. ~~Any other security of the same issuer which is of senior or substantially equal rank;~~

- e. Any security called for by subscription rights or warrants so listed or approved; or
  - d. Any warrant or right to purchase or subscribe to any of the foregoing. The commissioner may withdraw this exemption by order as to any exchange or system, or any particular security, if the commissioner determines that it would be in the public interest. A put or call option contract; a warrant; a subscription right on or with respect to such securities; or an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered under the Securities Exchange Act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange, or a facility of a national securities association registered under the Securities Exchange Act of 1934 or an offer or sale, of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or an option or a derivative security designated by the securities and exchange commission under section 9(b) of the Securities Exchange Act of 1934.
15. Securities issued by the North Dakota education association dues credit trust to members of the North Dakota education association.
  16. A security of a foreign issuer that is a margin security defined in regulations or rules adopted by the board of governors of the federal reserve system.

**SECTION 4. AMENDMENT.** Section 10-04-06 of the North Dakota Century Code is amended and reenacted as follows:

**10-04-06. Exempt transactions.** Except as hereinafter in this section expressly provided, sections 10-04-04, ~~10-04-07~~, 10-04-07.1, 10-04-08, 10-04-08.4, and 10-04-10 do not apply to any of the following transactions:

1. ~~Any judicial, executor's, administrator's, guardian's, or conservator's sale or any sale~~ A transaction by a an executor, administrator of an estate, sheriff, marshal, receiver, guardian, conservator, or trustee in insolvency or bankruptcy.
2. The sale, in good faith and not for the purpose of avoiding the provisions of this chapter, by a pledgee of securities pledged for a bona fide debt.
3. ~~Any~~ An isolated sale of any security made by or on behalf of a bona fide owner for the owner's account, such owner not being an issuer, underwriter, ~~dealer~~ broker-dealer, or agent and such sale not being made in the course of repeated and successive transactions of a like character. This subsection shall not exempt any ~~dealer~~ broker-dealer or agent participating in an isolated sale from registering in accordance with section 10-04-10; ~~nor shall this exemption be available in connection with any sale not made in good faith but rather for the purpose of evading the registration requirements imposed under chapter 10-04.~~

4. Securities dividends or other distributions by a corporation, cooperative, limited partnership, limited liability limited partnership, or a limited liability company out of its earnings or surplus, or the sale or distribution of additional capital stock of a corporation or cooperative, interest of a partnership, or membership interest of a limited liability company to or among its own stockholders, partners, or members, including persons who at the time of the transaction are holders of nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance, when no commission or other remuneration is paid or given directly or indirectly for soliciting or effecting such sale or distribution to stockholders or members in this state.
5. Any offer or sale of securities to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or similar benefit plan, or other financial institution, or qualified institutional buyer, or to a ~~dealer~~ broker-dealer, or any government or political subdivision or instrumentality thereof, whether the purchaser is acting for itself or in a fiduciary capacity.
6. Any transaction incident to a vote by stockholders, partners, or members pursuant to the articles of incorporation, bylaws, partnership agreement, articles of organization, member-control agreement, or the applicable corporation, partnership, or limited liability company statute on a merger, consolidation, ~~reclassification~~ exchange of securities, or sale of corporate, partnership, or limited liability company assets in consideration of the issuance of securities of another corporation, partnership, or limited liability company, other reorganization to which the issuer, or its parent or subsidiary and the other person or its parent or subsidiary, are parties, or any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, or the solicitation of tenders of securities by an offeror in a tender offer in compliance with rule 162 adopted under the Securities Act of 1933.
7. ~~The issuance and delivery of any securities in exchange for any other securities~~ A transaction under an offer to existing security holders of the same issuer pursuant to a right of conversion entitling the holder of the, including persons that at the date of the transaction are holders of convertible securities surrendered to make such conversion; provided, that the securities surrendered were not offered for sale or sold in violation of section 10-04-04, options, or warrants, if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in this state.
8. ~~The sale~~ A nonissuer transaction by or through a registered dealer broker-dealer and agent, acting either as principal or agent, of securities theretofore sold and distributed to the public, provided that both of which are registered or exempt from registration under this chapter, or a resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety days, if, at the date of the transaction:

- a. The issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;
- b. Such securities are sold at prices reasonably related to the current market price thereof at the time of sale and, if such registered dealer is acting as agent, the commission collected by such registered dealer on account of the sale thereof is not in excess of usual and customary commissions collected with respect to securities and transactions having comparable characteristics;
- ~~b.~~ c. Such securities do not constitute the whole or part of an unsold allotment to, or subscription or participation by such dealer, the broker-dealer as a participant in the distribution of such securities by the issuer, its officers, or directors or by or through an underwriter, of the security or a redistribution;
- e. A balance sheet of the issuer as of a date within eighteen months prior to the date of such sale and an income statement for either the fiscal year preceding that date or the most recent year of operations are contained in a securities manual.
- d. Such securities are listed in Standard and Poor's, Mergent's industrial manual, Mergent's bank and finance manual, Mergent's transportation manual, Mergent's public utility manual, or Fitch's individual stock bulletin Fitch investor service, incorporated, or are filed under section 13 or 15(d) of the Federal Securities and Exchange Act of 1934 [ch. 404, title I, sec. 1; 48 Stat. 881; 15 U.S.C. 78 et seq.];
- e. Such securities are limited to issuers organized under the laws of any state, territory, or insular possession of the United States; and
- f. Provided, however, that even though the foregoing conditions might all be met, the exemption would not apply to the securities of open-end management companies, mutual funds, unit investment trusts, contractual plans, and face amount certificate companies. Any one of the following requirements is met:
  - (1) The issuer of the security has a class of equity securities listed on a national securities exchange registered under section 6 of the Securities Exchange Act of 1934 or designated for trading on the national association of securities dealers automated quotation system;
  - (2) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;
  - (3) The issuer of the security, including its predecessors, has been engaged in continuous business for at least three years; or

- (4) The issuer of the security has total assets of at least two million dollars based on an audited balance sheet as of a date within eighteen months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had the audited balance sheet, a pro forma balance sheet for the combined organization.
9. a. Any transaction pursuant to an offer directed by the offeror to not more than thirty-five persons, other than those designated in subsection 5, in this state during any period of twelve consecutive months, whether or not the offeror or any of the offerees is then present in this state, if all of the following conditions are met:
- (1) The seller reasonably believes that all the buyers in this state, other than those designated in subsection 5, are purchasing for investment.
  - (2) ~~No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state, other than those~~ Except for offers or sales with respect to persons designated in subsection 5, no security may be offered or sold under this subdivision except to a dealer through or by a broker-dealer and agent registered in this state in connection with the offer or sale of the security to a resident of this state in accordance with section 10-04-10, unless it is offered and sold through an officer, director, governor, or partner of the issuer and no commission or other remuneration is paid, either directly or indirectly.
  - (3) The offeror applies for and obtains the written approval of the commissioner prior to making any offers in this state and pays a nonrefundable filing fee of one hundred fifty dollars, which fee must accompany the application for approval.

The commissioner may, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of offerees permitted, or waive the condition in paragraph 1.

- b. Any offer or sale in this state of common stock, preferred stock, limited liability company membership interests, or limited partnership interests of an issuer during any period of twelve consecutive months if all of the following conditions are met:
- (1) The issuer reasonably believes that all the buyers in this state, other than those designated in subsection 5, are purchasing for investment.
  - (2) ~~No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state, other than those~~ Except with respect to offers and sales made to persons designated in subsection 5, no security may be sold under this subdivision except reasonable and customary commissions paid through or by the issuer to a dealer broker-dealer and agent registered in



this state in connection with the offer or sale of the security to a resident of this state accordance with section 10-04-10, unless it is offered and sold through an officer, director, governor, or partner of the issuer and no commission or other remuneration is paid, either directly or indirectly.

- (3) The issuer is both organized under the laws of this state and has its principal place of business in this state.
- (4) No public advertising matter or general solicitation, except tombstone advertisements approved by the commissioner, is used in connection with any offers or sales.
- (5) An offering disclosure document in the form approved by the commissioner must be delivered to each offeree prior to the sale of the security.
- (6) The gross proceeds of the offering may not exceed five million dollars.
- (7) The issuer must apply for and obtain the written approval of the commissioner prior to making any offer or sale in this state by filing an application prescribed by the commissioner, a copy of the offering disclosure document, and any other information or documents the commissioner may require, together with a nonrefundable filing fee of one hundred fifty dollars.
- (8) All funds raised in the offering are placed in an escrow account until the total offering amount has been sold.

The commissioner may withdraw or further condition this exemption or waive the conditions in paragraphs 5 and 6.

- c. The issuer must file a report of all offers and sales made in this state pursuant to subdivision a or b on a form prescribed by the commissioner within thirty days after the completion of the offering or expiration of the twelve-month approval period, whichever occurs first.
- d. The exemptions provided under subdivisions a and b may not be combined.
- e. An exemption under this subsection is not available for the securities of any issuer if the issuer or any promoter, officer, director, manager, partner, or underwriter of the issuer:
  - (1) Has filed a registration statement that is the subject of a currently effective registration stop order entered pursuant to any federal or state securities law within five years prior to the filing of the application required under this exemption.
  - (2) Has been convicted within five years prior to the filing of the application required under this exemption of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit,

including forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.

- (3) Is currently subject to any state administrative enforcement order or judgment entered by any state securities administrator or the securities and exchange commission within five years prior to the filing of the application required under this exemption or is subject to any federal or state administrative enforcement order or judgment in which fraud or deceit, including making untrue statements of material facts, was found and the order of judgment was entered within five years prior to the filing of the application required under this exemption.
  - (4) Is subject to any federal or state administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase, or sale of securities.
  - (5) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment, or decree of any court of competent jurisdiction, permanently restraining or enjoining, such part from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security or involving the making of any false filing with any state or with the securities and exchange commission entered within five years prior to the filing of the application required under this exemption.
  - (6) Has been or is the subject of any order issued by the United States postal service that was entered within five years prior to reliance on this exemption and alleged any fraudulent or unlawful conduct.
- f. Subdivision e does not apply if the commissioner determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption should not be denied.
10. The sale of capital stock of a corporation or membership interests of a limited liability company if the corporation or limited liability company is organized under the statutes of this state or the sale of memberships, including dues, in a nonprofit corporation incorporated in North Dakota if the corporation or limited liability company is organized and operated for the primary purpose of promoting community development.
11. Any security issued in connection with an employee's stock purchase, savings, ~~pension option~~, profit-sharing, ~~a self-employed person's retirement plan pension~~, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees.

12. The sale of a security issued by the United States, or the state of North Dakota, or any political subdivision or instrumentality of the state of North Dakota; provided, that the offer for sale and sale are made by an official or employee of the issuer or of the Bank of North Dakota acting in an official capacity and not for personal pecuniary profit, or by a bank or similar financial association or institution or an official or employee thereof solely as an accommodation to customers of such association or institution and without asking or receiving a commission or remuneration other than an accommodation fee not to exceed one hundred dollars in connection with the transaction.
13. Any offer or sale of shares of capital stock issued by a professional corporation or professional limited liability company which is organized and operated pursuant to chapter 10-31.
14. The offer or sale of a security issued by the North Dakota education association dues credit trust to members of the North Dakota education association.
15. a. An offer, but not a sale, of a security made by or on behalf of an issuer for the sole purpose of soliciting an indication of interest in receiving a prospectus or similar disclosure document for the security if all of the following conditions are satisfied:
  - (1) The issuer is or will be a business entity organized under the laws of one of the states or possessions of the United States or one of the provinces or territories of Canada; is engaged in or proposes to engage in a business other than petroleum exploration or production, mining, or other extractive industries; and is not a blind pool offering or other offering for which the specific business or properties cannot now be described.
  - (2) The issuer may solicit indications of interest in a project or business only within a period of twelve months after receiving approval from the commissioner and does not pay a commission or fee to any person for soliciting a potential investor or prospective purchaser in this state unless the person who receives the commission or fee is registered as a ~~dealer~~ broker-dealer or agent in this state.
  - (3) The issuer intends to register securities in this state, rely upon subsection 8 of section 10-04-05 for the issuance of a security, or receive approval for an exemption under subsection 5 of section 10-04-05 or subsection 9 of this section.
  - (4) The issuer files a solicitation of interest form and copies of any advertising or marketing materials, including scripts for use in telephone, television, electronic, or computer publications, for approval by the commissioner at least ten business days before the issuer begins soliciting indications of interest from potential purchasers and at least ten business days before publishing or distributing any materials or information to any person.

- (5) The issuer obtains approval of the commissioner for any amendments or changes in filed forms, marketing materials, or advertisements at least ten business days before distributing the amended marketing materials or amended advertising information to any person.
- (6) The issuer does not use any solicitation of interest form, script, advertisement, or other material which the issuer has been notified by the commissioner not to distribute, to solicit indications of interest.
- (7) Except for scripted broadcasts and published notices, the issuer does not communicate with any offeree about the contemplated offering unless the offeree is provided with the most current solicitation of interest form at or before the time of the communication or within five days from the communication.
- (8) The issuer stops all communications with prospective investors made in reliance on this exemption immediately after filing an application to register or qualify the securities with the commissioner or with the securities and exchange commission.
- (9) The issuer does not accept money or sign completed contracts for sales of securities with any person while soliciting indications of interest and does not complete any sales of securities until at least ten business days after completing a securities registration or approval to offer and sell securities in this state.
- (10) The issuer does not make a sale until three days after delivery to the purchaser of a prospectus or similar disclosure document.
- (11) The issuer does not know, and in the exercise of reasonable care could not know, that the issuer or any officer, director, manager, ten percent shareholder, promoter, partner, or agent of the issuer:
  - (a) Has been the subject of or filed a registration statement that is the subject of a stop order, administrative enforcement order, judgment, injunction, or restraining order issued by any federal or state securities agency, any court of competent jurisdiction, or the United States postal service and which prohibits, denies, or revokes the registration or use of any exemption from registration in connection with the offer, sale, or purchase of a security, franchise, commodity, or other financial transaction or which involves fraud, deceit, misstatements of material facts, forgery, embezzlement, obtaining money under false pretenses, larceny, conspiracy to defraud, or similar deceptive acts within five years prior to the filing of the solicitation of interest form; or

- (b) Has been convicted of any felony or misdemeanor involving the offer, purchase, or sale of a security, franchise, commodity, or financial transaction, or any felony or misdemeanor involving fraud, deceit, forgery, embezzlement, conspiracy to defraud, or a similar financial crime.

The prohibitions listed above shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities-related business in the state in which the administrative order or judgment was entered against such person or if the ~~dealer~~ broker-dealer employing such party is licensed or registered in this state and the form B-D filed with this state discloses the order, conviction, judgment, or decree relating to such person. A person disqualified under this subsection may not act in a capacity other than that for which the person is licensed or registered. Any disqualification caused by this section is automatically waived if the agency, which created the basis for disqualification, determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

- b. The issuer shall comply with the requirements set forth below. Failure to comply will not result in the loss of the exemption from the requirements of section 10-04-04, but is a violation of this chapter, is actionable by the commissioner under section 10-04-16, and constitutes grounds for denying or revoking the exemption as to a specific security or transaction.
  - (1) Any published notice must contain at least the identity of the chief executive officer of the issuer, a brief and general description of its business and products, and the following legends:
    - (a) NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED;
    - (b) NO SALES OF THE SECURITIES WILL BE MADE OR COMMITMENT TO PURCHASE ACCEPTED UNTIL DELIVERY OF A PROSPECTUS OR SIMILAR DISCLOSURE DOCUMENT THAT INCLUDES COMPLETE INFORMATION ABOUT THE ISSUER AND THE OFFERING;
    - (c) AN INDICATION OF INTEREST MADE BY A PROSPECTIVE INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND; and
    - (d) THIS OFFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE FEDERAL AND STATE SECURITIES LAWS. NO SALE MAY BE MADE UNTIL THE OFFERING STATEMENT IS QUALIFIED BY THE SECURITIES AND EXCHANGE COMMISSION AND IS REGISTERED OR APPROVED IN THIS STATE.

- (2) Any script for broadcast must contain at least the identity of the chief executive of the issuer, a brief description of its business and products, its address and telephone number, and the following legends:
    - (a) THIS IS FOR AN INDICATION OF INTEREST ONLY AND INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND UPON A PROSPECTIVE INVESTOR;
    - (b) NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED; and
    - (c) THIS OFFER IS MADE PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER FEDERAL AND STATE SECURITIES LAWS.
  - c. Offers made on reliance of this exemption will not result in a violation of section 10-04-04 by virtue of being integrated with subsequent offers or sales of securities unless such subsequent offers and sales would be integrated under federal securities laws.
- 16. An offer or sale of common stock, limited liability company membership interests, or limited partnership interests by a person to a person or other subscribers, not exceeding ten in number, for the sole purpose of organization in this state, if the securities are not acquired for the purpose of resale to others for a period of twelve months, advertising has not been published or circulated in connection with the offer or sale, and all sales are consummated within ten days after the date of organization.
- 17. Any offer or sale of a security by an issuer in a transaction provided all of the following conditions are met:
  - a. Sales of securities may be made only to persons who are, or the issuer reasonably believes are, accredited investors as defined in 17 CFR 230.501(a) promulgated by the securities and exchange commission.
  - b. The exemption is not available to an issuer that is in the development stage that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.
  - c. The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to, or for, sale in connection with a distribution of the security. Any resale of a security sold in reliance of this exemption within twelve months of sale must be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under section 10-04-04 or to an accredited investor pursuant to an exemption available under subsection 5.
  - d. (1) The exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the

issuer's directors, officers, general partners, beneficial owners of ten percent or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director, or officer of such underwriter:

- (a) Within the last five years, has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the securities and exchange commission;
  - (b) Within the last five years, has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;
  - (c) Is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or
  - (d) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.
- (2) Paragraph 1 does not apply if:
  - (a) The party subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the order, judgment, or decree creating the disqualification was entered against such party;
  - (b) Before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or
  - (c) The issuer establishes that it did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this subdivision.
- e. (1) A general announcement of the proposed offering may be made by any means.
- (2) The general announcement must include only the following information, unless additional information is specifically permitted by the commissioner:

- (a) The name, address, and telephone number of the issuer of the securities;
    - (b) The name, a brief description, and price, if known, of any security to be issued;
    - (c) A brief description of the business of the issuer in twenty-five words or less;
    - (d) The type, number, and aggregate amount of securities being offered;
    - (e) The name, address, and telephone number of the person to contact for additional information; and
    - (f) A statement that:
      - [1] Sales will only be made to accredited investors;
      - [2] No money or other consideration is being solicited or will be accepted by way of this general announcement; and
      - [3] The securities have not been registered with or approved by any state securities agency or the securities and exchange commission and are being offered and sold pursuant to an exemption from registration.
  - f. The issuer, in connection with an offer, may provide information in addition to the general announcement under subdivision e, if such information:
    - (1) Is delivered through an electronic data base that is restricted to persons who have been prequalified as accredited investors; or
    - (2) Is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.
  - g. Telephone solicitation is not permitted unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.
  - h. Dissemination of the general announcement of the proposed offering to persons who are not accredited investors does not disqualify the issuer from claiming the exemption.
  - i. The issuer shall file with the department a notice of transaction, a consent to service of process, a copy of the general announcement, and a nonrefundable filing fee of one hundred dollars within fifteen days after the first sale in this state.
18. The offer or sale of a security issued by an organization organized under and operated in compliance with chapter 10-06.1.



19. Any offer or sale of an agricultural-related cooperative security by or on behalf of an agricultural producer, as defined by section 32-44-01, to a person for the purpose of producing and selling agricultural products, as defined by section 32-44-01, to the cooperative. Commissions or other remuneration may not be paid or given directly or indirectly for soliciting any prospective buyer in this state, except to a ~~dealer~~ broker-dealer or agent registered in this state, to an agent of a bank or a commercial trust department, to a licensed real estate agent, or to a licensed auctioneer if the sale is made at a bona fide public auction.
20. A transaction in a note, bond, debenture, or other evidence of indebtedness secured by a mortgage or other security agreement if:
  - a. The note, bond, debenture, or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit;
  - b. A general solicitation or general advertisement of the transaction is not made; and
  - c. A commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this Act as a broker-dealer or as an agent.
21. A nonissuer transaction by a federal covered investment adviser with investments under management in excess of one hundred million dollars acting in the exercise of discretionary authority in a signed record for the account of others.

<sup>69</sup> **SECTION 5. AMENDMENT.** Subsection 2 of section 10-04-07.1 of the North Dakota Century Code is amended and reenacted as follows:

2. Securities entitled to registration by announcement may be registered only by a ~~dealer~~ broker-dealer registered with the department as provided for in section 10-04-10 by filing with the department a written announcement of intention to trade in the securities containing the following:
  - a. Name of issuer and location of the headquarters or principal office.
  - b. A brief description of the security, including price and current earnings.
  - c. A statement that the securities have been outstanding and in the hands of the public not less than one year as aforesaid.
  - d. A balance sheet not more than twelve months old.
  - e. A statement that the security has been registered in North Dakota or by the securities and exchange commission.

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<sup>69</sup> Section 10-04-07.1 was also amended by section 6 of House Bill No. 1176, chapter 97.

<sup>70</sup> **SECTION 6. AMENDMENT.** Subsection 3 of section 10-04-07.1 of the North Dakota Century Code is amended and reenacted as follows:

3. The filing of such announcement with the department constitutes the registration of the security, unless advised to the contrary within forty-eight hours or advised to furnish additional information, and such ~~dealer broker-dealer~~ shall pay to the commissioner a filing fee of twenty-five dollars. Upon registration, such securities may be sold in this state for a period of one year from date of registration by registered ~~dealers broker-dealers~~ at a price or prices reasonably related to the current market price of such security at the time of sale, subject, however, to any and all rights and authority granted the commissioner and to any person or purchaser under chapter 10-04, in respect of securities registered by the commissioner by description or qualification. No security registered under this section shall be sold directly or indirectly for the benefit of the issuer, or an underwriter of such securities, or for the promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter; provided, that no security, the registration of which has been revoked by the commissioner, or application for registration of which has been denied by the commissioner, or withdrawn by the applicant, shall be registered under this section.

**SECTION 7. AMENDMENT.** Section 10-04-08 of the North Dakota Century Code is amended and reenacted as follows:

**10-04-08. Registration by qualification.** Securities required to be registered by qualification under this chapter before they may be sold in this state must be registered as provided in this section. Application for registration of securities by qualification must be made by the issuer of the securities or by a registered ~~dealer broker-dealer~~ by filing with the department:

1. An application for registration, which must be made in writing or on forms prescribed by the commissioner, must contain the following information and be accompanied by the following documents:
  - a. With respect to the applicant or issuer and any significant subsidiary: its name, address, and form of organization; the state of foreign jurisdiction and date of its organization; the general character and location of its business; a general description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged.
  - b. With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: the person's name, address, and principal occupation for the past five years; the amount of securities of the issuer held by the person as of a specified date within thirty days of the filing of the application for registration; the amount of the securities covered by the

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<sup>70</sup> Section 10-04-07.1 was also amended by section 5 of House Bill No. 1176, chapter 97.

application for registration to which the person has indicated an intention to subscribe; and a description of any material interest in any transaction with the issuer or any subsidiary effected within the past three years or proposed to be effected.

- c. With respect to persons covered by subdivision b: the remuneration paid during the past twelve months and estimated to be paid during the next twelve months, directly or indirectly, by the issuer to all those persons in the aggregate.
- d. With respect to any person owning of record, or beneficially if known, ten percent or more of the outstanding shares of any class of equity security of the issuer: the information specified in subdivision b other than the person's occupation.
- e. With respect to every promoter if the issuer was organized within the past three years: the information specified in subdivision b, any amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for any such payment.
- f. With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution: the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the application for registration; a description of any material interest in any transaction with the issuer or any subsidiary effected within the past three years or proposed to be effected; and a statement of the person's reasons for making the offering.
- g. The title, kind, classes, and amount of securities to be offered in this state; the proposed offering price to the public or the method by which it is to be computed; any variation therefrom at which any proportion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the maximum amount of commission or other form of remuneration to be paid in cash or otherwise, directly or indirectly, for or in connection with the sale or offering for sale of such securities; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering, or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges and a statement as to what person, corporation, or limited liability company shall be responsible for payment of the same; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter.

- h. The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition, and the amounts of any such commissions and any other expense in connection with the acquisition.
- i. A description of each and every stock option or other security option outstanding, or to be created in connection with the offering, including the price at which such options may be exercised together with the amount of any such options held or to be held by every person.
- j. The capitalization and long-term debt of the issuer and any subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities.
- k. The dates of, parties to, and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the application for registration or was made within the past two years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer is a party and which affects its business or assets.
- l. A detailed statement showing the items of cash, property, services, patents, goodwill, and any other consideration for which any securities of the issuer have been within two years or are to be issued in payment.
- m. A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering.
- n. A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered.
- o. A balance sheet of the issuer as of a date within four months prior to the filing of the application for registration; a profit and loss statement and analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of any

business, the same financial statements which would be required if the business were the registrant.

- p. Other states in which it is proposed to offer the securities for sale to the public; other states in which the securities are eligible for sale to the public; states which have refused, by order or otherwise, to render the securities eligible for sale to the public or have revoked or suspended the right to sell the securities, or in which an application for registration has been withdrawn; and, if application has been made to register the securities under the federal Securities Act of 1933, the date upon which the application to register the securities was first filed, and a statement as to whether registration under that Act is effective, and if so, the effective date.
  - q. Such additional information as the commissioner requires by rule or order or may subsequently request.
- 2. Payment of a filing fee for each security or class of security to be registered as follows:
  - a. One-tenth of one percent of the first seven hundred fifty thousand dollars of the aggregate offering price of each security or class of security to be registered.
  - b. One-twentieth of one percent of any amount in excess of seven hundred fifty thousand dollars of the aggregate offering price of each security or class of security to be registered.
  - c. In no event may such filing fee be less than one hundred dollars for each security or class of security to be registered.
  - d. Provided, further, that any applicant may increase the aggregate amount of securities under this subdivision before the expiration of one year from the date of the certificate of effectiveness at the same reduced fee, which must be computed as provided in subdivisions a and b as a separate fee for each additional amount registered, as if the additional securities had been included in the other registration of that year, registration year and not calendar year.
  - e. For the renewal of the registration of securities for additional periods of one year, there must be paid a renewal fee of one hundred dollars.
- 3. If the applicant is not domiciled in this state and is not a corporation or limited liability company organized or authorized to transact business under the laws of this state, a consent to service of process conforming to the requirements of section 10-04-14.
- 4. The commissioner may by rule or order require as a part of the application for registration under this section that a prospectus containing any designated part of the information specified in subsection 1 be submitted to the commissioner and the same prospectus must be sent or given to each person to whom a sale or an offer to sell is made. The commissioner may by rule or otherwise permit the omission of any item of information or document from any

application for registration. In all cases in which an application is filed to register securities and a registration statement covering the same securities has been filed with the federal securities and exchange commission, a copy of the registration statement so filed must be accepted by the commissioner in lieu of the information specified in subdivisions a through q of subsection 1, except that it must be accompanied by a statement of the amount of such securities to be offered in this state. All of the statements, exhibits, or documents of every kind required under this section must be certified by the applicant or the issuer or any person having knowledge of the facts. An applicant may, with the consent of the commissioner, amend or withdraw an application and any or all statements, exhibits, or documents filed therewith under this section at any time prior to the registration or prior to any offering and sale of the securities sought to be registered or the entry of an order denying the registration of such securities, but in no event may the fee be returned.

Registration under this section is effective for a period of one year.

**SECTION 8. AMENDMENT.** Section 10-04-08.3 of the North Dakota Century Code is amended and reenacted as follows:

**10-04-08.3. Unlawful representations concerning registration or exemption.**

1. Neither the fact that an application for approval under section 10-04-05 or 10-04-06 or registration under section ~~10-04-07~~, 10-04-07.1, 10-04-08, or 10-04-10 or a notice filing under section 10-04-08.4 has been filed nor the fact that a security or person is effectively approved or registered constitutes a finding by the commissioner that any document filed under this chapter is true, complete, and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the commissioner has passed in any way upon the merits or qualifications of, or recommended or given approval to, any security, transaction, or person.
2. It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with subsection 1.

**SECTION 9. AMENDMENT.** Subsection 2 of section 10-04-08.4 of the North Dakota Century Code is amended and reenacted as follows:

2. Any federal covered security that is subject to section 18(b)(4)(D) of the Securities Act of 1933, as amended, may be offered and sold ~~upon a filing of~~ under the following conditions:
  - a. A notice of intent is filed in writing on SEC form D or other prescribed form with a consent to service of process and a nonrefundable filing fee of one hundred dollars within fifteen calendar days after the first sale in this state.
  - b. A copy of any document filed with the securities and exchange commission is provided, as the commissioner may require.

- c. The notice filing is effective for a period of one year from the date the filing is received by the commissioner.
- d. The filing fee shall be two hundred fifty dollars in the event the filing is not made within the time period specified in subdivision a.

~~For any~~ No security may be offered or sold under this subsection, no commission or other remuneration may be paid, either directly or indirectly, for soliciting any prospective buyer in this state, except to through or by a dealer, broker-dealer and agent registered in accordance with section 10-04-10, unless it is offered and sold through an officer, director, governor, or partner of the issuer and no commission or other remuneration is paid, either directly or indirectly.

**SECTION 10. AMENDMENT.** Section 10-04-09 of the North Dakota Century Code is amended and reenacted as follows:

**10-04-09. Suspension or revocation of registration of securities.** The commissioner may revoke the registration of any securities registered under this chapter if, after a hearing or opportunity for hearing as provided in section 10-04-12, the commissioner finds that any provisions of this chapter or any rule, order, or condition lawfully imposed under this chapter has been violated, or if the commissioner finds any of the following:

1. The sale of such securities would work or tend to work a fraud, or deception upon the purchasers thereof or the public, or that the disposal of the securities is on unfair terms, or if the plan of business of the applicant appears to be unfair, unjust, or inequitable.
2. The issuer of such securities is insolvent, or has violated any of the provisions of this chapter or any order of the commissioner of which such issuer has notice, or does not conduct its business in accord with law.
3. The issuer of such securities has made any fraudulent representations in any prospectus or in any circular or other literature that has been distributed concerning the issuer or its securities.
4. The issuer of such securities has refused to permit an examination into its affairs as provided in this section or has failed to furnish the commissioner any further information required pursuant to this section.
5. ~~Securities registered by description were not entitled to registration by description.~~
6. No action may be brought under this section by the commissioner after ten years from the date of the alleged violation.

If the commissioner has reasonable grounds to believe that the registration of any securities registered under this chapter should be revoked upon any ground specified in this section, the commissioner or the commissioner's agent may conduct an examination into the affairs of the issuer of such securities; provided, that the commissioner or the commissioner's agent may conduct such an examination only if the information sought by such examination could not be obtained from other readily available sources. In making any such examination, the commissioner or the commissioner's agent shall have access to and may compel the production of all the

books and papers of an issuer and may administer oaths to and examine the officers and any employees of such issuer as to its business and affairs. They may also require a balance sheet exhibiting the assets and liabilities of any such issuer or the issuer's income statement, or both, to be certified to by a certified public accountant. Whenever the commissioner may deem it necessary in connection with any such examination, the commissioner may also require such balance sheet or income statement, or both, to be made more specific in such particulars as the commissioner shall point out or to be brought down to the latest practicable date. Such examination shall be made at the office of the commissioner, unless the issuer or a registered dealer requests that the examination be made at some other place, in which case the person making such request may be required by the commissioner to advance sufficient funds to pay the actual expenses of such investigation.

If the commissioner has reasonable grounds to believe that the registration of any securities under this chapter should be revoked on any ground specified in this section, the commissioner may enter an order suspending the registration of such securities pending an examination into the affairs of the issuer of such securities or pending a hearing or opportunity for hearing as provided in section 10-04-12; provided, that no such suspension order shall be effective for more than thirty days and such an order, if not withdrawn by the commissioner within thirty days, shall automatically terminate thirty days after the date of its issuance. Such suspension order shall state specifically the grounds for its issuance. Upon the entry of an order suspending the registration of any securities or of an order withdrawing a suspension order previously issued, the commissioner shall send a copy of such order to the issuer of such securities.

If the commissioner finds, after a hearing or opportunity for hearing as provided in section 10-04-12, that there are grounds for revoking the registration of certain securities, the commissioner may enter in the register of securities an order revoking the registration of such securities. Such order shall state specifically the grounds for its issuance. Upon the entry of an order revoking the registration of securities, the commissioner shall send a copy of such order to the issuer of such securities. No order revoking the registration of securities shall invalidate any sale of such securities made prior to the entry of such order.

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

**10-04-10. Registration of ~~dealers~~ broker-dealers, agents, investment advisers, and investment adviser representatives - Notice filings by federal covered advisers.** ~~A dealer or agent may not offer for sale or sell any securities within or from this state, except in transactions exempt under section 10-04-06, unless registered as a dealer or agent pursuant to the provisions of this section.~~

1. ~~Dealers. Broker-dealers.~~ It is unlawful for a person to transact business in this state as a broker-dealer unless the person is registered under this Act as a broker-dealer or is exempt. The following persons are exempt from the registration requirements:
  - a. A broker-dealer without a place of business in this state if its only transactions effected in this state are with:
    - (1) The issuer of the securities involved in the transactions;



- (2) A broker-dealer registered as a broker-dealer under this Act or not required to be registered as a broker-dealer under this Act;
- (3) An institutional investor;
- (4) A nonaffiliated federal covered investment adviser with investments under management in excess of one hundred million dollars acting for the account of others pursuant to discretionary authority in a signed record;
- (5) A bona fide preexisting customer whose principal place of residence is not in this state and the person is registered as a broker-dealer under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities laws of the state in which the customer maintains a principal place of residence; and
- (6) A bona fide preexisting customer whose principal place of residence is in this state but was not present in this state when the customer relationship was established, if:
  - (a) The broker-dealer is registered under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities laws of the state in which the customer relationship was established and where the customer had maintained a principal place of residence; and
  - (b) Within thirty days after the customer's first transaction in this state, the person files an application for registration as a broker-dealer in this state and a further transaction is not effected more than forty-five days after the date on which the application is filed, or, if earlier, the date on which the commissioner notifies the person that the commissioner has denied the application for registration or has stayed the pendency of the application for good cause.
- b. A person that deals solely in United States government securities and is supervised as a broker-dealer in government securities by the board of governors of the federal reserve system, the comptroller of the currency, the federal deposit insurance corporation, or the office of thrift supervision.

Application for registration as a dealer may be made by any person eighteen years of age or older. Such application for registration broker-dealer must be made in writing or electronically in a form prescribed by the commissioner, must be signed by the applicant, duly verified by oath, must be filed with the department, and must contain information the commissioner determines to be necessary concerning the applicant.

The commissioner may also require such additional information relating to the applicant and as to the previous history, record, or association of the applicant, its officers, directors, employees, members, partners, managers, or trustees as the commissioner deems necessary to establish whether or not the applicant should be registered as a ~~dealer~~ broker-dealer under the provisions of this law.

There must be filed with such application a written consent to the service of process upon the commissioner in actions against such ~~dealer~~ broker-dealer, conforming to the requirements of section 10-04-14.

When an applicant has fully complied with the provisions of this subsection, the commissioner may register such applicant as a ~~dealer~~ broker-dealer unless the commissioner finds that the applicant is not of good business reputation, or is not solvent, or the applicant's principals and compliance or sales supervisor do not appear qualified by training, examination, or experience to act on behalf of a ~~dealer~~ broker-dealer in securities.

Except as prohibited by the Securities Exchange Act of 1934, the commissioner may require an indemnity bond running to the state of North Dakota conditioned for the faithful compliance by the ~~dealer~~ broker-dealer and the ~~dealer's~~ broker-dealer's agents with all the provisions of this law and for the faithful performance and payment of all obligations of the ~~dealer~~ broker-dealer and the ~~dealer's~~ broker-dealer's agents.

The bond must be of such type as may be approved by the commissioner and must be in such amount as the commissioner deems necessary to protect purchasers. Any such bond must have as surety thereon a surety company authorized to do business in this state. When the commissioner has registered an applicant as a ~~dealer~~ broker-dealer, the commissioner shall notify the applicant of such registration.

2. Agent. It is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this Act as an agent or is exempt from registration. The following individuals are exempt from the registration requirements:
  - a. An individual who represents a broker-dealer in effecting transactions in this state limited to those in section 15(h)(2) of the Securities Exchange Act of 1934;
  - b. An individual who represents a broker-dealer that is exempt under subsection 1 of this section;
  - c. An individual who represents an issuer that effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal covered security under section 18(b)(3) or 18(b)(4)(D) of the Securities Act of 1933 is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities; or

- d. An individual who represents a broker-dealer registered in this state or exempt from registration in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of one hundred million dollars acting for the account of others pursuant to discretionary authority in a signed record.

Application for registration as an agent ~~may be made by any individual eighteen years of age or older.~~ Such application for ~~registration~~ must be made in writing or electronically in a form prescribed by the commissioner, must be signed by the applicant and by the registered ~~dealer~~ broker-dealer or issuer employing or proposing to employ such applicant, duly verified by oath, must be filed with the department, and must contain information the commissioner determines to be necessary concerning the applicant.

The commissioner shall require as a condition of registration that the applicant pass a written examination as evidence of knowledge of the securities business; provided, that not more than two officers or managers of an issuer may be registered as an agent for a particular original offering of the issuer's securities without being required to pass such written examination; and provided, further, that no such officer or manager may again register within three years as such agent for this or any other issuer without passing the written examination.

The commissioner may also require such additional information as to the applicant's previous business experience as the commissioner deems necessary to determine whether or not the applicant should be registered as an agent under the provisions of this law. If an agent proposes to be self-employed, the agent shall specifically state the particular security or securities the agent proposes to sell in this state in the application, and if said security or securities are exempt under section 10-04-05 or 10-04-06, ~~or have been registered by description under section 10-04-07,~~ or have been registered by announcement under section 10-04-07.1, or have been registered by qualification under section 10-04-08, then the commissioner may require that said self-employed agent file an indemnity bond running to the state of North Dakota conditioned for the faithful compliance by said self-employed agent with all the applicable provisions of this chapter and for the faithful performance and payment of all obligations hereunder. The bond must be in a form approved and in the amount required by the commissioner.

When an applicant has fully complied with the provisions of this subsection, the commissioner may register such applicant as an agent unless the commissioner finds that such applicant is not of good business reputation, or that the ~~dealer~~ broker-dealer named on the application is not a registered ~~dealer~~ broker-dealer. When the commissioner has registered an applicant as an agent, the commissioner shall immediately notify the ~~broker~~ broker-dealer of such registration.

Every registered ~~dealer~~ broker-dealer or issuer shall promptly notify the department of the termination of the employment by the ~~dealer~~ broker-dealer or issuer of a registered agent.

### 3. Investment advisers.

- a. It is unlawful for any person to transact business in this state as an investment adviser unless the person is registered under this Act as an investment adviser or is exempt from registration as an investment adviser. The following persons are exempt from the registration requirements:
- (1) ~~The~~ A person without a place of business in this state that is registered under this chapter; under the securities laws of the state in which the person has its principal place of business if its only clients in this state are:
    - (a) Federal covered investment advisers, investment advisers registered under this Act, or broker-dealers registered under this Act;
    - (b) Institutional investors; or
    - (c) Bona fide preexisting clients whose principal places of residence are not in this state if the investment adviser is registered under the securities laws of the state in which the clients maintain principal places of residences.
  - (2) The person's only clients in this state are investment companies as defined in the Investment Company Act of 1940, other investment advisers, federal covered advisers, dealers, banks, trust companies, savings and loan associations, insurance companies, employee benefit plans with assets of not less than one million dollars, and governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rule or order of the commissioner; or
  - ~~(3)~~ Such person is registered either under the laws of the state where its principal place of business is located or with the securities and exchange commission; if the investment adviser has no A person without a place of business in this state and if the person has had, during the preceding twelve-month period has had twelve months not more than six five clients; other than resident in this state in addition to those specified in paragraph 2; who are residents of this state paragraph 1.
- b. Application for registration as an investment adviser ~~may be made by any person eighteen years of age or older. Such application for registration~~ must be made in writing or electronically in a form prescribed by the commissioner, must be signed by the applicant, duly verified by oath, must be filed with the department, and must contain information the commissioner determines to be necessary concerning the applicant.

The commissioner may also require such additional information relating to the applicant and as to the previous history, record, or association of the applicant, its officers, directors, employees, members, partners, managers, or trustees, as the commissioner deems necessary

to establish whether or not the applicant should be registered as an investment adviser under the provisions of this chapter.

Except as prohibited by the Investment Advisers Act of 1940, the commissioner may require an indemnity bond running to the state of North Dakota conditioned for the faithful compliance by the investment adviser and the investment adviser's representatives with all the provisions of this law and for the faithful performance and payment of all obligations of the investment adviser and the investment adviser's representatives. The bond must be of such type as may be approved by the commissioner and must be in such amount as the commissioner deems necessary to protect persons in this state. Any such bond must have as surety thereon a surety company authorized to do business in this state.

The commissioner may by rule or order provide for an examination to be taken by any class of or all applicants, as well as persons who represent or will represent an investment adviser in doing any of the acts which make the person an investment adviser.

When an applicant has fully complied with the provisions of this subsection, the commissioner may register such applicant as an investment adviser unless the commissioner finds that the applicant is not of good business reputation or is not solvent.

A registrant as investment adviser shall notify the department of any change of address.

4. Federal covered adviser.

a. ~~Except with respect to a federal covered investment adviser whose clients are those described in paragraph 2 of subdivision a of subsection 3 or who meets the criteria of paragraph 3 of subdivision a of subsection 3 described in subdivision b,~~ it shall be unlawful for a person to transact business in this state as a federal covered adviser unless such person has made a notice filing with the department, in writing or electronically, consisting of a copy of those documents that have been filed with the securities and exchange commission as the commissioner may require by rule or otherwise and the prescribed notice filing fee.

b. The following federal covered investment advisers are not required to comply with the notice filing requirement:

(1) A federal covered investment adviser without a place of business in this state if its only clients are:

(a) Federal covered investment advisers, investment advisers registered under this Act, and broker-dealers registered under this Act;

(b) Institutional investors; or

(c) Bona fide preexisting clients whose principal places of residence are not in this state.

- (2) A federal covered investment adviser without a place of business in this state if the person has had, during the preceding twelve months, not more than five clients that are resident in this state in addition to those specified under paragraph 1.

A notice filing is effective from receipt until the following December thirty-first. It may be renewed by filing with the department, prior to expiration, those documents filed with the securities and exchange commission as the commissioner may require by rule or otherwise, with the notice filing renewal fee.

If the information contained in any document filed with the department is or becomes inaccurate or incomplete in any material respect, the federal covered adviser shall file an amendment with the department whenever such amendment is filed with the securities and exchange commission.

A notice filing may be terminated by a federal covered adviser by filing a notice of termination with the department.

5. Investment adviser representatives. It is unlawful for an individual to transact business in this state as an investment adviser representative unless the individual is registered under this Act as an investment adviser representative or is exempt from registration as an investment adviser representative or that the investment adviser representative is employed by or associated with an investment adviser that is exempt from registration or a federal covered investment adviser that is excluded from the notice filing requirements.

~~Application for registration as an investment adviser representative may be made by any person eighteen years of age or older. The application for registration must be submitted in writing or electronically in a form prescribed by the commissioner, be signed by the applicant and if applicable, by the investment adviser employing or proposing to employ the applicant, be duly verified by oath, be filed with the department, and contain information the commissioner determines to be necessary concerning the applicant.~~

When an applicant has fully complied with the provisions of this subsection, the commissioner may register the applicant as an investment adviser representative unless the commissioner finds that the applicant is not of good business reputation; that the investment adviser named in the application is not a registered investment adviser; or the federal covered adviser named in the application has not made a notice filing with the commissioner, as required by subsection 4. When the commissioner has registered an applicant as an investment adviser representative, the commissioner shall immediately notify the investment adviser or the federal covered adviser, as applicable, of such registration.

Every registered investment adviser shall promptly notify the department of the termination of the employment by the adviser of a registered investment adviser representative. Every registered investment adviser representative employed by a federal covered adviser or the federal covered adviser shall promptly notify the

department of the termination of such employment. The registration of the investment adviser representative is automatically suspended from the time of termination of employment until such time as the representative is registered by the commissioner as a representative of another investment adviser or federal covered adviser.

The commissioner shall require as a condition of registration that the applicant pass a written examination as evidence of knowledge of the securities business. At the discretion of the commissioner, certain professional designations may be accepted in lieu of an examination.

6. Refusal of registration. If the commissioner has reason to believe there are grounds to refuse the approval of any application under this section, the commissioner may, by order, summarily postpone the approval of any application made under this section. If, after affording an applicant a hearing or an opportunity for a hearing as provided in section 10-04-12, the commissioner finds that there is sufficient ground to refuse to register such applicant as provided in this section, the commissioner shall enter an order refusing to register such applicant. Such order shall state specifically the grounds for its issuance. A copy of such order must be mailed to the applicant at the applicant's business address, and if the application is for registration as an agent, to the registered ~~dealer~~ broker-dealer or issuer or if the application is for registration as an investment adviser representative to the investment adviser or federal covered adviser who proposed to employ such applicant. If the commissioner finds that an applicant has been guilty of any act or omission which would constitute a sufficient ground for revocation of a ~~dealer's~~ broker-dealer's, agent's, investment adviser's, or investment adviser representative's registration under section 10-04-11, such act or omission may constitute a sufficient ground for a finding by the commissioner that such applicant is not of good business reputation.
7. Record and renewal of registrations. The names and addresses of all persons who have been registered as ~~dealers~~ broker-dealers, agents, investment advisers, or investment adviser representatives, and all orders with respect thereto, and the names and addresses of all federal covered advisers who have made a notice filing must be recorded in a register of ~~dealers~~ broker-dealers, agents, investment advisers, federal covered advisers, and investment adviser representatives in the office of the commissioner. Every registration and notice filing under this section expires on December thirty-first of each year, unless renewed. The commissioner may by order provide for expirations and renewals, including dates, forms, and procedures, adjust registration and notice filing fees to correspond with expiration dates, and do any other thing which may be necessary or convenient in order to participate in a central registration depository or any similar arrangement designed to promote uniformity, to ease regulatory burdens, or to encourage cooperation with other states, the securities and exchange commission, or any registered national securities association or exchange.
8. Fees. The fee, which must accompany the application, for registration, transfer, or notice filing, and for each annual renewal thereof is:
  - a. For each ~~dealer~~ broker-dealer \$200.00
  - b. For each agent \$60.00

- c. For each investment adviser or federal covered adviser \$100.00
- d. For each investment adviser representative \$50.00

An application to register as a ~~dealer~~ broker-dealer, agent, investment adviser, or investment adviser representative may, with the consent of the commissioner, be withdrawn upon written application, but in no event may any registration fees be returned.

<sup>71</sup> **SECTION 12. AMENDMENT.** Subsection 1 of section 10-04-10.3 of the North Dakota Century Code is amended and reenacted as follows:

1. Every ~~registered dealer~~ broker-dealer, agent, investment adviser, and investment adviser representative conducting business in this state shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as ~~the commissioner prescribes by rule 6.~~ described below:
  - a. With the exclusion of a broker-dealer whose activities are limited to the sale of securities that it issues and who is not a member or required to be a member of any self-regulatory organization, every broker-dealer registered in or conducting business in this state, and each branch office located in or conducting business in this state, must keep and maintain all records as required by:
    - (1) Federal statutes or by rules or regulations promulgated by the securities and exchange commission.
    - (2) Rules promulgated by any securities exchange or self-regulatory organization of which the broker-dealer is a member.
    - (3) The laws, rules, or regulations of any state in which the broker-dealer is registered or maintains a place of business from which it conducts securities business in North Dakota.
  - b. Every investment adviser which maintains its principal place of business in any state, other than this state, and is registered as an investment adviser in the state in which it maintains its principal place of business, shall keep and maintain such books and records as required by the state in which it maintains its principal place of business.
  - c. Every investment adviser which maintains its principal place of business in this state, or is not registered or exempt from registration in the state in which it maintains its principal place of business, shall keep and maintain the following books and records for a period of three years:

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<sup>71</sup> Section 10-04-10.3 was also amended by section 13 of House Bill No. 1176, chapter 97.



- (1) Financial documents of the investment adviser which shall include:
  - (a) Journals and ledgers tracking income and expenses of the investment adviser. These documents must be continually maintained to within thirty days of current.
  - (b) Trial balances, financial statements, and internal audit papers.
  - (c) Checkbooks and statements on any type of account on which the investment adviser has check-writing privileges.
  - (d) Statements regarding any account of the investment adviser with any insurance company, broker-dealer, investment adviser, federal covered adviser, or financial institution.
- (2) A file which contains copies of all incoming and outgoing correspondence between the investment adviser or its representative and any of its customers, prospective customers, or former customers.
- (3) A file containing a copy of each customer complaint against the investment adviser or a representative of the investment adviser.
- (4) A file containing all advertisements used by the investment adviser or a representative of the investment adviser. To the extent that past performance of the investment adviser is used in advertising materials, the investment adviser shall maintain all accounts, records, and internal working papers that form the basis of the performance of the investment adviser.
- (5) Copies of all contracts between the investment adviser and its customers.
- (6) A manual regarding the supervisory procedures of the investment adviser, unless the investment adviser is wholly owned by the only representative of the investment adviser and the investment adviser has no employees.
- (7) With respect to discretionary accounts:
  - (a) A list of all discretionary accounts.
  - (b) A file containing all discretionary trading agreements.
  - (c) A list of all trades that were conducted on a discretionary basis.
- (8) All records created by the investment adviser or provided by a client or prospective client of an investment adviser

regarding the financial condition of the client or prospective client.

- (9) Records tracking all securities purchased by or advice provided by the investment adviser and the payment for the services if any. These records shall disclose whether the investment adviser or the investment adviser representative had any direct or indirect beneficial interest in the investment involved.
- (10) An updated copy of part II of the form ADV and a summary of all material updates to the same.
- (11) A list of all parties to whom referral fees have been paid and the amount of money paid to each such person.
- (12) A list containing the date of receipt and date of transmission of each customer check provided to the investment adviser for the purpose of deposit with the custodian of the investment adviser. Copies of each of the checks must be maintained with the list.

All records ~~so~~ required to be maintained pursuant to subdivision a or b, must be preserved for three years unless the commissioner prescribes otherwise as set forth in the rules or regulations of the jurisdiction originating the recordkeeping requirement. The commissioner may by rule for particular types of records enhance or waive the requirements of this subsection.

It is a violation of this subsection for any person who is registered, required to be registered, or is affiliated with or employed by any such entity, to create or cause to be created any record discussed in this subsection, if such record contains a material misstatement or misrepresentation regarding a customer or a customer's investments and the person knew or should have known of the falsity of the information or acted in reckless disregard of the truthfulness of the information.

<sup>72</sup> **SECTION 13. AMENDMENT.** Subsection 2 of section 10-04-10.3 of the North Dakota Century Code is amended and reenacted as follows:

- 2. Every registered ~~dealer~~ broker-dealer, agent, investment adviser, and investment adviser representative shall file such financial reports as the commissioner prescribes by rule.

**SECTION 14. AMENDMENT.** Section 10-04-11 of the North Dakota Century Code is amended and reenacted as follows:

**10-04-11. Suspension or revocation of ~~dealer's~~ broker-dealer's, agent's, investment adviser's, and investment adviser representative's registration.**

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<sup>72</sup> Section 10-04-10.3 was also amended by section 12 of House Bill No. 1176, chapter 97.

1. The commissioner may censure, place limitations on the activities of, suspend for a period not exceeding twelve months, or revoke the registration of any ~~dealer~~ broker-dealer, agent, investment adviser, or investment adviser representative or any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the ~~dealer~~ broker-dealer or investment adviser if, after a hearing or opportunity for hearing as provided in section 10-04-12, the commissioner finds that such registered ~~dealer~~ broker-dealer, agent, investment adviser, or investment adviser representative:
  - a. Has violated or failed to comply with any provisions of this chapter or any order or rule of the commissioner under this chapter;
  - b. Is, in the case of a ~~dealer~~ broker-dealer or investment adviser, insolvent;
  - c. Has engaged in dishonest, fraudulent, or unethical practices in the securities business;
  - d. Conducts business in purchasing or selling securities at such variations from current market prices as, in light of all the circumstances, are unconscionable or unfair to the purchasing public, or if such variance, including commissions on sales, unreasonably exceeds the price quoted by a recognized national quotation list as prescribed by the commissioner;
  - e. Has failed to file with the department any financial record required pursuant to section 10-04-10.3, or has refused to permit or has otherwise impeded an examination into the person's affairs as provided by section 10-04-10.3 and subsection 3;
  - f. Has filed an application for registration which, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;
  - g. Has been convicted of an offense determined by the commissioner to have a direct bearing upon a person's ability to serve the public as a ~~dealer~~ broker-dealer, agent, investment adviser, or investment adviser representative, or the commissioner finds that a person, following conviction of any offense, is not sufficiently rehabilitated under section 12.1-33-02.1;
  - h. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;
  - i. Is the subject of an order of the commissioner denying, suspending, or revoking registration as a ~~dealer~~ broker-dealer, agent, investment adviser, or investment adviser representative;
  - j. Is the subject of an order entered by the securities administrator of any other state or by the securities and exchange commission denying or revoking registration as a ~~dealer~~ broker-dealer, agent,

investment adviser, or investment adviser representative, or the substantial equivalent of those terms as defined in this chapter, or is the subject of an order suspending or expelling membership in or association with a member of a self-regulatory organization registered under the Securities Exchange Act of 1934, the Commodity Exchange Act, or the Investment Advisers Act of 1940; or is the subject of a United States post-office fraud order;

- k. Has, in connection with the offer, sale, or purchase of any security, directly or indirectly, effected a series of transactions creating actual or apparent active trading in any security, or to raise or depress the price of a security, for the purpose of inducing the purchase or sale of the security;
- l. Is not qualified on the basis of such factors as training, experience, and knowledge of the securities business;
- m. Has failed reasonably to supervise the person's agents if the person is a ~~dealer~~ broker-dealer or the person's employees or investment adviser representatives if the person is an investment adviser; or
- n. Is the subject of an order entered by the insurance administrator of any state denying or revoking registration as an insurance producer, consultant, or the substantial equivalent of those terms as defined in section 26.1-26-02.

It is a violation for any person to engage in any conduct described in subdivisions a, c, d, e, f, and k and any administrative rules promulgated under any of those subdivisions, if the activities occurred in this state, or with respect to a resident of this state, or has caused or could have caused harm to investors in this state.

- 2. It is sufficient cause for revocation of registration of a ~~dealer~~ broker-dealer or investment adviser as provided in this section, in case of a partnership, corporation, limited liability company, or any unincorporated association, if any member of a partnership or any officer or director of the corporation or association or any manager or governor of a limited liability company has been guilty of any act or omission which would be sufficient grounds for revoking the registration of an individual ~~dealer~~ broker-dealer or investment adviser.
- 3. If the commissioner has reasonable grounds to believe that the registration of any registered ~~dealer~~ broker-dealer, agent, investment adviser, or investment adviser representative should be censured, suspended, or revoked upon any grounds specified in this section, the commissioner or the commissioner's agent may conduct an examination into the affairs of any such registered ~~dealer~~ broker-dealer, agent, investment adviser, or investment adviser representative. In making any such examination, the commissioner or the commissioner's agent shall have access to and may compel the production of all the books and papers of a registered ~~dealer~~ broker-dealer, agent, investment adviser, or investment adviser representative, and may administer oaths to and examine the officers and employees of such ~~dealer~~ broker-dealer or investment adviser as to the ~~dealer's~~ broker-dealer's or investment adviser's business and affairs.

4. If the commissioner makes written findings of fact to support the conclusion that grounds exist pursuant to subsection 1 for the commissioner to suspend or revoke any registration, the commissioner may by order summarily suspend registration pending final determination of any proceeding under this section. Upon the entry of the summary order, the commissioner shall promptly notify the applicant, as well as the employer or prospective employer if the applicant is an agent or investment adviser representative, that it has been entered and the reasons. The person subject to the order, if desiring a hearing, must make a written request for a hearing to the commissioner within fifteen days after receipt of the notice. Within fifteen days after receipt by the commissioner of a written request, the matter will be set for hearing to determine if the order should be modified, vacated, or extended pending a final determination. If a hearing is not requested and none is ordered by the commissioner, the order will remain in effect until modified or vacated by the commissioner.
5. If the commissioner finds, after affording a registered ~~dealer~~ broker-dealer, a registered agent, a registered investment adviser, or a registered investment adviser representative a hearing or opportunity for hearing as provided in section 10-04-12, that there are grounds to censure, suspend, or revoke the registration of such ~~dealer~~ broker-dealer, agent, investment adviser, or investment adviser representative, the commissioner may enter an order in the register of ~~dealers~~ broker-dealers, agents, investment advisers, and investment adviser representatives censuring, suspending, or revoking the registration of such ~~dealer~~ broker-dealer, agent, investment adviser, or investment adviser representative. Such order shall state specifically the grounds for its issuance. A copy of such order shall be sent by registered mail to the ~~dealer~~ broker-dealer, agent, investment adviser, or investment adviser representative whose registration is censured, suspended, or revoked thereby at the person's business address and, if the censure, suspension, or revocation is of the registration of an agent or investment adviser representative, to the registered ~~dealer~~ broker-dealer or registered investment adviser who employs such person. Suspension or revocation of the registration of a ~~dealer~~ broker-dealer shall also suspend or revoke the registration of all of the ~~dealer's~~ broker-dealer's agents. Suspension or revocation of the registration of an investment adviser also suspends or revokes the registration of all of the investment adviser's investment adviser representatives. Suspension or revocation of the registration of an agent or investment adviser representative solely because of employment by a ~~dealer~~ broker-dealer or investment adviser whose registration was suspended or revoked shall not prejudice subsequent applications for registration by such person.
6. No action may be brought under this section by the commissioner after ten years from the date of the alleged violation.

**SECTION 15. AMENDMENT.** Section 10-04-12 of the North Dakota Century Code is amended and reenacted as follows:

**10-04-12. Hearings.** Before entering an order revoking the registration of any securities as provided in section 10-04-09, the commissioner shall send to the issuer of the securities, and if the application for registration of the securities was filed by a registered ~~dealer~~ broker-dealer, to the registered ~~dealer~~ broker-dealer, a

notice of opportunity for hearing. Before entering an order refusing to register any person as a ~~dealer broker-dealer~~, agent, investment adviser, or investment adviser representative, as provided in section 10-04-10, or censuring, placing limitations, suspending, or revoking the registration of any person as a registered ~~dealer broker-dealer~~, agent, investment adviser, or investment adviser representative as provided in section 10-04-11, the commissioner shall send to that person, and if that person is an agent or investment adviser representative or an applicant for registration as an agent or investment adviser representative, to the registered ~~dealer broker-dealer~~ or investment adviser who employs or proposes to employ that agent or investment adviser representative, a notice of opportunity for hearing.

1. Notices of opportunity for hearing must be sent by registered mail, returned receipt requested, to the addressee's business address, and the notice must state:
  - a. The order the commissioner proposes to issue.
  - b. The grounds for issuing the proposed order.
  - c. That the person to whom the notice is sent may be afforded a hearing upon request to the commissioner if the request is made within fifteen days after receipt of the notice.
2. Whenever a person requests a hearing in accordance with this section, the commissioner shall immediately set a date, time, and place for the hearing and shall notify the person requesting the hearing. The date set for the hearing must be within thirty days, but not earlier than fifteen days, after the request for hearing has been made, unless otherwise agreed to by both the commissioner and the person requesting the hearing.
3. Any hearing conducted under this section must be conducted in accordance with chapter 28-32.
4. If the commissioner does not receive a request for a hearing within the prescribed time, the commissioner may enter a final order which must set forth the findings with respect to the matters involved.

**SECTION 16. AMENDMENT.** Section 10-04-15 of the North Dakota Century Code is amended and reenacted as follows:

**10-04-15. Fraudulent practices.** It shall be a fraudulent practice and it shall be unlawful:

1. For any person knowingly to subscribe to, or make or cause to be made, any material false statement or representation in any application, financial statement, or other document or statement required to be filed under any provision of this chapter, or to omit to state any material statement or fact in any such document or statement which is necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.
2. For any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, to ~~employ~~:
  - a. Employ any device, scheme, or artifice to defraud.

3. ~~For any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, to make; or~~
  - b. Make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.
4. ~~For any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, to engage; or~~
  - c. Engage in any act, practice, or course of business which operates or would operate as a fraud or deception upon purchasers or the public.
- 5- 3. For any person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation as part of a regular business, issues or promulgates analyses or reports relating to securities:
  - a. To employ a device, scheme, or artifice to defraud another person; or
  - b. To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person or the public.
4. For any person, in connection with the offer, sale, or purchase of any security, or advising a person to offer, sell, or purchase any security, directly or indirectly, to effect a series of transactions creating actual or apparent active trading in any security, or to raise or depress the price of a security, for the purpose of inducing the purchase of the security.

**SECTION 17. AMENDMENT.** Section 10-04-16 of the North Dakota Century Code is amended and reenacted as follows:

**10-04-16. Orders, injunctions, and prosecutions for violations - Civil penalty.** If it appears to the commissioner, either upon complaint or otherwise, that any person has engaged in, or is engaging in, or is about to engage in any act or practice or transaction that is prohibited by this chapter or by any order of the commissioner issued under this chapter or which is declared to be illegal in this chapter, the commissioner may:

1. Issue any order including cease and desist, rescission, stop, and suspension orders, which the commissioner deems necessary or appropriate in the public interest or for the protection of investors. The commissioner may, in addition to any other remedy authorized by this chapter, impose by order and collect a civil penalty against any person found in an administrative action to have violated any provision of this chapter, or any rule or order adopted or issued under this chapter, in an amount not to exceed ten thousand dollars for each violation. The commissioner may bring actions to recover penalties pursuant to this section in district court. A person aggrieved by an order issued pursuant to this subsection may request a hearing before the commissioner if a written request is made within fifteen days after

receipt of the order. If a request for hearing is made under this subsection, the commissioner shall schedule a hearing within a reasonable time. Subsections 3 and 4 of section 10-04-12 apply to any hearing conducted under this subsection. If, after a hearing, the commissioner sustains an order previously issued, the sustaining order is subject to appeal to the district court of Burleigh County ~~by serving on the commissioner within twenty days after the date of entry of the sustaining order a written notice of appeal signed by the appellant stating:~~

- a. ~~The order of the commissioner from which the appeal is taken.~~
  - b. ~~The grounds upon which a reversal or modification of the order is sought.~~
  - c. A demand for a certified transcript of the record of the order according to the procedures set forth in chapter 28-32. Any order issued under this subsection is a final order if it is properly served and no hearing was requested within the required timeline. If an order issued under this subsection is sustained or modified after a hearing held in accordance with section 10-04-12, the order sustaining or modifying that order is a final order. If the final order is not appealed in accordance with the procedures set forth in chapter 28-32 or if the final order is sustained on appeal, the securities department may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.
2. Apply to the district court of any county in this state for an injunction restraining the person and the person's agents, employees, partners, officers, and directors from continuing the act, practice, or transaction or engaging therein or doing any acts in furtherance thereof, and for such other and further relief as the facts warrant. In any proceeding for an injunction, the commissioner may apply for and on due showing be issued the court's subpoena requiring the appearance forthwith of any defendant and the defendant's agents, employees, partners, officers, or directors, and the production of the documents, books, and records necessary for the hearing upon the petition for an injunction. Upon proof of any of the offenses described in this section, the court may grant the injunction as the facts warrant, and a receiver or conservator may be appointed for the defendant or the defendant's assets, and the court may assess civil penalties in an amount not to exceed ten thousand dollars for each violation of this chapter, and any rules promulgated thereunder or orders issued thereunder. The court shall not require the commissioner to post a bond.
  3. Refer any evidence available concerning the act, practice, or transaction to the appropriate criminal prosecutor who may, with or without the reference, institute the necessary criminal proceedings. The prosecutor may apply for and on due showing be issued the court's subpoena requiring the appearance forthwith of any defendant and the defendant's agents, employees, partners, officers, and directors, and the production of any documents, books, and records necessary for the prosecution of the criminal proceedings.



**SECTION 18. AMENDMENT.** Subsection 1 of section 10-04-16.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The department may:
  - a. Make such public or private investigations within or outside of this state as deemed necessary to determine whether any person has violated, is violating, or is about to violate any provision of this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder.
    - (1) For the purposes of this section, an investigation may include an examination of the books and records of any person registered under the provisions of this chapter. In the discretion of the commissioner, the expense reasonably attributed to an investigation under this section must be paid by the ~~dealer~~ broker-dealer, agent, investment adviser, or investment adviser representative whose affairs are investigated.
    - (2) No person is liable to a broker-dealer, agent, investment adviser, federal covered adviser, or investment adviser representative for defamation relating to a statement that is contained in a record required or requested by the securities department pursuant to this subsection or required to be maintained under section 10-04-10.3, unless the person knew, or should have known at the time the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.
  - b. Require or permit any person to file a statement in writing, under oath or otherwise, as to all the facts and circumstances concerning the matter to be investigated.
  - c. Publish information concerning any violation of this chapter or any rule or order hereunder and may keep confidential the information or documents obtained or prepared in the course of any investigation conducted under this section but only during an active and ongoing investigation. If an investigation under this section extends beyond six months, the commissioner shall, upon a request by any party, state in writing that the need for confidentiality still exists, the general reason why the need exists, and the date, as can best be determined at the time, when the need for confidentiality will cease.

**SECTION 19. AMENDMENT.** Section 10-04-17 of the North Dakota Century Code is amended and reenacted as follows:

**10-04-17. Remedies.**

1. Every sale or contract for sale made in violation of any of the provisions of this chapter, or of any rule or order issued by the commissioner under any provisions of this chapter, shall be voidable at the election of the purchaser. The person making such sale or contract for sale, and every director, officer, or agent of or for such seller who shall have participated or aided in any way in making such sale shall be jointly and severally

liable to such purchaser who may sue either at law or in equity to recover the full amount paid by such purchaser, together with all taxable court costs, interest as provided in this subsection 2, and reasonable attorney's fees, less the amount of any income received on the securities, upon tender to the seller, in person or in open court, of the securities sold or of the contracts made, or for damages if the purchaser no longer owns the securities. Damages are the amount that would be recoverable upon a tender less the value of the securities when the purchaser disposed of them and interest as provided in subsection 2 from the date of disposition. ~~Provided:~~

1. ~~That no action may be brought under this section for the recovery of the purchase price after five years from the date that the aggrieved party knew or reasonably should have known about the facts that are the basis for the alleged violation; and~~
2. ~~That no~~ No purchaser shall claim or have the benefit of this section if the purchaser shall have refused or failed to accept, within thirty days from the date of such offer, an offer in writing of the seller to take back the securities in question and to refund the full amount paid by such purchaser, together with interest on such amount for the period from the date of payment by such purchaser down to the date of repayment; ~~such~~. Any offer made pursuant to this subsection must be registered or exempt from registration under this chapter in order to preclude a subsequent civil action by the purchaser. For the purposes of this subsection, interest to shall be computed as follows:
  - a. In case such securities consist of interest-bearing obligations, at the same rate as provided in such securities, less the amount of any income received on the securities.
  - b. In case such securities consist of other than interest-bearing obligations, at the legal rate specified in section 47-14-05, less the amount of any income received on the securities.
2. Any person that receives directly or indirectly any consideration for providing investment advice to another person and violates this chapter is liable to the other person as follows:
  - a. For violations of section 10-04-15, the person is liable for the actual damages caused by the violative conduct, interest at the rate as specified in section 47-14-05, costs, and reasonable attorney's fees, less the amount of any income received as a result of the violative conduct.
  - b. For all other violations of this chapter, or any rule promulgated thereunder, the person is liable for all income collected in connection with the violative conduct.
3. The provisions of this section do not apply to a violation of ~~subsection 4 or 3 of~~ section 10-04-08.4.
4. Nothing in this chapter shall limit any statutory or common-law right of any person in any court for any act involved in the sale of securities.

5. No action may be taken under this section after five years from the date that the aggrieved party knew or reasonably should have known about the facts that are the basis for the alleged violation.
6. Each of the following persons are liable jointly and severally with and to the same effect as persons liable under this section:
  - a. A person who controls, supervises, or serves as an officer, director, or managing partner of a person liable under this section, unless the person did not know, and in the exercise of reasonable care could not have known, of the conduct by reason of which the liability is alleged to exist.
  - b. An individual who is an employee of or associated with a person liable under this section and who materially aids the conduct giving rise to the liability, unless the individual did not know, and in the exercise of reasonable care could not have known, of the conduct by reason of which the liability is alleged to exist.
  - c. A person who is a broker-dealer, agent, investment adviser, or investment adviser representative that materially aids the conduct giving rise to the liability under this section, unless the person did not know, and in the exercise of reasonable care could not have known, of the conduct by reason of which the liability is alleged to exist.

<sup>73</sup> **SECTION 20. AMENDMENT.** Subsection 1 of section 10-04-18 of the North Dakota Century Code is amended and reenacted as follows:

1. Any person who willfully violates any provision of this chapter, except ~~subsection 1 or 3 of section 10-04-08.4 or subsection 4 of section 10-04-10, or any rule or order of the commissioner made pursuant to the provisions of this chapter, or who engages in any act, practice, or transaction declared by any provision of this chapter to be unlawful shall be guilty of a class B felony.~~

<sup>74</sup> **SECTION 21. AMENDMENT.** Subsection 2 of section 10-04-18 of the North Dakota Century Code is amended and reenacted as follows:

2. As used in this section, the term "willfully", except as it applies to subdivisions a and b of subsection 1 of section 10-04-10.1 and ~~subsections subdivisions a and c of subsection 2 and 4 of section 10-04-15,~~ means that the person acted intentionally in the sense that the person was aware of what the person was doing. Proof of evil motive or intent to violate the law or knowledge that the law was being violated is not required.

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<sup>73</sup> Section 10-04-18 was also amended by section 21 of House Bill No. 1176, chapter 97.

<sup>74</sup> Section 10-04-18 was also amended by section 20 of House Bill No. 1176, chapter 97.

**SECTION 22. REPEAL.** Section 10-04-07 of the North Dakota Century Code is repealed.

Approved March 21, 2005

Filed March 22, 2005

## CHAPTER 98

### SENATE BILL NO. 2138

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

### NATURAL AREAS ACQUISITION ADVISORY COMMITTEE COMPOSITION

AN ACT to amend and reenact subsection 3 of section 10-06.1-10 of the North Dakota Century Code, relating to the composition of the natural areas acquisition advisory committee.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 3 of section 10-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

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

Approved March 31, 2005

Filed March 31, 2005

## CHAPTER 99

### SENATE BILL NO. 2116

(Government and Veterans Affairs Committee)  
(At the request of the Secretary of State)

## ELECTRONIC RECORDS AND SIGNATURES

AN ACT to create and enact section 10-15-01.1, a new subsection to section 10-15-36, a new subsection to section 10-15-54, and section 10-15-62 of the North Dakota Century Code, relating to legal recognition of electronic records and electronic signatures, exempting some information from open records laws, and fees for filing documents with the secretary of state; and to amend and reenact section 10-15-01 and subsection 1 of section 10-15-29 of the North Dakota Century Code, relating to definitions and officers of cooperative associations.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 10-15-01 of the North Dakota Century Code is amended and reenacted as follows:

**10-15-01. Definitions.** As used in this chapter, unless the context requires otherwise, the term:

1. "Association" includes both cooperatives and foreign cooperatives.
2. "Cooperative" means an association incorporated under this chapter.
3. "Corporation" means all corporations not associations.
4. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
5. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper that:
  - a. Creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
  - b. May be directly reproduced in paper form by the recipient through an automated process.
6. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
7. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
8. "Filed with the secretary of state" means, except as otherwise permitted by law or rule:

a. That a document meeting the applicable requirements of this chapter together with the fees provided in section 10-15-54 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:

(1) 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.

9. "Foreign cooperative" means an association incorporated under a cooperative law of another state which has members residing within this state and which is operating on the following cooperative bases:

a. Either no member of the foreign cooperative who is an individual is allowed more than one vote because of the amount of stock or membership capital the member owns therein, or the foreign cooperative does not pay dividends on stock or membership capital in excess of eight percent per annum.

b. The foreign cooperative shall not deal in the products of or for nonmembers to an amount greater in value than such as are handled by it for members.

c. The foreign cooperative distributes its proceeds according to either the law governing cooperatives of this state or the law of the state of its incorporation.

5- 10. "Member" means a person who has been qualified and accepted for membership in an association.

**SECTION 2.** Section 10-15-01.1 of the North Dakota Century Code is created and enacted as follows:

**10-15-01.1. Legal recognition of electronic records and electronic signatures.**

1. For purposes of this chapter:

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

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

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

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

2. The provisions of this chapter relating to electronic records or electronic transactions do not limit or supersede any provision of chapter 9-16.

**SECTION 3. AMENDMENT.** Subsection 1 of section 10-15-29 of the North Dakota Century Code is amended and reenacted as follows:

1. The principal officers of a cooperative are a president, one or more vice presidents and a treasurer as prescribed in the bylaws, and a secretary; and a treasurer. They shall be elected annually by the board at such time and in such manner as the bylaws provide. Each principal officer except the secretary and the treasurer must be a director of the cooperative. The offices of secretary and treasurer may be combined in one person. If the bylaws provide, the board of directors may also elect from its number a chairman and one or more vice chairmen, in which case the president and vice presidents need not be directors or stockholders.

**SECTION 4.** A new subsection to section 10-15-36 of the North Dakota Century Code is created and enacted as follows:

Fees paid to the secretary of state according to subsections 4, 5, and 6 are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by subsection 1 or lacks sufficient payment as required by subsections 4, 5, and 6.

**SECTION 5.** A new subsection to section 10-15-54 of the North Dakota Century Code is created and enacted as follows:

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

**SECTION 6.** Section 10-15-62 of the North Dakota Century Code is created and enacted as follows:

**10-15-62. Secretary of state - Confidential 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 confidential. The secretary of state shall delete or obscure any social security number or federal tax identification number before a copy of any document is released to the public.

Approved March 16, 2005

Filed March 17, 2005



**CHAPTER 100****HOUSE BILL NO. 1391**

(Representative DeKrey)

(Senator Traynor)

**CORPORATION AND LLC LAW REVISIONS**

AN ACT to create and enact sections 10-19.1-01.2, 10-19.1-102.1, 10-19.1-104.1, 10-19.1-104.2, 10-19.1-104.3, 10-19.1-104.4, 10-19.1-104.5, 10-19.1-104.6, 10-19.1-148.1, 10-19.1-148.2, 10-32-02.2, 10-32-106.1, 10-32-108.1, 10-32-108.2, 10-32-108.3, 10-32-108.4, 10-32-108.5, 10-32-108.6, 10-32-152.1, 10-32-152.2, 10-33-01.2, 10-33-141.1, 10-33-141.2, 45-13-01.1, 45-21-02.1, 45-21-04.1, 45-21-04.2, 45-21-07.1, 45-22-23.1, and 45-22-23.2 of the North Dakota Century Code, relating to corporations, limited liability companies, limited liability partnerships, and partnerships; to amend and reenact sections 10-19.1-01 and 10-19.1-08, subsections 3 and 4 of section 10-19.1-10, sections 10-19.1-13, 10-19.1-20, 10-19.1-21, 10-19.1-27, and 10-19.1-39, subsections 3 and 5 of section 10-19.1-43, sections 10-19.1-52 and 10-19.1-55, subsection 2 of section 10-19.1-61.1, section 10-19.1-63, subsection 2 of section 10-19.1-70, section 10-19.1-74, subsection 1 of section 10-19.1-75, section 10-19.1-75.1, subsection 7 of section 10-19.1-76.2, subsections 2 and 3 of section 10-19.1-76.3, subsections 4 and 10 of section 10-19.1-84, section 10-19.1-87, subsections 3 and 4 of section 10-19.1-88, subsection 1 of section 10-19.1-91, subsection 1 of section 10-19.1-103, subsection 2 of section 10-19.1-104, subsection 1 of section 10-19.1-110, section 10-19.1-129, subsection 1 of section 10-19.1-141, section 10-19.1-145, subsections 1, 2, 4, and 6 of section 10-19.1-146, sections 10-19.1-147, 10-19.1-148, 10-19.1-149, 10-19.1-149.1, 10-19.1-150, 10-31-07.3 and 10-32-02, subsections 2 and 4 of section 10-32-07, section 10-32-10, subsection 2 of section 10-32-12, subsection 4 of section 10-32-13, sections 10-32-17, 10-32-20, 10-32-24, and 10-32-42, subsection 1 of section 10-32-43, section 10-32-43.1, subsection 2 of section 10-32-51, sections 10-32-53 and 10-32-54, subsections 3 and 4 of section 10-32-55, sections 10-32-56 and 10-32-76, subsections 3 and 5 of section 10-32-80, section 10-32-91, subsection 1 of section 10-32-99, subsections 1 and 2 of section 10-32-100, subsections 1 and 5 of section 10-32-102, subsection 2 of section 10-32-106, subsections 1 and 4 of section 10-32-107, subsection 2 of section 10-32-108, subsection 1 of section 10-32-114, section 10-32-132, subsection 1 of section 10-32-144, section 10-32-148, subsections 1, 2, 3, 4, and 7 of section 10-32-149, sections 10-32-150, 10-32-152, 10-32-153, 10-32-153.1, 10-32-154, and 10-33-01, subsection 3 of section 10-33-06, section 10-33-10, subsection 2 of section 10-33-12, subsection 4 of section 10-33-13, sections 10-33-18, 10-33-22, and 10-33-34, subsections 3 and 5 of section 10-33-39, sections 10-33-47, 10-33-51, 10-33-72, 10-33-73, and 10-33-74, subsections 2, 5, and 7 of section 10-33-80, section 10-33-120, subsections 1 and 2 of section 10-33-123, subsection 1 of section 10-33-134, sections 10-33-138, 10-33-139, 10-33-140, 10-33-141, 10-33-142, 10-33-142.1, and 10-33-143, subsection 2 of section 10-33-145, sections 45-13-01, 45-13-02, and 45-13-04.1, subsections 3 and 4 of section 45-13-04.2, subsection 8 of section 45-13-05, sections 45-21-01, 45-21-02, 45-21-03, 45-21-04, 45-21-05, 45-21-06, 45-21-07, 45-22-01, 45-22-04,

45-22-05, 45-22-17, 45-22-21.1, 45-22-22, 45-22-23, 45-23-01, 45-23-02, 45-23-03, and 45-23-04, subsections 1 and 2 of section 45-23-05, and sections 45-23-06, 45-23-07, 45-23-08, and 45-23-09 of the North Dakota Century Code, relating to corporations, limited liability companies, limited liability partnerships, and partnerships; and to repeal section 45-22-01.1 of the North Dakota Century Code, relating to limited liability partnerships.

## BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. "Acquiring corporation" means the domestic or foreign corporation that acquires the shares of a corporation in an exchange.
2. "Acquiring organization" means the corporation, foreign corporation, or domestic or foreign limited liability company acquiring in an exchange the shares of a corporation or foreign corporation or the membership interests of a domestic or foreign limited liability company.
3. "Address" means:
  - a. In the case of a registered office or principal executive office, the mailing address, including ~~a~~ the 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~~ the zip code.
4. "Articles" means:
  - a. In the case of a corporation incorporated under or governed by this chapter, articles of incorporation, articles of amendment, a resolution of election to become governed by this chapter, a demand retaining the two-thirds majority for shareholder approval of certain transactions, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of shares, a statement of cancellation of authorized shares, articles of merger, articles of abandonment, articles of conversion, and articles of dissolution.
  - b. In the case of a foreign corporation, the term includes all ~~documents~~ records serving a similar function required to be filed with the secretary of state or other officer of the corporation's state of incorporation.
5. "Authenticated electronic communication" means:
  - a. That the electronic communication is delivered:
    - (1) To the principal place of business of the corporation; or

- (2) To an officer or agent of the corporation authorized by the corporation to receive the electronic communication; and
- b. That the electronic communication sets forth information from which the corporation can reasonably conclude that the electronic communication was sent by the purported sender.
6. "Ballot" means a written ballot or a ballot transmitted by electronic communications.
7. "Board" or "board of directors" means the board of directors of a corporation.
- ~~7.~~ 8. "Board member" means:
- a. An individual serving on the board of directors in the case of a corporation; and
- b. An individual serving on the board in the case of a limited liability company.
- ~~8.~~ 9. "Bylaws" means the code adopted for the regulation or management of the internal affairs of a corporation, regardless of how that code is designated.
- ~~9.~~ 10. "Class", when used with reference to shares, means a category of shares that differs in designation or one or more rights or preferences from another category of shares of the corporation.
- ~~40.~~ 11. "Closely held corporation" means a corporation that does not have more than thirty-five shareholders.
- ~~44.~~ 12. "Constituent corporation" means a corporation or a foreign corporation that:
- a. In a merger, is either the surviving corporation or a corporation that is merged into the surviving organization; or
- b. In an exchange, is either the acquiring corporation or a corporation whose shares are acquired by the acquiring organization.
- ~~42.~~ 13. "Constituent organization" means a corporation, foreign corporation, limited liability company, or foreign limited liability company 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.
14. "Converted organization" means the organization into which a converting organization converts pursuant to sections 10-19.1-104.1 through 10-19.1-104.6.

15. "Converting organization" means an organization that converts into another organization pursuant to sections 10-19.1-104.1 through 10-19.1-104.6.
- ~~43.~~ 16. "Corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by this chapter.
- ~~44.~~ 17. "Director" means a member of the board.
- ~~45.~~ 18. "Distribution" means a direct or indirect transfer of money or other property, other than a corporation's own shares, with or without consideration, or an incurrence or issuance of indebtedness, by a corporation to any of the corporation's shareholders in respect of the corporation's shares, and may be in the form of a dividend or a distribution in liquidation, or as consideration for the purchase, redemption, or other acquisition of the corporation's shares, or otherwise.
- ~~46.~~ 19. "Division" or "combination" means dividing or combining shares of a class or series, whether issued or unissued, into a greater or lesser number of shares of the same class or series.
- ~~47.~~ 20. "Domestic organization" means an organization created under the laws of this state.
- ~~48.~~ 21. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- ~~49.~~ 22. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper that:
- a. Creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
  - b. May be directly reproduced in paper form by the recipient through an automated process.
- ~~20.~~ 23. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
- ~~24.~~ 24. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and ~~executed~~ signed or adopted by a person with the intent to sign the record.
- ~~22.~~ 25. "Filed with the secretary of state" means, except as otherwise permitted by law or rule:
- a. That a ~~document~~ record meeting the applicable requirements of this chapter, together with the fees provided in section 10-19.1-147, 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~~ did then:

- (1) Record the actual date on which the ~~document is record was~~ filed, and if different the effective date of filing; and
  - (2) Record the ~~document~~ record in the office of the secretary of state.
- ~~23.~~ 26. "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.
- ~~24.~~ 27. "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.
- ~~25.~~ 28. "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.~~ 29. "Good faith" means honesty in fact in the conduct of an act or transaction.
30. "Governing statute" of an organization means:
  - a. With respect to a domestic organization, the following chapters of this code which govern the internal affairs of the organization:
    - (1) If a corporation, then this chapter;
    - (2) If a limited liability company, then chapter 10-32;
    - (3) If a general partnership, then chapters 45-13 through 45-21;
    - (4) If a limited partnership, then chapter 45-10.2;
    - (5) If a limited liability partnership, then chapter 45-22; and
    - (6) If a limited liability limited partnership, then chapter 45-23; and
  - b. With respect to a foreign organization, the laws of the jurisdiction under which the organization is created and under which the internal affairs of the organization are governed.
- ~~27.~~ 31. "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:
  - 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.

- ~~28.~~ 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.
- ~~29.~~ 32. "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.
- ~~30.~~ 33. "Limited liability company" means a limited liability company, other than a foreign limited liability company, organized under chapter 10-32.
- ~~34.~~ 34. "Nonprofit corporation" means a corporation, whether domestic or foreign, incorporated under or governed by chapter 10-33.
- ~~32.~~ 35. "Notice":
- a. Is given by a shareholder of a corporation to the corporation or an officer of the corporation:
    - (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; 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. Is given, 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;
  - (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.
  - (5) When the method is fair and reasonable when all of the circumstances are considered.
- d. Is given by mail when deposited in the United States mail with sufficient postage affixed.
- e. Is deemed received when it is given.

~~33.~~ 36. "Officer" means an individual who is eighteen years of age or more who is:

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

- b. Deemed elected as an officer pursuant to section 10-19.1-56.

~~34-~~ 37. "Organization" means:

- a. Whether domestic or foreign, a corporation, limited liability company, general 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~~ or any other person subject to a governing statute; 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.

~~35-~~ 38. "Outstanding shares" means all shares duly issued and not reacquired by a corporation.

~~36-~~ 39. "Owners" means:

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

~~37-~~ 40. "Ownership interests" means for an organization that is:

- a. ~~Shares in the case of a~~ A corporation, its shares;
- b. ~~Membership interests in the case of a nonprofit corporation or A~~ limited liability company, its membership interests; and
- c. ~~Similar interests in other organizations~~ A limited partnership, its partnership interests;
- d. A general partnership, its partnership interests;
- e. A limited liability partnership, its partnership interests; or
- f. A limited liability limited partnership, its partnership interests.

~~38-~~ 41. "Parent" of a specified corporation means a corporation ~~or, a foreign corporation, a limited liability company, or a foreign limited liability company~~ that directly, or indirectly through related organizations, owns more than fifty percent of the voting power of the shares entitled to vote for directors of the specified corporation.

~~39-~~ 42. "Principal executive office" means:

- a. If the corporation has an elected or appointed president, then an office where the elected or appointed president of a corporation has an office; or
- b. If the corporation has no elected or appointed president, then the registered office of the corporation.



- 40- 43. "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.
- 44- 44. "Registered office" means the place in this state designated in ~~the a~~ corporation's articles of incorporation or in a foreign corporation's certificate of authority as the registered office ~~of the corporation~~.
- 42- 45. "Related organization" means an organization that controls, is controlled by, or is under common control with another organization with control existing if an organization:
- a. Owns, directly or indirectly, at least fifty percent of the shares, membership interests, or other ownership interests of another organization;
  - b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or more of the voting members of the governing body of another organization; or
  - c. Has the power, directly or indirectly, to direct or cause the direction of the management and policies of another organization, whether through the ownership of voting interests, by contract, or otherwise.
- 43- 46. "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.
- 44- 47. "Security" has the meaning given in section 10-04-02.
- 45- 48. "Series" means a category of shares, within a class of shares authorized or issued by a corporation by or pursuant to a corporation's articles, that have some of the same rights and preferences as other shares within the same class, but that differ in designation or one or more rights and preferences from another category of shares within that class.
- 46- 49. "Share" means one of the units, however designated, into which the shareholders' proprietary interests in a corporation are divided.
- 47- 50. "Shareholder" means a person registered on the books or records of a corporation or the corporation's transfer agent or registrar as the owner of whole or fractional shares of the corporation.
- 48- 51. "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 telecommunication or electronically, or in any other manner reproduced on the ~~document~~ record, is placed on a ~~document~~ record, as provided under section 41-01-09; and
  - b. With respect to a ~~document~~ record required by this chapter to be filed with the secretary of state, that:

- (1) The ~~document~~ record is signed by a person authorized to do so by this chapter, the articles or bylaws, or a resolution approved by the directors as required under section 10-19.1-46 or the shareholders as required under section 10-19.1-74; and
- (2) The signature and the ~~document~~ record are communicated by a method or medium of communication acceptable by the secretary of state.

~~49.~~ 52. "Subscriber" means a person ~~who~~ that subscribes for shares in a corporation, whether before or after incorporation.

~~50.~~ 53. "Subsidiary" of a specified corporation means:

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

~~51.~~ 54. "Surviving corporation" means the domestic or foreign corporation resulting from a merger.

~~52.~~ 55. "Surviving organization" means the corporation or foreign corporation or domestic or foreign limited liability company resulting from a merger which:

- a. May preexist the merger; or
- b. May be created by the merger.

~~53.~~ 56. "Vote" includes authorization by written action.

~~54.~~ 57. "Written action" means:

- a. A written ~~document~~ record signed by all of the persons required to take the action; or
- b. The counterparts of a written ~~document~~ record signed by any of the persons taking the action described.
  - (1) Each counterpart constitutes the action of the person signing; and
  - (2) All the counterparts, taken together, constitute one written action by all of the persons signing the counterparts.

**SECTION 2.** Section 10-19.1-01.2 of the North Dakota Century Code is created and enacted as follows:

**10-19.1-01.2. Knowledge and notice.**

1. A person knows or has knowledge of a fact if the person has actual knowledge of it. A person does not know or have knowledge of a fact merely because the person has reason to know or have knowledge of the fact.
2. A person has notice of a fact if the person:
  - a. Knows of the fact;
  - b. Has received notice of the fact as provided in subsection 35 of section 10-19.1-01;
  - c. Has reason to know the fact exists from all of the facts known to the person at the time in question; or
  - d. Has notice of it under subsection 3.
3. Subject to subsection 8, a person has notice of:
  - a. The intention of a corporation to dissolve, ninety days after the effective date of the filed notice of intent to dissolve;
  - b. The dissolution of a corporation, ninety days after the effective date of the filed articles of dissolution;
  - c. The conversion of a corporation, ninety days after the effective date of the filed articles of conversion; or
  - d. The merger of a corporation, ninety days after the effective date of the filed articles of merger.
4. A person notifies or gives a notification to another person by taking the steps provided in subsection 35 of section 10-19.1-01, whether or not the other person learns of it.
5. A person receives a notification as provided in subsection 35 of section 10-19.1-01.
6. Except as otherwise provided in subsection 7 and except as otherwise provided in subsection 35 of section 10-19.1-01, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the person knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the attention of the individual if the person had exercised reasonable diligence.
  - a. A person other than an individual exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the person and there is reasonable compliance with the routines.
  - b. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is

part of the regular duties of the individual or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

7. Knowledge, notice, or receipt of a notification of a fact relating to the corporation by an officer or director is effective immediately as knowledge of, notice to, or receipt of a notification by the corporation, except in the case of a fraud on the corporation committed by or with the consent of the officer or director. Knowledge, notice, or receipt of a notification of a fact relating to the corporation by a shareholder who is not an officer or director, is not effective as knowledge by, notice to, or receipt of a notification by the corporation.
8. Notice otherwise effective under subsection 3 does not affect the power of a person to transfer real property held in the name of a corporation unless at the time of transfer a certified copy of the relevant statement, amendment, or articles, as filed with the secretary of state, has been recorded in the office of the county recorder in the county in which the real property affected by the statement, amendment, or articles is located.
9. With respect to notice given by a form of electronic communication:
  - a. Consent by an officer or director to notice given by electronic communication may be given in writing or by authenticated electronic communication. The corporation is entitled to rely on any consent so given until revoked by the officer or director. However, no revocation affects the validity of any notice given before receipt by the corporation of revocation of the consent.
  - b. An affidavit of an officer or director or an authorized agent of the corporation, 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.

**SECTION 3. AMENDMENT.** Section 10-19.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-08. Purposes.** A corporation may be incorporated under this chapter for any lawful business purpose or purposes, unless some other statute of this state requires incorporation for any of those purposes under a different law. Unless otherwise provided in its articles, a corporation has general business purposes.

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

3. The following provisions govern a corporation unless modified in the articles:
  - a. A corporation has general business purposes as provided in section 10-19.1-08.
  - b. A corporation has perpetual existence and certain powers as provided in section 10-19.1-26.

- c. The power to adopt, amend, or repeal the bylaws is vested in the board as provided in section 10-19.1-31.
- d. The affirmative vote of a majority of directors present is required for an action of the board as provided in section 10-19.1-46.
- e. A written action by the board taken without a meeting must be signed by all directors as provided in section 10-19.1-47.
- f. The board may authorize the issuance of securities and rights to purchase securities as provided in subsection 1 of section 10-19.1-61.
- g. All shares are common shares entitled to vote and are of one class and one series as provided in subdivisions a and b of subsection 2 of section 10-19.1-61.
- h. All shares have equal rights and preferences in all matters not otherwise provided for by the board as provided in subdivisions a and b of subsection 2 of section 10-19.1-61.
- i. The par value of shares is fixed at one cent per share for certain purposes and may be fixed by the board for certain other purposes as provided in subdivisions a and b of subsection 2 of section 10-19.1-61.
- j. ~~The~~ Subject to article XII of the Constitution, the board or the shareholders may issue shares for any consideration or for no consideration to effectuate share dividends or splits and determine the value of nonmonetary consideration as provided in subsection 1 of section 10-19.1-63.
- k. Shares of a class or series may not be issued to holders of shares of another class or series to effectuate share dividends or splits, unless authorized by a majority of the voting power of the shares of the same class or series as the shares to be issued as provided in subsection 1 of section 10-19.1-63.
- l. A corporation may issue rights to purchase securities whose terms, provisions, and conditions are fixed by the board as provided in section 10-19.1-64.
- m. The affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote at a duly held meeting is required for an action of the shareholders, except when this chapter requires the affirmative vote of a:
  - (1) A plurality of the votes cast as provided in subsection 1 of section 10-19.1-39; or
  - (2) A majority of the voting power of all shares entitled to vote as provided in subsection 1 of section 10-19.1-74.
- n. Shares of a corporation acquired by the corporation may be reissued as provided in subsection 1 of section 10-19.1-93.

- o. An exchange need not be approved by shareholders of the acquiring corporation unless the outstanding shares entitled to vote of that corporation will be increased by more than twenty percent immediately after the exchange as provided in subdivision c of subsection 3 of section 10-19.1-98.
  - p. An exchange need not be approved by shareholders of the acquiring corporation unless the outstanding participating shares of that corporation will be increased by more than twenty percent immediately after the exchange as provided in subdivision d of subsection 3 of section 10-19.1-98.
  - q. Each share has one vote unless otherwise provided in the terms of the share as provided in subsection 5 of section 10-19.1-73.2.
  - r. The board may effect share dividends, divisions, and combinations under certain circumstances without shareholder approval as provided in section 10-19.1-61.1.
  - s. A written action of shareholders must be signed by all shareholders as provided in section 10-19.1-75.
- 4. The following provisions govern a corporation unless modified either in the articles or in the bylaws:
  - a. A director serves for an indefinite term that expires upon the election and qualification of a successor as provided in section 10-19.1-35.
  - b. The compensation of directors is fixed by the board as provided in section 10-19.1-37.
  - c. The method provided in section 10-19.1-41 or 10-19.1-41.1 must be used for removal of directors.
  - d. The method provided in section 10-19.1-42 must be used for filling board vacancies.
  - e. If the board 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 10-19.1-43.
  - f. A director may call a board meeting, and the notice of the meeting need not state the purpose of the meeting as provided in subsection 3 of section 10-19.1-43.
  - g. A majority of the board is a quorum for a board meeting as provided in section 10-19.1-45.
  - h. A committee must consist of one or more persons, who need not be directors, appointed by affirmative vote of a majority of the directors present as provided in subsection 2 of section 10-19.1-48.
  - i. The board may establish a special litigation committee as provided in section 10-19.1-48.

- j. Unless the board determines otherwise, the officers have specified duties as provided in section 10-19.1-53.
- k. Officers may delegate some or all of their duties and powers, if not prohibited by the board from doing so as provided in section 10-19.1-59.
- l. The board may establish uncertificated shares as provided in subsection 6 of section 10-19.1-66.
- ~~m.~~ m. Regular meetings of shareholders need not be held, unless demanded by a shareholder under certain conditions as provided in section 10-19.1-71.
- ~~n.~~ n. No fewer than ten nor more than fifty days' notice is required for a meeting of shareholders as provided in subsection 3 of section 10-19.1-73.
- ~~o.~~ o. The number of shares required for a quorum at a shareholders' meeting is a majority of the voting power of the shares entitled to vote at the meeting as provided in section 10-19.1-76.
- ~~p.~~ p. The board may fix a date up to fifty days before the date of a shareholders' meeting as the date for the determination of the holders of shares entitled to notice of and entitled to vote at the meeting as provided in subsection 1 of section 10-19.1-73.2.
- ~~q.~~ q. Indemnification of certain persons is required as provided in section 10-19.1-91.
- ~~r.~~ r. The board may authorize, and the corporation may make, distributions not prohibited, limited, or restricted by an agreement as provided in subsection 1 of section 10-19.1-92.

<sup>75</sup> **SECTION 5. AMENDMENT.** Section 10-19.1-13 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-13. 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. Must 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 indicating or implying the corporation may not be incorporated under this chapter.~~

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<sup>75</sup> Section 10-19.1-13 was also amended by section 1 of House Bill No. 1273, chapter 384, and section 2 of House Bill No. 1273, chapter 384.

- 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. d. May not contain a word or phrase ~~indicating or implying that~~ indicates or implies the corporation is:
  - (1) Is incorporated for a purpose other than a legal:
    - (a) A lawful business purpose for which a corporation may be incorporated under this chapter; or
    - (b) For a purpose stated in its articles of incorporation; or
  - (2) May not be incorporated under this chapter.
- f. e. May not be the same as, or deceptively similar to:
  - (1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the articles a ~~document~~ record that complies with subsection ~~7 3~~, of:
    - (a) Another corporation;
    - (b) A corporation incorporated or authorized to do business in this state under another chapter 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~~ 45-10.2-11, 45-13-04.2, or 45-22-05;
  - (3) A fictitious name registered in the manner provided in chapter 45-11; or
  - (4) A trade name registered in the manner provided in chapter 47-25.
- 2. The secretary of state shall determine whether a corporate name is "deceptively similar" to another name for purposes of this chapter.
- 3. 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 to which the proposed name has been determined to be deceptively similar; or
    - b. A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.
  - 4. This subsection does not affect the right of a domestic corporation existing on July 1, 1986, or a foreign corporation authorized to do business in this state on that date to continue the use of its name.
  - 5. This section and section 10-19.1-14 do not:
    - a. Abrogate or limit:
      - (1) The law of unfair competition or unfair practices;
      - (2) Chapter 47-25;
      - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, service marks; or
      - (4) Any other rights to the exclusive use of names or symbols; or
    - b. Derogate the common law or the principles of equity.
- 4. 6. A corporation that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another 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~~ 45-10.2-11, 45-13-04.2, 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.
- ~~5.~~ 7. The use of a name by a corporation in violation of this section does not affect or vitiate its corporate existence. However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the corporation from doing business under a name assumed in

violation of this section, although its articles may have been filed with the secretary of state and a certificate of incorporation issued.

6. 8. A corporation whose period of existence has expired or that is involuntarily dissolved by the secretary of state pursuant to section 10-19.1-146 may reacquire the right to use that name by refiling articles of incorporation pursuant to section 10-19.1-11, unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment as provided in subsection 2. A corporation that cannot reacquire the use of its corporate name shall adopt a new corporate name that complies with the provisions of this section:

- a. By refiling articles of incorporation pursuant to section 10-19.1-11;
- b. By amending pursuant to section ~~40-19.1-427~~ 10-19.1-17; or
- c. By reinstating pursuant to section 10-19.1-146;

~~unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 2. A corporation that cannot reacquire the use of its corporate name shall adopt a new corporate name which complies with the provisions of this section.~~

7. 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 to which the proposed name has been determined to be deceptively similar; or
- b. A certified copy of a judgment of a court in this state establishing the prior 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 July 1, 1997, or a foreign corporation authorized to do business in this state on that date to continue the use of its name.~~

9. Subject to section 10-19.1-133, this section applies to any foreign corporation transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.

**SECTION 6. AMENDMENT.** Section 10-19.1-20 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-20. Class or series voting on amendments.** The holders of the outstanding shares of a class or series are entitled to vote as a class or series upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles, if the amendment would:

1. ~~Increase or decrease the aggregate number of authorized shares of the class or series;~~

- ~~2-~~ Increase or decrease the par value of the shares of the class or series;
- ~~3-~~ 2. Effect an exchange, reclassification, or cancellation of all or part of the shares of the class or series or effect a combination of outstanding shares of a class or series into a lesser number of shares of the class or series where each other class and series is not subject to a similar combination;
- ~~4-~~ 3. Effect an exchange, or create a right of exchange, of all or any part of the shares of another class or series for the shares of the class or series;
- ~~5-~~ 4. Change the rights or preferences of the shares of the class or series;
- ~~6-~~ Change the shares of the class or series, whether with or without par value, into the same or a different number of shares, either with or without par value, of another class or series;
- ~~7-~~ 5. Create a new class or series of shares having rights and preferences prior and superior to the shares of that class or series, or increase the rights and preferences or the number of authorized shares, of a class or series having rights and preferences prior or superior to the shares of that class or series;
- ~~8-~~ 6. Divide the shares of the class into series and determine the designation of each series and the variations in the relative rights and preferences between the shares of each series, or authorize the board to do so;
- ~~9-~~ 7. Limit or deny any existing preemptive rights of the shares of the class or series; or
- ~~10-~~ 8. Cancel or otherwise affect distributions on the shares of the class or series that have accrued but have not been declared.

**SECTION 7. AMENDMENT.** Section 10-19.1-21 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-21. Articles of amendment.** When an amendment has been adopted, articles of amendment must be prepared ~~that~~ which contain:

1. The name of the corporation.
2. The amendment adopted.
3. The date of the adoption of the amendment by the shareholders or by the incorporators or the board when no shares have been issued.
- ~~4. If the amendment provides for but does not establish the manner for effecting an exchange, reclassification, or cancellation of issued shares, a statement of the manner in which it will be effected.~~
- ~~5-~~ If the amendment restates the articles in their entirety, a statement that the restated articles supersede the original articles and all amendments to ~~them~~ the original articles.

- 6- 5. A statement that the amendment has been adopted pursuant to this chapter.

**SECTION 8. AMENDMENT.** Section 10-19.1-27 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-27. Corporate seal.** A corporation may, but need not, have a corporate seal. The use or nonuse of a corporate seal does not affect the validity, recordability, or enforceability of a document record or act. If a corporation has a corporate seal, the use of the seal by the corporation on a document record is not necessary.

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

**10-19.1-39. ~~Cumulative voting~~ Voting for directors - Cumulative voting.**  
~~Each~~ With respect to the election of directors:

1. Unless otherwise provided in the articles and subject to subsection 2, directors are elected by a plurality of the voting power of the shares present and entitled to vote on the election of directors at a meeting at which a quorum is present.
2. As provided in article XII of the Constitution of North Dakota, each shareholder entitled to vote for directors has the right to cumulate those votes in all elections of directors by giving written notice of intent to cumulate those votes to any officer of the corporation before the meeting, or to the presiding officer at the meeting at which the election is to occur at any time before the election of directors at the meeting, in which case:
  - 4- a. The presiding officer at the meeting shall announce, before the election of directors, that shareholders may cumulate their votes; and
  - 2- b. Each shareholder shall cumulate those votes either by casting for one candidate the number of votes equal to the number of directors to be elected multiplied by the number of votes represented by the shares entitled to vote, or by distributing all of those votes on the same principle among any number of candidates.

**SECTION 10. AMENDMENT.** Subsections 3 and 5 of section 10-19.1-43 of the North Dakota Century Code are amended and reenacted as follows:

3. Unless the articles or bylaws provide for a different time period, a director may call a board meeting by giving at least ten days' notice or, in the case of organizational meetings pursuant to subsection 2 of section 10-19.1-30, at least three days' notice, to all directors of the date, time, and place of the meeting.
  - a. The notice need not state the purpose of the meeting unless the articles or bylaws require it.
  - b. Any notice to a director given under any provision of this chapter, the articles, or the bylaws by a form of electronic communication

consented to by the director to whom the notice is given is effective when given.

- c. Consent by a director to notice given by electronic communication may be given in writing or by authenticated electronic communication.

(1) Any consent so given may be relied upon until revoked by the director.

(2) However, no revocation affects the validity of any notice given before a receipt of revocation of the consent.

5. A director may waive notice of a meeting of the board. A waiver of notice by a director entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, by authenticated electronic communication, or by attendance. Attendance by a director at a meeting is a waiver of notice of that meeting, except when the director 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 11. AMENDMENT.** Section 10-19.1-52 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-52. Officers.** The officers of a corporation must be individuals who are eighteen years of age or more and shall consist of a president, a secretary, and a treasurer and may also include one or more vice presidents and any other officers or agents as may be ~~prescribed by~~ provided in the bylaws. Each of the officers must be elected by the board at a time and in a manner as may be provided in the bylaws unless the articles or bylaws provide that the shareholders may elect the officers.

**SECTION 12. AMENDMENT.** Section 10-19.1-55 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-55. Multiple offices.** Any number of offices or functions of those offices may be held or exercised by the same individual. If a ~~document~~ record must be signed by individuals holding different offices or functions and an individual holds or exercises more than one of those offices or functions, that individual may sign the ~~document~~ record in more than one capacity, but only if the ~~document~~ record indicates each capacity in which the individual signs.

**SECTION 13. AMENDMENT.** Subsection 2 of section 10-19.1-61.1 of the North Dakota Century Code is amended and reenacted as follows:

2. Articles of amendment must be adopted by the board and the shareholders under ~~sections~~ section 10-19.1-19 and, if required, section 10-19.1-20 to effect a division or combination if, as a result of the proposed division or combination:
- The rights or preferences of the holders of outstanding shares of any class or series will be adversely affected; or
  - The percentage of authorized shares of any class or series remaining unissued after the division or combination will exceed

the percentage of authorized shares of that class or series that were unissued before the division or combination.

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

**10-19.1-63. Consideration for shares - Value and payment - Liability.**

1. Subject to ~~any restrictions in article XII of the articles:~~

a. ~~The Constitution of North Dakota,~~ consideration for the issuance of shares may be paid, in whole or in part, in money; in other property, tangible or intangible; or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued is received by the corporation, the shares are considered fully paid and nonassessable. Neither promissory notes nor future services constitute payment or part payment for shares of a corporation.

b. ~~Without~~

2. Subject to any restrictions in the articles, 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.

2- 3. The determinations of the board or the shareholders as to the amount or fair value or the fairness to the corporation of the consideration received or to be received by the corporation for its shares or the terms of payment, as well as the agreement to issue shares for that consideration, 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. Directors or shareholders who are present and entitled to vote, and who, intentionally or without reasonable investigation, fail to vote against approving an issue of shares for a consideration that is unfair to the corporation, or overvalue property or services received or to be received by the corporation as consideration for shares issued, are jointly and severally liable to the corporation for the benefit of the then shareholders who did not consent to and are damaged by the action, to the extent of the damages of those shareholders. A director or shareholder against whom a claim is asserted pursuant to this section, except in case of knowing participation in a deliberate fraud, is entitled to contribution on an equitable basis from other directors or shareholders who are liable under this section.

- ~~3-~~ 4. A corporation may issue only shares for which the agreed consideration has been fully paid, delivered, or rendered to the corporation:
- a. The reasonable charges and expenses of organization or reorganization of a corporation, and the reasonable expenses of and compensation for the sale or underwriting of its shares, may be paid or allowed by the corporation out of the consideration received by it in payment for its shares without rendering the shares not fully paid and nonassessable.
  - b. If shares are issued in violation of this subsection, the following persons are jointly and severally liable to the corporation for the difference between the agreed consideration for the shares and the consideration actually received by the corporation:
    - (1) A director or shareholder who was present and entitled to vote but who failed to vote against the issuance of the shares knowing of the violation;
    - (2) The person to whom the shares were issued; and
    - (3) A successor or transferee of the interest in the corporation of a person described in paragraph 1 or 2, including a purchaser of shares, a subsequent assignee, successor, or transferee, a pledgee, a holder of any other security interest in the assets of the corporation or shares granted by the person described in paragraph 1 or 2, or a legal representative of or for the person or estate of the person, which successor, transferee, purchaser, assignee, pledgee, holder, or representative acquired the interest knowing of the violation.
- ~~4-~~ 5. A pledgee or holder of any other security interest in all or any shares that have been issued in violation of subsection ~~3~~ 4 is not liable under subdivision b of subsection ~~3~~ 4 if all those shares are surrendered to the corporation. The surrender does not impair any rights of the pledgee or holder of any other security interest against the pledgor or person granting the security interest.
- ~~5-~~ 6. A pledgee, holder of any other security interest, or legal representative is liable under subdivision b of subsection ~~3~~ 4 only in that capacity. The liability of the person under subdivision a of subsection ~~3~~ 4 is limited to the assets held in that capacity for the person or estate of the person described in paragraph 1 or 2 of subdivision b of subsection ~~3~~ 4.
- ~~6-~~ 7. Each person liable under subdivision b of subsection ~~3~~ 4 has a full right of contribution on an equitable basis from all other persons liable under that subdivision for the same transaction.
- ~~7-~~ 8. An action may not be maintained against a person under subdivision b of subsection ~~3~~ 4 unless commenced within two years from the date on which shares are issued in violation of subsection ~~3~~ 4.

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

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

**SECTION 16. AMENDMENT.** Section 10-19.1-74 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-74. Act of the shareholders.**

1. Unless this chapter or the articles require a greater vote or voting by class and except for the election of directors which is governed by section 10-19.1-39, the shareholders shall take action by the affirmative vote of the holders of the greater of:
  - a. A majority of the voting power of the shares present and entitled to vote on that item of business; or
  - b. A majority of the voting power of the minimum number of shares entitled to vote that would constitute a quorum for the transaction of business at the meeting.

If the articles require a larger proportion or number than is required by this chapter for a particular action, then the articles control.

2. In any case when a class or series of shares is entitled by this chapter, the articles of incorporation, or the terms of the shares to vote as a class or series, the matter being voted upon must also receive the affirmative vote of the owners of the same proportion of the shares as is required as provided in subsection 1, unless the articles of incorporation require a larger proportion. Unless otherwise stated in the articles or the bylaws in the case of voting as a class or series, the minimum percentage of the total voting power of shares of the class or series that must be present is equal to the minimum percentage of all shares entitled to vote required to be present under section 10-19.1-76.
3. Unless otherwise provided in the articles or bylaws, shareholders may take action at a meeting by:
  - a. Voice or ballot;
  - b. Action without a meeting pursuant to section 10-19.1-75;
  - c. ~~Written ballot~~ Ballot pursuant to section 10-19.1-75.1; or



- d. ~~Electronic~~ Remote communication pursuant to section 10-19.1-75.2.

**SECTION 17. AMENDMENT.** Subsection 1 of section 10-19.1-75 of the North Dakota Century Code is amended and reenacted as follows:

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. After the adoption of the initial articles, an amendment to the articles to permit written action to be taken by less than all shareholders requires the approval of all of the shareholders entitled to vote on the amendment.
  - b. 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 no later than five days after the effective time of the action.
  - ~~b.~~ c. Failure to provide the notice does not invalidate the written action.
  - ~~c.~~ d. 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.

**SECTION 18. AMENDMENT.** Section 10-19.1-75.1 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-75.1. ~~Action~~ Shareholder action by written ballot.**

1. Except as provided in subsection 5 and unless prohibited or limited by the articles or bylaws, an action that may be taken at a regular or special meeting of shareholders may be taken without a meeting if the corporation mails or delivers a ~~written~~ ballot to every shareholder entitled to vote on the matter.
2. A ~~written~~ ballot must set forth each proposed action and provide an opportunity to vote for or against each proposed action.
3. Approval by ~~written~~ ballot under this section is valid only if:
  - a. The number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action; and
  - b. The number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.
4. Solicitations for votes by ~~written~~ ballot must:
  - a. Indicate the number of responses needed to meet the quorum requirements;

- b. State the percentage of approvals necessary to approve each matter other than election of directors; and
  - c. Specify the time by which a ballot must be received by the corporation in order to be counted.
5. Except as otherwise provided in the articles or bylaws, a ~~written~~ ballot may not be revoked.
6. With respect to a ballot by electronic communication:
- a. A corporation may deliver a ballot by electronic communication only if the corporation complies with subsection 4 of section 10-19.1-75.2 as if the ballot were a notice.
  - b. Consent by a shareholder to receive notice by electronic communication in a certain manner constitutes consent to receive a ballot by electronic communication in the same manner.

**SECTION 19. AMENDMENT.** Subsection 7 of section 10-19.1-76.2 of the North Dakota Century Code is amended and reenacted as follows:

7. Subject to section 10-19.1-76.3 and an express restriction, limitation, or specific reservation of authority of the proxy appearing on the appointment, the corporation may accept a vote or action by the proxy as the action of the shareholder. The vote of a proxy is final, binding, and not subject to challenge; ~~but~~. However, the proxy is liable to the shareholder or beneficial owner for damages resulting from a failure to exercise the proxy or from an exercise of the proxy in violation of the authority granted in the appointment.

**SECTION 20. AMENDMENT.** Subsections 2 and 3 of section 10-19.1-76.3 of the North Dakota Century Code are amended and reenacted as follows:

2. Unless the articles or bylaws provide otherwise, if the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the record name of a shareholder, the corporation if acting in good faith may accept the vote, consent waiver, or proxy appointment and give it effect as the act of the shareholder if:
- a. The shareholder is an organization and the name signed purports to be that of an officer, manager, or agent of the organization;
  - b. The name signed purports to be that of an administrator, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;
  - c. The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder, and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

- d. The name signed purports to be that of a pledgee, beneficial owner, or attorney in fact of the shareholder, and if, the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment; or
    - e. Two or more persons hold the shares as cotenants or fiduciaries and the name signed purports to be the name of at least one of the coholders and the person signing appears to be acting on behalf of all the coholders.
  3. The corporation may reject a vote, consent, waiver, or proxy appointment if the officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis ~~for to~~ doubt about the validity of the signature on it or ~~about the signatory's authority~~ of the signatory to sign for the shareholder.

**SECTION 21. AMENDMENT.** Subsections 4 and 10 of section 10-19.1-84 of the North Dakota Century Code are amended and reenacted as follows:

4. A shareholder or a holder of a voting trust certificate of a corporation that is not a publicly held corporation has an absolute right, upon written demand, to examine and copy, in person or by a legal representative, at any reasonable time, and the corporation shall make available within ten days after receipt by an officer of the corporation of the written demand:
    - a. The share register; and
    - b. All ~~documents~~ records referred to in subsection 2.
  10. Copies of the share register and all ~~documents~~ records referred to in subsection 2, if required to be furnished under this section, must be furnished at the expense of the corporation. In all other cases, the corporation may charge the requesting party a reasonable fee to cover the expenses of providing the copy.

**SECTION 22. AMENDMENT.** Section 10-19.1-87 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-87. Rights of dissenting shareholders.**

1. A shareholder of a corporation may dissent from, and obtain payment for the fair value of the shareholder's shares in the event of, any of the following corporate actions:
  - a. ~~An~~ Unless otherwise provided in the articles, an amendment of the articles that materially and adversely affects the rights or preferences of the shares of a dissenting shareholder in that it:
    - (1) Alters or abolishes a preferential right of the shares;
    - (2) Creates, alters, or abolishes a right in respect of the redemption of the shares, including a provision respecting a sinking fund for the redemption or repurchase of shares;

- (3) Alters or abolishes a preemptive right of the holder of the shares to acquire shares, securities other than shares, or rights to purchase 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; or
  - (5) Eliminates the right to obtain payment under this subdivision;
- 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 that requires shareholder approval under subsection 4 2 of section 10-19.1-104, or a~~ but not including:
- (1) A disposition in dissolution described in subsection 2 of section 10-19.1-109 ~~or a~~;
  - (2) A disposition pursuant to an order of a court; ~~or a~~
  - (3) 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 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. A plan of conversion adopted by a corporation; or
- f. 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.
2. A shareholder may not assert dissenters' rights as to less than all of the shares registered in the name of the shareholder, unless the shareholder dissents with respect to all the shares that are beneficially owned by another person but registered in the name of the shareholder and discloses the name and address of each beneficial owner on whose behalf the shareholder dissents. In that event, the rights of the dissenter must be determined as if the shares as to which the shareholder has dissented and the other shares were registered in the names of different shareholders. The beneficial owner of shares who is not the shareholder may assert dissenters' rights with respect to shares held on behalf of the beneficial owner, and must be treated as a dissenting

shareholder under the terms of this section and section 10-19.1-88, if the beneficial owner submits to the corporation at the time of or before the assertion of the rights a written consent of the shareholder.

3. Unless the articles, the bylaws, or a resolution approved by the board otherwise provide, the right to obtain payment under this section does not apply to the shareholders of:
  - a. The surviving corporation in a merger with respect to shares of the shareholders that are not entitled to be voted on the merger and are not canceled or exchanged in the merger; or
  - b. The corporation whose shares will be acquired by the acquiring corporation in a plan of exchange with respect to shares of the shareholders that are not entitled to be voted on the plan of exchange and are not exchanged in the plan of exchange.
4. The shareholders of a corporation who have a right under this section to obtain payment for their shares do not have a right at law or in equity to have a corporate action described in subsection 1 set aside or rescinded, except when the corporate action is fraudulent with regard to the complaining shareholder or the corporation.
5. If a date is fixed according to subsection 1 of section 10-19.1-73.2 for the determination of shareholders entitled to receive notice of and to vote on an action described under subsection 1, only shareholders as of the date fixed and beneficial owners as of the date fixed who hold through shareholders, as provided in subsection 2, may exercise dissenters' rights.
6. Notwithstanding subsection 1, the right to obtain payment under this section, other than in connection with a plan of merger adopted under section 10-19.1-100, is limited in accordance with the following provisions:
  - a. The right to obtain payment under this section is not available for the holders of shares of any class or series of shares that is listed on the New York stock exchange or the American stock exchange or designated as a national market system security on an interdealer quotation system by the national association of securities dealers, incorporated.
  - b. The applicability of subdivision a is determined as of:
    - (1) The record date fixed to determine the shareholders entitled to receive notice of, and to vote at, the meeting of shareholders to act upon the corporate action described in subsection 1; or
    - (2) The day before the effective date of corporate action described in subsection 1 if there is no meeting of shareholders.
  - c. Subdivision a is not applicable, and the right to obtain payment under this section is available pursuant to subsection 1, for the holders of any class or series of shares who are required by the

terms of the corporate action described in subsection 1 to accept for such shares anything other than shares, or cash in lieu of fractional shares, of any class or any series of shares of the corporation, or any other proprietary interest of any other entity, that satisfies the standards set forth in subdivision a at the time the corporate action becomes effective.

**SECTION 23. AMENDMENT.** Subsections 3 and 4 of section 10-19.1-88 of the North Dakota Century Code are amended and reenacted as follows:

3. If the proposed action must be approved by the shareholders, and the corporation calls a meeting of shareholders, then a shareholder who is entitled to dissent under section 10-19.1-87 and who wishes to exercise dissenter's rights shall file with the corporation before the vote on the proposed action a written notice of intent to demand the fair value of the shares owned by the shareholder and may not vote the shares in favor of the proposed action.
4. After the proposed action has been approved by the board and, if necessary, the shareholders, the corporation shall send to all shareholders who have complied with subsection 3, to all shareholders who did not sign or consent to a written action that gave effect to the action creating the right to obtain payment under section 10-19.1-87, and to all shareholders entitled to dissent if no shareholder vote was required, a notice that contains:
  - a. The address to which a demand for payment and share certificates must be sent in order to obtain payment and the date by which they must be received;
  - b. A form to be used to certify the date on which the shareholder, or the beneficial owner on whose behalf the shareholder dissents, acquired the shares or an interest in them and to demand payment; and
  - c. A copy of section 10-19.1-87 and this section.

**SECTION 24. AMENDMENT.** Subsection 1 of section 10-19.1-91 of the North Dakota Century Code is amended and reenacted as follows:

1. For purposes of this section:
  - a. "Corporation" includes a domestic or foreign corporation that was the predecessor of the corporation referred to in this section in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.
  - b. "Official capacity" means:
    - (1) With respect to a director, the position of director in a corporation;
    - (2) With respect to a person other than a director, the elective or appointive office or position held by an officer, member of a committee of the board, or the employment relationship undertaken by an employee of the corporation; and

- (3) With respect to a director, officer, or employee of the corporation who, while a director, officer, or employee of the corporation, is or was serving at the request of the corporation or whose duties in that position involve or involved service as a governor, director, officer, manager, partner, trustee, employee, or agent of another organization or employee benefit plan, the position of that person as a governor, director, officer, manager, partner, trustee, employee, or agent, as the case may be, of the other organization or employee benefit plan.
- c. "Proceeding" means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the corporation.
- d. "Special legal counsel" means counsel who has not represented the corporation or a related organization, or a director, officer, member of a committee of the board, or employee whose indemnification is in issue.

**SECTION 25.** Section 10-19.1-102.1 of the North Dakota Century Code is created and enacted as follows:

**10-19.1-102.1. Continuance of corporate authority.** When an act or record is considered necessary or appropriate to evidence the vesting of property or other rights in the single corporation, the persons with authority to do so under the articles or bylaws of each constituent organization shall do the act or sign and deliver the record and for this purpose, the existence of the constituent organizations and the authority of those persons is continued.

**SECTION 26. AMENDMENT.** Subsection 1 of section 10-19.1-103 of the North Dakota Century Code is amended and reenacted as follows:

1. A domestic corporation may merge with, including a merger pursuant to section 10-19.1-100, or participate in an exchange with a foreign corporation or foreign limited liability company by following the procedures set forth in this section, if:
  - a. With respect to a merger, the merger is permitted by the laws of the jurisdiction under which the foreign corporation or foreign limited liability company is incorporated or organized.
  - b. With respect to an exchange, the constituent organization whose ownership interests will be acquired is a domestic corporation or limited liability company, regardless of whether the exchange is permitted by the laws of the jurisdiction under which the foreign corporation or foreign limited liability company is incorporated or organized.

**SECTION 27. AMENDMENT.** Subsection 2 of section 10-19.1-104 of the North Dakota Century Code is amended and reenacted as follows:

2. With respect to shareholders approval:
  - a. A corporation, by affirmative vote of a majority of the directors present, may sell, lease, transfer, or otherwise dispose of all or

substantially all of its property and assets, including its good will, 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 deems expedient, when approved at a regular or special meeting of the shareholders by the affirmative vote of the holders of a majority of the voting power of the shares entitled to vote.

- (1) Written notice of the meeting must be given to all shareholders whether or not they are entitled to vote at the meeting.
  - (2) 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 corporation.
- b. Shareholder approval is not required under subdivision a if, following the sale, lease, transfer, or other disposition of its property and assets, the corporation retains a significant continuing business activity. The corporation will conclusively be deemed to have retained a significant continuing business activity if the corporation retains a business activity that represented at least:
  - (1) Twenty-five percent of the corporation's total assets at the end of the most recently completed fiscal year; and
  - (2) Twenty-five percent of either income from continuing operations before taxes or revenues from continuing operations for that fiscal year, measured on a consolidated basis with its subsidiaries for each of paragraphs 1 and 2.

**SECTION 28.** Section 10-19.1-104.1 of the North Dakota Century Code is created and enacted as follows:

**10-19.1-104.1. Conversion.**

1. An organization other than a corporation may convert to a corporation, and a corporation may convert to another organization other than a general partnership as provided in this section and sections 10-19.1-104.2 through 10-19.1-104.6 and a plan of conversion, if:
  - a. The governing statute of the other organization authorizes the conversion;
  - b. The conversion is not prohibited by the law of the jurisdiction that enacted the governing statute; and
  - c. The other organization complies with its governing statute in effecting the conversion.
2. For the purposes of sections 10-19.1-104.1 through 10-19.1-104.6, unless the context otherwise requires:



- a. "Act of the board" means action by the board as provided in section 10-19.1-46 whether:
- (1) At a meeting of the board as provided in section 10-19.1-43; or
  - (2) By a written action of the board as provided in section 10-19.1-47.
- b. "Act of the shareholders" means action by the shareholders as provided in section 10-19.1-74 whether:
- (1) At a meeting of the shareholders as provided in sections 10-19.1-71 and 10-19.1-72; or
  - (2) By a written action of the shareholders as provided in section 10-19.1-75.
- c. "Certificate of creation" means:
- (1) A certificate of incorporation, if the converted organization is a corporation deemed to be incorporated under this chapter;
  - (2) A certificate of organization, if the converted organization is a limited liability company deemed to be organized under chapter 10-32;
  - (3) A certificate of limited partnership, if the converted organization is a limited partnership deemed to be formed under chapter 45-10.2;
  - (4) The filed registration of a limited liability partnership, if the converted organization is a limited liability partnership deemed to be established under chapter 45-22; or
  - (5) A certificate of limited liability limited partnership, if the converted organization is a limited liability limited partnership deemed to be formed under chapter 45-23.
- d. "Date of origin" means the date on which:
- (1) A corporation which is:
    - (a) The converting organization was incorporated; or
    - (b) The converted organization is deemed to be incorporated;
  - (2) A limited liability company which is:
    - (a) The converting organization was organized; or
    - (b) The converted organization is deemed to be organized;

- (3) A general partnership that is the converting organization was formed;
  - (4) A limited partnership which is:
    - (a) The converting organization was formed; or
    - (b) The converted organization is deemed to be formed;
  - (5) A limited liability partnership which is:
    - (a) The converting organization was formed; or
    - (b) The converted organization is deemed to be formed; and
  - (6) A limited liability limited partnership which is:
    - (a) The converting organization was formed; or
    - (b) The converted organization is deemed to be formed.
- e. "Filed registration" means the registration of a limited liability partnership which has been filed with the secretary of state.
- f. "General partnership" means an organization formed under chapters 45-13 through 45-21.
- g. "Organizational records" means for an organization which is:
  - (1) A corporation, its articles of incorporation and bylaws;
  - (2) A limited liability company, its articles of organization, operating agreement or bylaws, and any member-control agreement;
  - (3) A limited partnership, its partnership agreement;
  - (4) A limited liability partnership, its partnership agreement; or
  - (5) A limited liability limited partnership, its partnership agreement.
- h. "Originating records" means for an organization which is:
  - (1) A corporation, its articles of incorporation;
  - (2) A limited liability company, its articles of organization;
  - (3) A limited partnership, its certificate of limited partnership;
  - (4) A limited liability partnership, its registration; or
  - (5) A limited liability limited partnership, its certificate of limited liability limited partnership.

**SECTION 29.** Section 10-19.1-104.2 of the North Dakota Century Code is created and enacted as follows:

**10-19.1-104.2. Plan of conversion.** A plan of conversion must be in a record and must contain:

1. The name and form of the converting organization before conversion;
2. The name and form of the converted organization after conversion;
3. The terms and conditions of the proposed conversion;
4. The manner and basis of converting each ownership interest in the converting organization into ownership interests in the converted organization or, in whole or in part, into money or other property;
5. The organizational records of the converted organization; and
6. Any other provisions with respect to the proposed conversion that are deemed necessary or desirable.

**SECTION 30.** Section 10-19.1-104.3 of the North Dakota Century Code is created and enacted as follows:

**10-19.1-104.3. Plan approval and amendment.**

1. If the converting organization is a corporation, then:
  - a. A resolution containing or amending the plan of conversion must be approved by an act of the board of the converting corporation and must then be approved by an act of its shareholders.
    - (1) In the action by the shareholders, a class or series of shares is entitled to vote as a class or series on the approval or amendment of the plan.
    - (2) Any amendment of the plan is subject to any contractual rights.
  - b. If the resolution containing or amending the plan of conversion is approved by the shareholders:
    - (1) At a shareholder meeting, then:
      - (a) Written notice must be given to every shareholder of the converting corporation, whether or not entitled to vote at the meeting, not less than fourteen days nor more than fifty days before the meeting, in the manner provided in section 10-19.1-73.
      - (b) The written notice must state that a purpose of the meeting is to consider the proposed plan of conversion or an amendment to it.

- (c) A copy or short description of the plan of conversion or the amendment to it must be included in or enclosed with the notice.
  - (2) By a written action of the shareholders, then a copy or short description of the plan of conversion or the amendment to it must be included in or attached to the written action.
- 2. If the converting organization is not a corporation, then the approval and amendment of the plan of conversion must comply with its governing statute in effecting the conversion.

**SECTION 31.** Section 10-19.1-104.4 of the North Dakota Century Code is created and enacted as follows:

**10-19.1-104.4. Articles of conversion.**

- 1. Upon receiving the approval required by section 10-19.1-104.3, articles of conversion must be prepared in a record that must contain:
  - a. A statement that the converting organization is being converted into another organization including:
    - (1) The name of the converting organization immediately before the filing of the articles of conversion;
    - (2) The name to which the name of the converting organization is to be changed, which must be a name that satisfies the laws applicable to the converted organization;
    - (3) The form of organization that the converted organization will be; and
    - (4) The jurisdiction of the governing statute of the converted organization;
  - b. A statement that the plan of conversion has been approved by the converting organization as provided in section 10-19.1-104.3;
  - c. A statement that the plan of conversion has been approved as required by the governing statute of the converted organization;
  - d. The plan of conversion without organization records;
  - e. A copy of the originating record of the converted organization; and
  - f. If the converted organization is a foreign organization not authorized to transact business or conduct activities in this state, then the street and mailing address of an office which the secretary of state may use for the purposes of subsection 4 of section 10-19.1-104.6.
- 2. The articles of conversion must be signed on behalf of the converting organization and filed with the secretary of state.
  - a. If the converted organization is a domestic organization:

- (1) Then the filing of the articles of conversion must also include the filing with the secretary of state of the originating record of the converted organization.
    - (2) Upon both the articles of conversion and the originating record of the converted organization being filed with the secretary of state, the secretary of state shall issue a certificate of conversion and the appropriate certificate of creation to the converted organization or its legal representative.
  - b. If the converted organization is a foreign organization:
    - (1) That is transacting business or conducting activities in this state, then:
      - (a) The filing of the articles of conversion must include the filing with the secretary of state of an application for a certificate of authority by the converted organization.
      - (b) Upon both the articles of conversion and the application for a certificate of authority by the converted organization being filed with the secretary of state, the secretary of state shall issue a certificate of conversion and the appropriate certificate of authority to the converted organization or the legal representative.
    - (2) That is not transacting business or conducting activities in this state, then, upon the articles of conversion being filed with the secretary of state, the secretary of state shall issue a certificate of conversion to the converted organization or its legal representative.
3. A converting organization that is the owner of a trademark or trade name, is a general partner named in a fictitious name certificate, is a general partner in a limited partnership or a limited liability limited partnership, or is a managing partner in a limited liability partnership that is on file with the secretary of state must change or amend the name of the converting organization to the name of the converted organization in each registration when filing the articles of conversion.

**SECTION 32.** Section 10-19.1-104.5 of the North Dakota Century Code is created and enacted as follows:

**10-19.1-104.5. Abandonment of conversion.**

1. If the articles of conversion have not been filed with the secretary of state, and:
  - a. If the converting organization is a corporation, then:
    - (1) Before a plan of conversion has been approved by the converting corporation as provided in section 10-19.1-104.3, it may be abandoned by an act of its board.

- (2) After a plan of conversion has been approved by the converting corporation as provided in section 10-19.1-104.3, and before the effective date of the plan, it may be abandoned:
          - (a) If the shareholders of the converting corporation entitled to vote on the approval of the plan as provided in section 10-19.1-104.3 have approved the abandonment by an act of the shareholders; or
          - (b) If the plan provides for abandonment and if all conditions for abandonment set forth in the plan are met.
      - b. If the converting organization is not a corporation, then the abandonment of the plan of conversion must comply with its governing statute.
  - 2. If articles of conversion have been filed with the secretary of state, but have not yet become effective, then the converting organization shall file with the secretary of state articles of abandonment that contain:
    - a. The name of the converting organization;
    - b. The provision of this section under which the plan is abandoned; and
    - c. If the plan is abandoned:
      - (1) By an act of the board under paragraph 1 of subdivision a of subsection 1, or by an act of the shareholders under subparagraph b of paragraph 2 of subdivision a of subsection 1, then the text of the resolution abandoning the plan; or
      - (2) As provided in the plan under subparagraph b of paragraph 2 of subdivision a of subsection 1, then a statement that the plan provides for abandonment and that all conditions for abandonment set forth in the plan are met.

**SECTION 33.** Section 10-19.1-104.6 of the North Dakota Century Code is created and enacted as follows:

**10-19.1-104.6. Effective date of conversion - Effect.**

- 1. A conversion is effective when the filing requirements of subsection 2 of section 10-19.1-104.4 have been fulfilled or on a later date specified in the articles of conversion.
- 2. With respect to the effect of conversion on the converting organization and on the converted organization:
  - a. An organization that has been converted as provided in sections 10-19.1-104.1 through 10-19.1-104.6 is for all purposes the same entity that existed before the conversion.

- b. Upon a conversion becoming effective:
- (1) If the converted organization:
    - (a) Is a corporation, then the converted organization has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities, of a corporation incorporated under this chapter; or
    - (b) Is not a corporation, then the converted organization has all the rights, privileges, immunities, and powers, and is subject to the duties and liabilities as provided in its governing statute;
  - (2) All property owned by the converting organization remains vested in the converted organization;
  - (3) All debts, liabilities, and other obligations of the converting organization continue as obligations of the converted organization;
  - (4) An action or proceeding pending by or against the converting organization may be continued as if the conversion has not occurred;
  - (5) Except as otherwise provided by other law, all rights, privileges, immunities, and powers of the converting organization remain vested in the converted organization; and
  - (6) Except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect.
3. When a conversion becomes effective, each ownership interest in the converting organization is deemed to be converted into ownership interests in the converted organization or, in whole or in part, into money or other property to be received under the plan, subject to any dissenters' rights under section 10-19.1-87.
4. A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by the converting corporation, if before the conversion the converting corporation was subject to suit in this state on the obligation.
5. A converted organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for purposes of enforcing an obligation under this subsection.

**SECTION 34. AMENDMENT.** Subsection 1 of section 10-19.1-110 of the North Dakota Century Code is amended and reenacted as follows:

1. If notice to creditors and claimants is given, it must be given by:
  - a. Publishing the notice once each week for four successive weeks in an official newspaper, as defined in chapter 46-06, in the county or

counties where the registered office and the principal executive office of the corporation are located; and

- b. Giving written notice to known creditors and claimants pursuant to subsection ~~32~~ 35 of section 10-19.1-01.

**SECTION 35. AMENDMENT.** Section 10-19.1-129 of the North Dakota Century Code is amended and reenacted as follows:

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

1. The registered agent must be an agent of the corporation or foreign corporation and any nonresident director upon whom any process, notice, or demand required or permitted by law to be served on the corporation, the foreign corporation, or any director may be served.
  - a. When a foreign corporation transacts business without a certificate of authority, or when the certificate of authority of a foreign corporation is suspended or revoked, the secretary of state is an agent of the foreign corporation for service of process, notice, or demand.
  - b. Acceptance of a directorship includes the appointment of the secretary of state as an agent for personal service of legal process, notice, or demand.
2. A process, notice, or demand required or permitted by law to be served upon a corporation or foreign corporation may be served ~~either upon:~~
  - a. On the registered agent of the corporation; ~~or upon;~~
  - b. On an officer of the corporation; or foreign corporation;
  - c. On any responsible person found at the registered office or at the principal executive office if located in this state; or upon
  - d. On the secretary of state as provided in this section.
3. If neither the ~~corporation's~~ registered agent nor ~~an officer of the corporation~~ a responsible person 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~~ responsible person cannot be found at the ~~registered office~~ principal executive office if located in this state, then the secretary of state is ~~the~~ an agent of the corporation or foreign corporation upon whom the process, notice, or demand may be served.
  - a. Service on the secretary of state:
    - a- (1) Shall be made by registered mail or personal delivery to the secretary of state and not by electronic communication;\_
    - b- (2) Shall include the return of the sheriff, or the affidavit of a ~~person~~ an individual who is not a party, verifying that neither the registered agent nor ~~an officer~~ a responsible person can



be found at the registered office; ~~and~~ or at the principal executive office.

- e. (3) Is deemed personal service upon the corporation and must be made by filing with the secretary of state:

(4) (a) Three copies of the process, notice, or demand; and

(2) (b) The fees provided in section 10-19.1-147.

(4) Is returnable in not less than thirty days notwithstanding a shorter period specified in the process, notice, or demand.

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

4. Process, notice, or demand may be served on a dissolved corporation as provided in this subsection. The court shall determine if service is proper. If a corporation has voluntarily dissolved or a court has entered a decree of dissolution, then service may be made according to subsection 2 so long as claims are not finally barred under section 10-19.1-124. If a corporation has been involuntarily dissolved pursuant to section 10-19.1-146, then service may be made according to subsection 2.
5. ~~A~~ The secretary of state shall maintain a record of ~~all processes, notices every process, notice, and demands demand served upon on~~ the secretary of state under this section, including the date of service and the action taken with reference to it, ~~must be maintained in the office of the secretary of state~~ the process, notice, or demand.
6. ~~Nothing in this~~ This section limits ~~does not limit~~ the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner permitted by law.

**SECTION 36. AMENDMENT.** Subsection 1 of section 10-19.1-141 of the North Dakota Century Code is amended and reenacted as follows:

1. The certificate of authority of a foreign corporation to transact business in this state may be revoked by the secretary of state upon the occurrence of either of these events:
- a. The foreign corporation has failed to:
- (1) Maintain a registered office as required by this chapter;
  - (2) Appoint and maintain a registered agent as required by this chapter;
  - (3) File a report upon any change in the address of its registered office;

- (4) File a report upon any change in the name or business address of the registered agent; or
  - (5) File in the office of the secretary of state any amendment to its application for a certificate of authority as specified in section 10-19.1-137; or
- b. A misrepresentation has been made of any material matter in any application, report, affidavit, or other document record submitted by the foreign corporation pursuant to this chapter.

**SECTION 37. AMENDMENT.** Section 10-19.1-145 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-145. Foreign corporation - Service of process.** Service of process on a foreign corporation must be as provided in section 10-19.1-129. ~~When a foreign corporation transacts business without a certificate of authority or when the certificate of authority of a foreign corporation is suspended or revoked, the secretary of state is an agent of the foreign corporation for service of process, notices, or demand.~~

**SECTION 38. AMENDMENT.** Subsections 1, 2, 4, and 6 of section 10-19.1-146 of the North Dakota Century Code are amended and reenacted as follows:

1. Each corporation and each foreign corporation authorized to transact business in this state shall file, within the time ~~prescribed by~~ provided in subsection 3, an annual report setting forth:
  - a. The name of the corporation or foreign corporation and the state or country under the laws of which the corporation or foreign corporation is incorporated.
  - b. The address of the registered office of the corporation or foreign corporation in this state, the name of the corporation's or foreign corporation's registered agent in this state at that address, and the address of the corporation's or foreign corporation's principal executive office.
  - c. A brief statement of the character of the business in which the corporation or foreign corporation is actually engaged in this state.
  - d. The names and respective addresses of the officers and directors of the corporation or foreign corporation.
  - e. A statement of the aggregate number of shares the corporation or foreign corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
  - f. A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
  - g. A statement, expressed in dollars, of the value of all the property owned by the corporation, wherever located, and the value of the

h. Any additional information necessary or appropriate to enable the secretary of state to determine and assess the proper amount of fees payable by the corporation.

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 subdivision g 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~~ provided in subsection ~~48~~ 51 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 subdivision g of subsection 1 to any person, except a person ~~who~~ that 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.
4. The secretary of state must file the annual report if the annual report conforms to the requirements of this section and all fees have been paid as provided in section 10-19.1-147.
  - a. If the annual report does not conform, it must be returned to the corporation or foreign corporation for any necessary correction or payment.
  - b. If the annual report is corrected and filed before the date provided in subsection 3, or within thirty days after the annual report was returned by the secretary of state for correction, then the penalties

~~prescribed~~ provided in section 10-19.1-147 for the failure to file an annual report within the time provided do not apply.

6. ~~Within three~~ Three months after the date provided in subsection 3, ~~the secretary of state shall notify~~ any corporation or foreign corporation failing to file its annual report is not in good standing. After the corporation or foreign corporation becomes not in good standing, the secretary of state shall notify the corporation or foreign corporation that its certificate of incorporation or certificate of authority is not in good standing and that it may be dissolved or revoked as provided in subsection 7 or 8.
- a. The secretary of state must mail the notice of impending dissolution or revocation to the last registered agent at the last registered office of record.
- b. If the corporation or foreign corporation files its annual report after the notice is mailed, together with the filing fee and the late filing penalty fee provided in section 10-19.1-147, then the secretary of state shall restore its certificate of incorporation or certificate of authority to good standing.

**SECTION 39. AMENDMENT.** Section 10-19.1-147 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Filing articles of incorporation and issuing a certificate of incorporation, thirty dollars.
2. Filing articles of amendment, twenty dollars.
3. Filing articles of correction, twenty dollars.
4. Filing restated articles of incorporation, thirty dollars.
5. Filing articles of conversion of a corporation, fifty dollars and:
  - a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or
  - b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.
6. Filing abandonment of conversion, fifty dollars.
4. 7. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, fifty dollars.
5. 8. Filing articles of abandonment of merger, fifty dollars.

- ~~6-~~ 9. Filing an application to reserve a corporate name, ten dollars.
- ~~7-~~ 10. Filing a notice of transfer of a reserved corporate name, ten dollars.
- ~~8-~~ 11. Filing a cancellation of reserved corporate name, ten dollars.
- ~~9-~~ 12. Filing a consent to use of name, ten dollars.
- ~~40-~~ 13. Filing a statement of change of address of registered office or change of registered agent, or both, ten dollars.
- ~~44-~~ 14. Filing a statement of change of address of registered office by registered agent, ten dollars for each corporation affected by such change.
- ~~42-~~ 15. Filing a registered agent's consent to serve in such capacity, ten dollars.
- ~~43-~~ 16. Filing a resignation as registered agent, ten dollars.
- ~~44-~~ 17. Filing a statement of the establishment of a series of shares, twenty dollars.
- ~~45-~~ 18. Filing a statement of cancellation of shares, twenty dollars.
- ~~46-~~ 19. Filing a statement of reduction of stated capital, twenty dollars.
- ~~47-~~ 20. Filing a statement of intent to dissolve, ten dollars.
- ~~48-~~ 21. Filing a statement of revocation of voluntary dissolution proceedings, ten dollars.
- ~~49-~~ 22. Filing articles of dissolution, twenty dollars.
- ~~20-~~ 23. Filing an application of a foreign corporation for a certificate of authority to transact business in this state and issuing a certificate of authority, forty dollars.
- ~~24-~~ 24. Filing an application of a foreign corporation for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, forty dollars.
- ~~22-~~ 25. Filing a certificate of fact stating a merger or consolidation of a foreign corporation holding a certificate of authority to transact business in this state, fifty dollars.
- ~~23-~~ 26. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, twenty dollars.
- ~~24-~~ 27. Filing an annual report of a corporation or foreign corporation, twenty-five dollars.
  - a. The secretary of state shall charge and collect additional fees for late filing of the annual report as follows:
    - ~~a-~~ (1) Within ninety days after the date provided in subsection 3 of section 10-19.1-146, twenty dollars;

- ~~b.~~ (2) Thereafter, sixty dollars; and
- ~~e.~~ (3) After the involuntary dissolution of a corporation, or the revocation of the certificate of authority of a foreign corporation, the reinstatement fee of one hundred thirty-five dollars.
- b. Fees paid to the secretary of state according to this subsection are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 10-19.1-146, or the annual report lacks sufficient payment as required by this subsection.
- ~~25.~~ 28. Filing any process, notice, or demand for service, twenty-five dollars.
- ~~26.~~ 29. Furnishing a certified copy of any ~~document~~ record, instrument, or paper relating to a corporation, one dollar for every four pages or fraction and fifteen dollars for the certificate and affixing the seal thereto.
- ~~27.~~ 30. License fee of fifty dollars for the first fifty thousand dollars of a corporation's authorized shares, or fraction, and the further sum of ten dollars if paid at the time of authorization, or twelve dollars if paid after authorized shares are issued, for every additional ten thousand dollars of its authorized shares, or fraction thereof, in excess of fifty thousand dollars.
  - a. A license fee is payable by a corporation at the time of:
    - (1) Filing articles of incorporation;
    - (2) Filing articles of amendment increasing the number or value of authorized shares; or
    - (3) Filing articles of merger or consolidation increasing the number or value of authorized shares a surviving or new corporation will have authority to issue above the aggregate number or value of shares the constituent corporations had authority to issue.
  - b. A license fee payable on an increase in authorized shares must be imposed only on the additional shares, but the amount of previously authorized shares must be taken into account in determining the rate applicable to the additional authorized shares.
  - c. For the purposes of this subsection, shares without par value are considered worth one dollar per share.
  - d. The minimum sum of fifty dollars must be paid for authorized shares at the time of filing articles of incorporation.
  - e. A corporation increasing authorized shares by articles of amendment or articles of merger must have previously paid for a minimum of fifty thousand dollars of authorized shares.

**SECTION 40. AMENDMENT.** Section 10-19.1-148 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-148. Secretary of state - Powers - Enforcement - Penalty - Appeal.**

1. The secretary of state has the power and authority reasonably necessary to efficiently administer this chapter and to perform the duties imposed thereby.
2. The secretary of state may propound to any corporation or foreign corporation that is subject to this chapter and to any officer, director, or employee thereof, any interrogatory reasonably necessary and proper to ascertain whether the corporation has complied with all provisions of this chapter applicable to the corporation.
  - a. The interrogatory must be answered within thirty days after mailing, or within any additional time as must be fixed by the secretary of state. The answer to the interrogatory must be full and complete and must be made in writing and under oath.
  - b. If the interrogatory is directed:
    - (1) To an individual, it must be answered by that individual; or
    - (2) To a corporation, it must be answered by the president, vice president, secretary, or assistant secretary of the corporation.
  - c. The secretary of state is not required to file any document record to which the interrogatory relates until the interrogatory has been answered, and not then if the answers disclose the document record is not in conformity with this chapter.
  - d. The secretary of state shall certify to the attorney general, for action the attorney general may deem appropriate, an interrogatory and answers thereto, which discloses a violation of this chapter.
  - e. Each officer, director, or employee of a corporation or foreign corporation who fails or refuses within the time provided by subdivision a to answer truthfully and fully an interrogatory propounded to that person by the secretary of state is guilty of an infraction.
  - f. An interrogatory propounded by the secretary of state and the answers are not open to public inspection. The secretary of state may not disclose any facts or information obtained from the interrogatory or answers except insofar as permitted by law or insofar as required for evidence in any criminal proceedings or other action by this state.
3. If the secretary of state rejects any document record required by this chapter to be approved by the secretary of state before the document record may be filed, then the secretary of state shall give written notice of the rejection to the person who that delivered the document record, specifying the reasons for rejection.
  - a. From such rejection the person Within thirty days after the service of the notice of denial, the corporation or foreign corporation, as the





1. A record authorized or required to be delivered to the secretary of state for filing under this chapter must be captioned to describe the purpose of the record, be in a medium permitted by the secretary of state, and be delivered to the secretary of state. If the secretary of state determines that a record complies with the filing requirements of this chapter, then the secretary of state shall file the record and return a copy of the filed record to the person who delivered it to the secretary of state for filing. That person shall then send a copy of the filed record to the person on whose behalf the record was filed.
2. Upon request and payment of a fee provided in section 10-19.1-147, the secretary of state shall send to the requester a certified copy of the requested record.
3. Except as otherwise specifically provided in this chapter, a record delivered to the secretary of state for filing under this chapter may specify a delayed effective date within ninety days. Except as otherwise provided in this chapter, a record filed by the secretary of state is effective:
  - a. If a record does not specify a delayed effective date within ninety days, then on the date the record is filed as evidenced by the endorsement of the secretary of state of the date on the record.
  - b. If the record specifies a delayed effective date within ninety days, then on the specified date.

**SECTION 42.** Section 10-19.1-148.2 of the North Dakota Century Code is created and enacted as follows:

**10-19.1-148.2. Correcting a filed record.** With respect to correction of a filed record:

1. Whenever a record authorized by this chapter to be filed with the secretary of state has been filed and inaccurately records the action referred to in the record, contains an inaccurate or erroneous statement, or was defectively or erroneously signed, sealed, acknowledged, or verified, the record may be corrected by filing a statement of correction.
2. A statement of correction:
  - a. Must:
    - (1) Be signed by:
      - (a) The person that signed the original record; or
      - (b) By a person authorized to sign on behalf of that person;
    - (2) Set forth the name of the corporation that filed the record;
    - (3) Identify the record to be corrected by description and by the date of its filing with the secretary of state;
    - (4) Identify the inaccuracy, error, or defect to be corrected; and



tax identification number before a copy of any ~~document~~ record is released to the public.

**SECTION 45. AMENDMENT.** Section 10-19.1-150 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-150. Secretary of state - Forms to be furnished by the secretary of state.** All annual reports required by this chapter to be filed in the office of the secretary of state must be made on forms prescribed by the secretary of state. Forms for all other ~~documents~~ records to be filed in the office of the secretary of state may be furnished by the secretary of state upon request. However, the use of such ~~documents~~ records, unless otherwise specifically required by law, is not mandatory.

**SECTION 46. AMENDMENT.** Section 10-31-07.3 of the North Dakota Century Code is amended and reenacted as follows:

**10-31-07.3. Issuance and transfer of partnership interests.** A professional organization in the form of a limited liability partnership may issue partnership interests only to ~~persons~~ individuals who are licensed to render the same specific professional services as those for which the partnership was registered. A partner may voluntarily transfer partnership interests in a professional limited liability partnership only to a person owning or eligible to own a partnership interest. The issuance of any partnership interests issued in violation of this section is void. The voluntary transfer of any partnership interests in violation of this section is void. No partnership interest may be transferred upon the books of the professional limited liability partnership or issued by the professional limited liability partnership until there is presented to and filed with the limited liability partnership a certificate from the regulating board stating that the person to whom the transfer is to be made or the partnership interest issued is licensed to render the same specific professional services as those for which the limited liability partnership was registered.

**SECTION 47. 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 limited liability company, or ~~domestic~~ corporation or foreign corporation that acquires in an exchange the shares of a ~~domestic or foreign~~ corporation or foreign corporation 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, articles of conversion, and articles of termination.

- b. In the case of a foreign limited liability company, the term includes all ~~documents~~ records 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. "Ballot" means a written ballot or a ballot transmitted by electronic communications.

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

~~6.~~ 7. "Board member" means:

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

~~7.~~ 8. "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 or the members.

~~8.~~ 9. "Class", when used with reference to membership interests, means a category of membership interests which differs in one or more rights or preferences from another category of membership interests of the limited liability company.

~~9.~~ 10. "Closely held limited liability company" means a limited liability company that does not have more than thirty-five members.

- ~~40-~~ 11. "Constituent organization" means a limited liability company or a domestic or foreign corporation that:
- In a merger, is either the surviving organization or an organization that is merged into the surviving organization; or
  - In an exchange, is either the acquiring organization or an organization whose securities are acquired by the acquiring organization.
- ~~44-~~ 12. "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.
- ~~42-~~ 13. "Contribution agreement" means an agreement between a person and a limited liability company under which:
- The person agrees to make a contribution in the future; and
  - 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.
- ~~43-~~ 14. "Contribution allowance agreement" means an agreement between a person and a limited liability company under which:
- The person has the right, but not the obligation, to make a contribution in the future; and
  - 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.
15. "Converted organization" means the organization resulting from a conversion under sections 10-32-108.1 through 10-32-108.6.
16. "Converting organization" means the organization that effects a conversion under sections 10-32-108.1 through 10-32-108.6.
17. "Corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under chapter 10-19.1.
- ~~44-~~ 18. "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.
- ~~45-~~ 19. "Dissolution avoidance consent" means the consent of all remaining members:
- 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.

~~46-~~ 20. "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.

~~47-~~ 21. "~~Domestic corporation~~" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by ~~chapter 40-49.4.~~

~~48-~~ 21. "Domestic organization" means an organization created under the laws of this state.

~~49-~~ 22. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

~~20-~~ 23. "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
- b. That may be directly reproduced in paper form by the recipient through an automated process.

~~24-~~ 24. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

~~22-~~ 25. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and ~~executed~~ signed or adopted by a person with the intent to sign the record.

~~23-~~ 26. "Filed with the secretary of state" means except as otherwise permitted by law or rule:

- a. That a ~~document~~ record meeting the applicable requirements of this chapter, together with the fees provided in section 10-32-150, has been delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state, and has been determined by the secretary of state to conform to law.

- b. That the secretary of state ~~shall~~ did then:

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

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

~~24.~~ 27. "Financial rights" means a member's rights:

- a. To share in profits and losses as provided in section 10-32-36;
- b. To share in distributions as provided in section 10-32-60;
- c. To receive interim distributions as provided in section 10-32-61; and
- d. To receive termination distributions as provided in subdivision c of subsection 1 of section 10-32-131.

~~25.~~ 28. "Foreign corporation" means a corporation organized for profit that is incorporated under laws other than the laws of this state for a purpose for which a corporation may be incorporated under chapter 10-19.1.

~~26.~~ 29. "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 this chapter.

~~27.~~ 30. "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.

~~28.~~ 31. "Good faith" means honesty in fact in the conduct of the act or transaction concerned.

~~29.~~ 32. "Governance rights" means all of a member's rights as a member in the limited liability company other than financial rights and the right to assign financial rights.

~~30.~~ 33. "Governing board" means:

- a. The board of governors in the case of a limited liability company; and
- b. The board of directors in the case of a corporation.

34. "Governing statute" of an organization means:

a. With respect to a domestic organization, the following chapters of this code which govern the internal affairs of the organization:

- (1) If a corporation, then chapter 10-19.1;
- (2) If a limited liability company, then this chapter;
- (3) If a general partnership, then chapters 45-13 through 45-21;
- (4) If a limited partnership, then chapter 45-10.2;
- (5) If a limited liability partnership, then chapter 45-22; and



(6) If a limited liability limited partnership, then chapter 45-23; and

b. With respect to a foreign organization, the laws of the jurisdiction under which the organization is created and which govern the internal affairs of the organization.

~~34.~~ 35. "Governor" means an individual serving on the board.

~~32.~~ 36. "Intentionally" means that the person referred to either has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result. A person "intentionally" violates a statute:

- 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.

~~33.~~ "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.

~~34.~~ 37. "Legal representative" means a person empowered to act for another person, including an agent, manager, officer, partner, or associate of an organization; a trustee of a trust; a personal representative; a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator.

~~35.~~ 38. "Limited liability company" means a limited liability company, other than a foreign limited liability company, organized under this chapter.

~~36.~~ 39. "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; and
- b. An individual considered elected as a manager pursuant to section 10-32-92.

~~37.~~ 40. "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.

~~38.~~ 41. "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.

~~39.~~ 42. "Notice":

- a. Is given by a member of a limited liability company to the limited liability company or a manager of a limited liability company:
  - (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.
- b. Is given, 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;
  - (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.
- (5) When the method is fair and reasonable when all of the circumstances are considered.
  - c. Is given by mail when deposited in the United States mail with sufficient postage affixed.
  - d. Is deemed received when it is given.

~~40-~~ 43. "Organization" means:

- 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~~ or any other person having a governing statute; 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.

~~41-~~ 44. "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.

- 42- 45. "Ownership interests" means:
- Membership interests in the case of a limited liability company or a nonprofit corporation; and
  - Shares in the case of a corporation.
- 43- 46. "Parent" of a specified limited liability company means a limited liability company ~~or, a foreign limited liability company, a corporation, or a foreign 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.
- 44- 47. "Pertains" means a contribution "pertains":
- To a particular series when the contribution is made in return for a membership interest in that particular series.
  - To a particular class when the class has no series and the contribution is made in return for a membership interest in the class.
- A contribution that pertains to a series does not pertain to the class of which the series is a part.
- 45- 48. "Principal executive office" means:
- If the limited liability company has an elected or appointed president, an office where the elected or appointed president of the limited liability company has an office; or
  - If the limited liability company has no elected or appointed president, the registered office of the limited liability company.
- 46- 49. "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.
- 47- 50. "Registered office" means the place in this state designated in ~~the a~~ limited liability company's articles of organization or a foreign limited liability company's certificate of authority as the registered office ~~of the limited liability company~~.
- 48- 51. "Related organization" means an organization that controls, is controlled by, or is under common control with another organization with control existing if an organization:
- Owns, directly or indirectly, at least fifty percent of the shares, membership interests, or other ownership interests of another organization;
  - Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or more of the voting members of the governing body of another organization; or

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

~~49.~~ 52. "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.

~~50.~~ 53. "Required records" are those records required to be maintained under section 10-32-51.

~~51.~~ 54. "Security" has the meaning given in section 10-04-02.

~~52.~~ 55. "Series" means a category of membership interests, within a class of membership interests, that has some of the same rights and preferences as other membership interests within the same class, but that differ in one or more rights and preferences from another category of membership interests within that class.

~~53.~~ 56. "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 telecommunication or electronically, or in any other manner reproduced on the ~~document~~ record, is placed on a ~~document~~ record, as provided under section 41-01-09.
- b. With respect to a ~~document~~ record required by this chapter to be filed with the secretary of state, that:
  - (1) The ~~document~~ record has been signed by a person authorized to do so by this chapter, the articles of organization, a member-control agreement, or the bylaws or a resolution approved by the governors as required by section 10-32-83 or the members as required by section 10-32-42; and
  - (2) The signature and the ~~document~~ record are communicated by a method or medium acceptable by the secretary of state.

~~54.~~ 57. "Subsidiary" of a specified limited liability company means:

- a. A limited liability company or a foreign 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 organizations by the specified limited liability company; or
- b. A domestic corporation or a foreign 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.

- ~~55-~~ 58. "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.
- ~~56-~~ 59. "Surviving organization" means the ~~foreign~~ foreign limited liability company or domestic foreign limited liability company or domestic or foreign corporation resulting from a merger which:
- a. May preexist the merger; or
  - b. May be created by the merger.
- ~~57-~~ 60. "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. 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.
- ~~58-~~ 61. "Vote" includes authorization by written action.
- ~~59-~~ 62. "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.
- ~~60-~~ 63. "Written action" means:
- a. A written ~~document~~ record signed by every person required to take the action described; and
  - b. The counterparts of a written ~~document~~ record signed by any person taking the action described.
    - (1) Each counterpart constitutes the action of the persons signing it; and
    - (2) All the counterparts, taken together, constitute one written action by all of the persons signing them.

**SECTION 48.** Section 10-32-02.2 of the North Dakota Century Code is created and enacted as follows:

**10-32-02.2. Knowledge and notice.**

1. A person knows or has knowledge of a fact if the person has actual knowledge of it. A person does not know or have knowledge of a fact merely because the person has reason to know or have knowledge of the fact.
2. A person has notice of a fact if the person:

- a. Knows of the fact;
  - b. Has received notice of the fact as provided in subsection 42 of section 10-32-02;
  - c. Has reason to know the fact exists from all of the facts known to the person at the time in question; or
  - d. Has notice of it under subsection 3.
3. Subject to subsection 8, a person has notice of:
  - a. The intention of a limited liability company to dissolve, ninety days after the effective date of the filed notice of dissolution;
  - b. The dissolution of a limited liability company, ninety days after the effective date of the filed articles of dissolution;
  - c. The conversion of a limited liability company, ninety days after the effective date of the filed articles of conversion; or
  - d. The merger of the limited liability company, ninety days after the effective date of the filed articles of merger.
4. A person notifies or gives a notification to another person by taking the steps provided in subsection 42 of section 10-32-03, whether or not the other person learns of it.
5. A person receives a notification as provided in subsection 42 of section 10-32-02.
6. Except as otherwise provided in subsection 7 and except as otherwise provided in subsection 42 of section 10-32-02, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the person knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the attention of the individual if the person had exercised reasonable diligence.
  - a. A person other than an individual exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the person and there is reasonable compliance with the routines.
  - b. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the regular duties of the individual or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.
7. Knowledge, notice, or receipt of a notification of a fact relating to the limited liability company by a manager or governor is effective immediately as knowledge of, notice to, or receipt of a notification by the limited liability company, except in the case of a fraud on the limited liability company committed by or with the consent of the manager or

governor. Knowledge, notice, or receipt of a notification of a fact relating to the limited liability company by a member who is not a manager or governor is not effective as knowledge by, notice to, or receipt of a notification by the limited liability company.

8. Notice otherwise effective under subsection 3 does not affect the power of a person to transfer real property held in the name of a limited liability company unless at the time of transfer a certified copy of the relevant statement, amendment, or articles, as filed with the secretary of state, has been recorded in the office of the county recorder in the county in which the real property affected by the statement, amendment, or articles is located.
9. With respect to notice given by a form of electronic communication:
  - a. Consent by a manager or governor 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 manager or governor. However, no revocation affects the validity of any notice given before receipt by the limited liability company of revocation of the consent.
  - b. An affidavit of a manager or governor 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.

**SECTION 49. AMENDMENT.** Subsections 2 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 as provided in subsection 2 of 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 as provided in section 10-32-83;
  - f. A written action by the board 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;
- h. All membership interests are ordinary membership interests entitled to vote and are of one class with no series as provided in subdivisions a and b of subsection 5 of section 10-32-56;
- i. All membership interests have equal rights and preferences in all matters not otherwise provided for by the board as provided in subdivision b of subsection 5 of section 10-32-56;
- j. The value of previous contributions must be restated when a new contribution is accepted as provided in subsections 3 and 4 of section 10-32-57;
- k. A member has certain preemptive rights, unless otherwise provided by the board as provided in section 10-32-37;
- l. The affirmative vote of the greater of the owners of a majority of the voting power of the membership interests present and entitled to vote at a duly held meeting or a majority of the voting power of the membership interests with voting rights constituting the minimum voting power needed for a quorum for the transaction of business is required for an action of the members, except ~~if~~ when this chapter requires the affirmative vote of ~~a~~;
  - (1) A plurality of the votes cast as provided in subsection 1 of section 10-32-76; or
  - (2) A majority of the voting power of all membership interests entitled, to vote as provided in subsection 1 of section 10-32-42;
- m. The voting power of each membership interest is in proportion to the value reflected in the required records of the contributions of the members as provided in section 10-32-40.1;
- n. Members share in distributions in proportion to the value reflected in the required records of the contributions of members as provided in section 10-32-60;
- o. Members share profits and losses in proportion to the value reflected in the required records of the contributions of members as provided in section 10-32-36;
- p. A written action by the members taken without a meeting must be signed by 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.
4. The provisions in subdivisions a, g, o, p, and r may be included in the articles of organization or a member-control agreement under section 10-32-50. The provisions in subdivisions b through f, h, i, j, k, l, m, n, and q may be included in the articles of organization, in a member-control agreement under section 10-32-50, or, in the bylaws:
- a. The persons to serve as the first board may be named in the articles of organization as provided in subsection 1 of section 10-32-69;
  - b. A manner for increasing or decreasing the number of governors may be provided as provided in section 10-32-70;
  - c. Additional qualifications for governors may be imposed as provided in section 10-32-71;
  - d. Governors may be classified as provided in section 10-32-75;
  - e. The date, time, and place of board meetings may be fixed as provided in subsection 1 of section 10-32-80;
  - f. Absent governors may be permitted to give written consent or opposition to a proposal as provided in section 10-32-81;
  - g. A larger than majority vote may be required for board action as provided in section 10-32-83;
  - h. Authority to sign and deliver certain ~~documents~~ records may be delegated to a manager or agent of the limited liability company other than the president as provided in section 10-32-89;
  - i. Additional managers may be designated as provided in section 10-32-88;
  - j. Additional powers, rights, duties, and responsibilities may be given to managers as provided in section 10-32-89;
  - k. A method for filling vacant offices may be specified as provided in subsection 3 of section 10-32-94;
  - l. The date, time, and place of regular member meetings may be fixed as provided in subsection 3 of section 10-32-38;

- m. Certain persons may be authorized to call special meetings of members as provided in subsection 1 of section 10-32-39;
- n. Notices of member meetings may be required to contain certain information as provided in subsection 3 of section 10-32-40;
- o. A larger than majority vote may be required for member action as provided in section 10-32-42;
- p. Voting rights may be granted in or pursuant to the articles of organization to persons who are not members as provided in subsection 3 of section 10-32-40.1;
- q. Limited liability company actions giving rise to dissenter rights may be designated as provided in subdivision d of subsection 1 of section 10-32-55; and
- r. A governor's personal liability to the limited liability company or the limited liability company's members for monetary damages for breach of fiduciary duty as a governor may be eliminated or limited in the articles as provided in subsection 4 of section 10-32-86.

<sup>76</sup> **SECTION 50. AMENDMENT.** Section 10-32-10 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-10. Limited liability company name.**

- 1. The limited liability company name:
    - a. Must be in the English language or in any other language expressed in English letters or characters;
    - b. Must contain the words "limited liability company", or must contain the abbreviation "L.L.C." or the abbreviation "LLC", either of which abbreviation may be used interchangeably for all purposes authorized by this chapter, including real estate matters, contracts, and filings with the secretary of state;
    - c. ~~May not contain a word or phrase that indicates or implies that it may not be organized under this chapter;~~
    - d. May not contain the word "corporation", "incorporated", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words;
    - e. d. May not contain a word or phrase that indicates or implies that ~~it is~~ the limited liability company:
- (1) Is organized for a purpose other than a legal:

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<sup>76</sup> Section 10-32-10 was also amended by section 3 of House Bill No. 1273, chapter 384.

- (a) A lawful business purpose for which a limited liability company may be organized under this chapter; ~~and~~ or
  - (b) For a purpose stated in its articles of organization; or
  - (2) May not be organized under this chapter; and
- f. e. May not be the same as, or deceptively similar to:
  - (1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the articles a ~~document~~ record which complies with subsection 3, of:
    - (a) Another limited liability company;
    - (b) A corporation;
    - (c) A limited partnership;
    - (d) A limited liability partnership; or
    - (e) A limited liability limited partnership;
  - (2) A name, the right of which is, at the time of organization, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, ~~45-10.1-03~~ 45-10.2-11, 45-13-04.2, or 45-22-05;
  - (3) A fictitious name registered in the manner provided in chapter 45-11; or
  - (4) A trade name registered in the manner provided in chapter 47-25.
2. The secretary of state shall determine whether a limited liability company name is deceptively similar to another name for purposes of this chapter.
3. If the secretary of state determines that a limited liability company name is deceptively similar to another name for purposes of this chapter, then the limited liability company 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 to which the proposed name has been determined to be deceptively similar; or
  - b. A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.

This subsection does not affect the right of a domestic limited liability company existing on July 1, 1993, or a foreign limited liability company authorized to do business in this state on July 1, 1993, to continue the use of its name.

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

- a. Abrogate or limit:
    - (1) The law of unfair competition or unfair practices;
    - (2) Chapter 47-25;
    - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, and service marks; or
    - (4) Any other rights to the exclusive use of names or symbols.
  - b. Derogate the common law or the principles of equity.
5. A limited liability company that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another 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 organization whose name is sought to be used:
  - a. Was organized, incorporated, 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~~ 45-10.2-11, 45-13-04.2, or 45-22-05;
  - d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
  - e. Holds a trade name registered in the manner provided in chapter 47-25.
6. The use of a name by a limited liability company in violation of this section does not affect or vitiate its limited liability company existence. However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the limited liability company from doing business under a name assumed in violation of this section, although its articles of organization may have been filed with the secretary of state and a certificate of organization issued.
7. A limited liability company whose period of existence has expired or that is involuntarily dissolved by the secretary of state pursuant to section 10-32-149 may reacquire the right to use that name by refiling articles of organization pursuant to section 10-32-20, ~~amending pursuant to section 10-32-130.1, or reinstating pursuant to section 10-32-149,~~ unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 2. A limited liability company that cannot reacquire the use of its limited liability company name shall adopt a new limited liability company name which complies with the provisions of this section;

- a. By refiling the articles of organization pursuant to section 10-32-07;
  - b. By amending pursuant to section 10-32-18; or
  - c. By reinstating pursuant to section 10-32-149.
8. Subject to section 10-32-136, this section applies to any foreign limited liability company transacting business in this state, having a certificate of authority to transact business in this state or applying for a certificate of authority.

**SECTION 51. AMENDMENT.** Subsection 2 of section 10-32-12 of the North Dakota Century Code is amended and reenacted as follows:

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

**SECTION 52. AMENDMENT.** Subsection 4 of section 10-32-13 of the North Dakota Century Code is amended and reenacted as follows:

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

**SECTION 53. AMENDMENT.** Section 10-32-17 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Effect an exchange, reclassification, or cancellation of all or part of the membership interests of the class or series, or effect a combination of outstanding membership interests of a class or series into a lesser number of membership interests of the class or series where each other class or series is not subject to a similar combination;
2. Effect an exchange, or create a right of exchange, of all or any part of the membership interests of another class or series for the membership interests of the class or series;
3. Change the rights or preferences of the membership interests of the class or series;
4. ~~Change the membership interests of the class or series into the same or a different number of membership interests of another class or series;~~

- 5- Create a new class or series of membership interests having rights and preferences prior and superior to the membership interests of that class or series, or increase the rights and preferences or the number of membership interests, of a class or series having rights and preferences prior or superior to the membership interests of that class or series;
- 6- 5. Divide the membership interests of the class into series and determine the designation of each series and the variations in the relative rights and preferences between the membership interests of each series or authorize the board to do so;
- 7- 6. Limit or deny any existing preemptive rights of the membership interests of the class or series; or
- 8- 7. Cancel or otherwise affect distributions on the membership interests of the class or series.

**SECTION 54. AMENDMENT.** Section 10-32-20 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-20. Filing of articles of amendment.** An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to law, and that all fees have been paid as provided in section 10-32-150, then the articles of amendment must be recorded in the office of the secretary of state. A limited liability company that amends its name and which is the owner of a trademark or trade name, is a general partner named in a fictitious name certificate, is a general partner in a limited partnership or a limited liability limited partnership, or is a managing partner of a limited liability partnership that is on file with the secretary of state must change or amend the limited liability company's name in each registration when the limited liability company files an amendment.

**SECTION 55. AMENDMENT.** Section 10-32-24 of the North Dakota Century Code is amended and reenacted as follows:

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

**SECTION 56. AMENDMENT.** Section 10-32-42 of the North Dakota Century Code is amended and reenacted as follows:

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

1. The Unless this chapter or the articles or a member-control agreement require a larger proportion or voting by class and except for the election of governors which is governed by section 10-32-76, the members shall take action by the affirmative vote of the owners of the greater of a:
  - a. A majority of the voting power of the membership interests present and entitled to vote on that item of business; or a

- b. A majority of the voting power of the membership interests with voting rights that would constitute the minimum voting power needed for a quorum for the transaction of business at a meeting, except if this chapter, the articles of organization, or a member-control agreement require a larger proportion.

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

2. In any case when a class or series of membership interests is entitled by this chapter, the articles of organization, a member-control agreement, or the terms of the membership interests to vote as a class or series, the matter being voted upon must also receive the affirmative vote of the owners of the same proportion of the membership interests as is required pursuant to subsection 1, unless the articles of organization or a member-control agreement requires a larger proportion. Unless otherwise stated in the articles, a member-control agreement or the bylaws in the case of voting as a class or series, the minimum percentage of the total voting power of membership interests of the class or series that must be present is equal to the minimum percentage of all membership interests entitled to vote required to be present under section 10-32-44.
3. Unless otherwise provided in the articles of organization, a member-control agreement, or the bylaws, members may take action at a meeting by ~~voice~~:
  - a. Voice or ballot, ~~action~~;
  - b. Action without a meeting pursuant to section 10-32-43, ~~written ballot~~;
  - c. Ballot pursuant to section 10-32-43.1; ~~or by electronic~~
  - d. Remote communication pursuant to section 10-32-43.2.

**SECTION 57. AMENDMENT.** Subsection 1 of section 10-32-43 of the North Dakota Century Code is amended and reenacted as follows:

1. If 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. After the adoption of the initial articles or the first making of a member-control agreement, an amendment to the articles or to a member-control agreement to permit written action to be taken by less than all members requires the approval of all the members entitled to vote on the amendment.

**SECTION 58. AMENDMENT.** Section 10-32-43.1 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-43.1. Action Member action by written ballot.**



1. Except as provided in subsection 5, and unless prohibited or limited by the articles or the bylaws, an action that may be taken at a regular or special meeting of members may be taken without a meeting if the limited liability company mails or delivers a ~~written~~ ballot to every member entitled to vote on the matter.
2. A ~~written~~ ballot must set forth each proposed action and provide an opportunity to vote for or against each proposed action.
3. Approval by ~~written~~ ballot under this section is valid only if:
  - a. The number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action; and
  - b. The number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.
4. Solicitations for votes by ~~written~~ ballot must:
  - a. Indicate the number of responses needed to meet the quorum requirements;
  - b. State the percentage of approvals necessary to approve each matter other than election of governors; and
  - c. Specify the time by which a ballot must be received by the limited liability company in order to be counted.
5. Except as otherwise provided in the articles or the bylaws, a written ballot may not be revoked.
6. With respect to a ballot by electronic communication:
  - a. A limited liability company may deliver a ballot by electronic communication only if the limited liability company complies with subsection 4 of section 10-32-43.2 as if the ballot were a notice.
  - b. Consent by a member to receive notice by electronic communication in a certain manner constitutes consent to receive a ballot by electronic communication in the same manner.

**SECTION 59. AMENDMENT.** Subsection 2 of section 10-32-51 of the North Dakota Century Code is amended and reenacted as follows:

2. A member of a limited liability company has an absolute right, upon written demand, to examine and copy, in person or by a legal representative, at any reasonable time, and the limited liability company shall make available within ten days after receipt by a manager of the limited liability company of the written demand, all ~~documents~~ records referred to in subsection 1.

**SECTION 60. AMENDMENT.** Section 10-32-53 of the North Dakota Century Code is amended and reenacted as follows:

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

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

**SECTION 61. AMENDMENT.** Section 10-32-54 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Subject to a member-control agreement under section 10-32-50, a member of a limited liability company may dissent from, and obtain payment for the fair value of the member's membership interests in the event of, any of the following limited liability company actions:
  - a. ~~An~~ Unless otherwise provided in the articles, an amendment of the articles of organization, but not an amendment to a member-control agreement, which materially and adversely affects the rights or preferences of the membership interests of the dissenting member in that it:
    - (1) Alters or abolishes a preferential right of the membership interests;

- (2) Creates, alters, or abolishes a right in respect of the redemption of the membership interests, including a provision respecting a sinking fund for the redemption or repurchase of the membership interests;
  - (3) Alters or abolishes a preemptive right of the owner of the membership interests to make a contribution;
  - (4) Excludes or limits the right of a member to vote on a matter, or to cumulate votes, except as the right may be excluded or limited through the acceptance of contributions or the making of contribution agreements pertaining to membership interests with similar or different voting rights;
  - (5) Changes a member's right to resign or retire; ~~or~~
  - (6) Establishes or changes the conditions for or consequences of expulsion; or
  - (7) Eliminates the right to obtain payment under this subdivision;
- b. A sale, lease, transfer, or other disposition of ~~all or substantially all of the~~ property and assets of the limited liability company, ~~but not including a transaction permitted without that requires~~ member approval under subsection 2 of section 10-32-108, a but not including:
- (1) A disposition in dissolution described in subsection 4 of section 10-32-113; a;
  - (2) A disposition pursuant to an order of a court; or a
  - (3) A disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the members in accordance with 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. A plan of conversion adopted by the limited liability company; or
- f. 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 directs that dissenting members may obtain payment for the dissenting members' membership interests.

2. A member may not assert dissenters' rights as to less than all the membership interests registered in the name of the member, unless the member dissents with respect to all the membership interests that are beneficially owned by another person but registered in the name of the member and discloses the name and address of each beneficial owner on which behalf the member dissents. In that event, the rights of the dissenter must be determined as if the membership interests to which the member has dissented and the other membership interests were registered in the names of different members. The beneficial owner of membership interests who is not the member may assert dissenters' rights with respect to membership interests held on behalf of the beneficial owner, and must be treated as a dissenting member under the terms of this section and section 10-32-55, if the beneficial owner submits to the limited liability company at the time of or before the assertion of the rights a written consent of the member.
3. Unless the articles, the bylaws, a member-control agreement, or a resolution approved by the board otherwise provide, the right to obtain payment under this section does not apply to the members of:
  - a. The surviving limited liability company in a merger with respect to membership interests of the members are not entitled to be voted on the merger and are not canceled or exchanged in the merger; or
  - b. The limited liability company whose membership interests will be acquired by the acquiring limited liability company in a plan of exchange with respect to membership interests of the members that are not entitled to be voted on the plan of exchange and are not exchanged in the plan of exchange.
4. The members of a limited liability company who have a right under this section to obtain payment for their membership interests do not have a right at law or in equity to have a limited liability company action described in subsection 1 set aside or rescinded, except when the limited liability company action is fraudulent with regard to the complaining member or the limited liability company.
- ~~3.~~ 5. If a date is fixed according to subsection 1 of section 10-32-40.1 for the determination of members entitled to receive notice of and to vote on an action described in subsection 1, only members as of the date fixed may exercise dissenters' rights.

**SECTION 62. AMENDMENT.** Subsections 3 and 4 of section 10-32-55 of the North Dakota Century Code are amended and reenacted as follows:

3. If the proposed action must be approved by the members and the limited liability company calls a meeting of members, then a member who is entitled to dissent under section 10-32-54 and who wishes to exercise dissenters' rights shall file with the limited liability company before the vote on the proposed action a written notice of intent to demand the fair value of the membership interests owned by the member and may not vote the membership interests in favor of the proposed action.

4. After the proposed action is approved by the board and, if necessary, the members, the limited liability company shall send to all members who complied with subsection 3, and all members who did not sign or consent to a written action that gave effect to the action creating the right to obtain payment under section 10-32-54 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 63. 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 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. 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 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 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 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 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.

~~7.~~ a. 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.

b. 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.~~ 7. 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;
- 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 64. AMENDMENT.** Section 10-32-76 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-76. ~~Cumulative voting~~ Voting for governors and cumulative voting.**

1. Unless otherwise provided in the articles and subject to subsection 2, governors are elected by a plurality of the voting power of the membership interests present and entitled to vote on the election of governors at a meeting at which a quorum is present.
2. Unless the articles of organization or a member-control agreement provides that there is no cumulative voting, each member entitled to vote for governors has the right to cumulate voting power in the election of governors by giving written notice of intent to cumulate voting power to any manager of the limited liability company before the meeting or to the presiding manager at the meeting at which the election is to occur at any time before the election of governors at the meeting, in which case:
  - a. The presiding manager at the meeting shall announce, before the election of governors, that members shall cumulate their voting power; and
  - b. Each member shall cumulate that member's voting power either by casting for one candidate the amount of voting power equal to the number of governors to be elected multiplied by the voting power represented by the membership interests owned by that member, or by distributing all of that voting power on the same principle among any number of candidates.
- ~~2-~~ 3. 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 under cumulative voting are cast against the amendment.

**SECTION 65. AMENDMENT.** Subsections 3 and 5 of section 10-32-80 of the North Dakota Century Code are amended and reenacted as follows:

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

- a. The notice need not state the purpose of the meeting unless the articles, a member-control agreement, or the bylaws otherwise require.
  - b. Any notice to a governor given under any provision of this chapter, the articles, a member-control agreement, or the bylaws by a form of electronic communication consented to by the governor to whom the notice is given is effective when given.
  - c. Consent by a governor to notice given by electronic communication may be given in writing or by authenticated electronic communication.
    - (1) Any consent so given may be relied upon until revoked by the governor.
    - (2) However, no revocation affects the validity of any notice given before receipt of revocation of the consent.
5. A governor may waive notice of a meeting of the board. A waiver of notice by a governor entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, by authenticated electronic communication, 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 10-32-91 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-91. Multiple managerial positions.** Any number of managerial positions or functions of those positions may be held or exercised by the same individual. If a document record must be signed by individuals holding different positions or functions and an individual holds or exercises more than one of those positions or functions, that individual may sign the document record in more than one capacity, but only if the document record indicates each capacity in which the individual signs.

**SECTION 67. AMENDMENT.** Subsection 1 of section 10-32-99 of the North Dakota Century Code is amended and reenacted as follows:

- 1. For purposes of this section:
  - a. "Limited liability company" includes a domestic limited liability company or foreign limited liability company that was the predecessor of the limited liability company referred to in this section in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.
  - b. "Official capacity" means:
    - (1) With respect to a governor, the position of governor in a limited liability company;



- (2) With respect to a person other than a governor, the elective or appointive office or position held by a manager, member of a committee of the board, the employment relationship undertaken by an employee, agent of the limited liability company, or the scope of the services provided by members of the limited liability company who provide services to the limited liability company; and
  - (3) With respect to a governor, manager, member, employee, or agent of the limited liability company who, while a governor, manager, member, or employee of the limited liability company, is or was serving at the request of the limited liability company or whose duties in that position involve or involved service as a governor, director, manager, officer, member, partner, trustee, employee, or agent of another organization or employee benefit plan, the position of that person as a governor, 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, employee, or agent whose indemnification is in issue.

**SECTION 68. AMENDMENT.** Subsections 1 and 2 of section 10-32-100 of the North Dakota Century Code are amended and reenacted as follows:

- 1. With or without a business purpose, a limited liability company may merge:
  - a. With another limited liability company pursuant to a plan of merger approved in the manner provided in sections 10-32-101 through 10-32-106.
  - b. With a ~~domestic~~ corporation under a plan of merger approved in the manner provided in sections 10-32-101 through 10-32-107 and in chapter 10-19.1.
  - c. With any foreign corporation or foreign limited liability company pursuant to a plan of merger approved in the manner provided in section 10-32-107.
- 2. With respect to an exchange:
  - a. A limited liability company may acquire all of the ownership interests of one or more classes or series of another limited liability company pursuant to a plan of exchange approved in the manner provided in sections 10-32-101 through 10-32-106.

- b. A limited liability company may acquire all of the ownership interests of one or more classes or series of a ~~domestic~~ corporation pursuant to a plan of exchange approved in the manner provided in sections 10-32-101 through 10-32-107 and in chapter 10-19.1.
- c. A ~~domestic~~ corporation may acquire all of the ownership interests of one or more classes or series of a limited liability company pursuant to a plan of exchange approved in the manner provided in sections 10-32-101 through 10-32-106 and in chapter 10-19.1.
- d. A foreign corporation or foreign limited liability company may acquire all of the ownership interests of one or more classes or series of a limited liability company pursuant to a plan of exchange approved in the manner provided in section 10-32-107.

**SECTION 69. AMENDMENT.** Subsections 1 and 5 of section 10-32-102 of the North Dakota Century Code are amended and reenacted as follows:

- 1. A resolution containing the plan of merger or exchange must be approved by the governing board as required by section 10-19.1-46 or 10-32-83 of each constituent organization and must then be submitted at a regular or special meeting to the owners of each constituent organization in the case of a plan of merger; and the constituent organization whose ownership interests will be acquired by the acquiring constituent organization in the exchange, in the case of an exchange. The plan of merger or exchange may require that it be submitted to the owners whether or not the governing board determines at any time after the governing board's initial approval of the plan that the plan is no longer advisable and recommends that the owners reject it. If owners owning any class or series of ownership interests in a constituent organization are entitled to vote on the plan of merger or exchange pursuant to this subsection, written notice must be given to every owner of that constituent organization, whether or not entitled to vote at the meeting, not less than fourteen days nor more than sixty days before the meeting, in the manner provided in section 10-19.1-73 for notice of meetings of shareholders in the case of a ~~domestic~~ corporation and in the manner provided in section 10-32-40 for notice of meetings of members in the case of a limited liability company. The written notice must state that a purpose of the meeting is to consider the proposed plan of merger or exchange. A copy or short description of the plan of merger or exchange must be included in or enclosed with the notice.
- 5. If the merger or exchange is with a ~~domestic~~ corporation, the plan of merger or exchange must also be approved in the manner provided in chapter 10-19.1.

**SECTION 70. AMENDMENT.** Subsection 2 of section 10-32-106 of the North Dakota Century Code is amended and reenacted as follows:

- 2. When a merger becomes effective:
  - a. The constituent organizations become a single entity, the surviving corporation, or surviving limited liability company;

- b. The separate existence of all constituent organizations except the surviving constituent organization ceases;
- c. As to any limited liability company that was a constituent organization and is not the surviving constituent organization, the articles of merger serve as the articles of termination and, unless previously filed, the notice of dissolution;
- d. As to rights, privileges, immunities, powers, duties, and liabilities:
  - (1) If the surviving organization is a limited liability company, the surviving limited liability company has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities of a limited liability company organized under this chapter; and
  - (2) If the surviving organization is a ~~domestic~~ corporation, the surviving ~~domestic~~ corporation has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities of a ~~domestic~~ corporation;
- e. The surviving constituent organization, whether a limited liability company or a domestic or foreign corporation, possesses all the rights, privileges, immunities, and franchises, of a public as well as of a private nature, of each of the constituent organizations.
  - (1) All property, real, personal, and mixed, and all debts due on any account, including subscriptions to shares and contribution agreements, as the case may be, and all other choses in action, and every other interest of or belonging to or due to each of the constituent organizations vests in the surviving constituent organization without any further act or deed.
  - (2) Confirmatory deeds, assignments, or similar instruments to accomplish that vesting may be signed and delivered at any time in the name of a constituent organization by its current officers or managers, as the case may be, or, if the organization no longer exists, by its last officers or managers, as the case may be.
  - (3) The title to any real estate or any interest in real estate vested in any of the constituent organizations does not revert nor in any way become impaired by reason of the merger;
- f. The surviving constituent organization is responsible and liable for all the liabilities and obligations of each of the constituent organizations.
  - (1) A claim of or against or a pending proceeding by or against a constituent organization may be prosecuted as if the merger had not taken place, or the surviving organization may be substituted in the place of the constituent organization.

- (2) Neither the rights of creditors nor any liens upon the property of a constituent organization are impaired by the merger; and
- g. The articles of organization or articles of incorporation, as the case may be, of the surviving organization are considered to be amended to the extent that changes in its articles, if any, are contained in the plan of merger.

**SECTION 71.** Section 10-32-106.1 of the North Dakota Century Code is created and enacted as follows:

**10-32-106.1. Continuance of limited liability company authority.** When an act or record is considered necessary or appropriate to evidence the vesting of property or other rights in the single limited liability company, the persons with authority to do so under the articles or bylaws of each constituent organization shall do the act or sign and deliver the record and for this purpose, the existence of the constituent organizations and the authority of those persons are continued.

**SECTION 72. AMENDMENT.** Subsections 1 and 4 of section 10-32-107 of the North Dakota Century Code are amended and reenacted as follows:

1. A limited liability company may merge with including a merger pursuant to section 10-32-104, or participate in an exchange with a foreign corporation or a foreign limited liability company by following the procedures set forth in this section, if:
  - a. With respect to a merger, the merger is permitted by the laws of the jurisdiction under which the foreign corporation or foreign limited liability company is incorporated or organized; and
  - b. With respect to an exchange, the constituent organization of which the ownership interests will be acquired is a limited liability company or a ~~domestic~~ corporation, regardless of whether the exchange is permitted by the laws of the jurisdiction under which the foreign corporation or foreign limited liability company is incorporated or organized.
4. If the surviving organization in a merger will be a foreign corporation or foreign limited liability company and will transact business in this state, the surviving organization shall comply, as the case may be, with the provisions of chapter 10-19.1 with respect to foreign corporations or with the provisions of this chapter with respect to foreign limited liability companies. In every case, the surviving foreign corporation or foreign limited liability company shall file with the secretary of state:
  - a. An agreement that the surviving organization may be served with process in this state in a proceeding for the enforcement of an obligation of a constituent organization and in a proceeding for the enforcement of the rights of a dissenting owner of an ownership interest of a constituent organization against the surviving foreign corporation or foreign limited liability company;
  - b. An irrevocable appointment of the secretary of state as the surviving organization's agent to accept service of process in any

proceeding, and an address to which process may be forwarded; and

- c. An agreement that the surviving organization promptly will pay to the dissenting owners of ownership interests of each constituent ~~domestic~~ limited liability company and constituent ~~domestic~~ corporation the amount, if any, to which the dissenting owners are entitled under section 10-19.1-88 or 10-32-55.

**SECTION 73. AMENDMENT.** Subsection 2 of section 10-32-108 of the North Dakota Century Code is amended and reenacted as follows:

2. With respect to member approval:

- a. 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 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.

(1) Written notice of the meeting must be given to all members whether or not they are entitled to vote at the meeting.

(2) 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.

- b. Member approval is not required under subdivision a if, following the sale, lease, transfer, or other disposition of its property and assets, the limited liability company retains a significant continuing business activity. The limited liability company will conclusively be deemed to have retained a significant continuing business activity if the limited liability company retains a business activity that represented at least:

(1) Twenty-five percent of the limited liability company's total assets at the end of the most recently completed fiscal year; and

(2) Twenty-five percent of either income from continuing operations before taxes or revenues from continuing operations for that fiscal year, measured on a consolidated basis with its subsidiaries for paragraph 1 and this paragraph.

**SECTION 74.** Section 10-32-108.1 of the North Dakota Century Code is created and enacted as follows:

**10-32-108.1. Conversion.**

1. An organization other than a limited liability company may convert to a limited liability company, and a limited liability company may convert to another organization other than a general partnership as provided in this section and sections 10-32-108.2 through 10-32-108.6 and a plan of conversion, if:
  - a. The governing statute of the other organization authorizes the conversion;
  - b. The conversion is not prohibited by the law of the jurisdiction that enacted the governing statute; and
  - c. The other organization complies with its governing statute in effecting the conversion.
2. For the purposes of sections 10-32-108.1 through 10-32-108.6, unless the context otherwise requires:
  - a. "Act of the board" means action by the board as provided in section 10-32-83 whether:
    - (1) At a meeting of the board as provided in section 10-32-80; or
    - (2) By a written action of the board as provided in section 10-32-84.
  - b. "Act of the members" means action by the members as provided in section 10-32-42 whether:
    - (1) At a meeting of the members as provided in sections 10-32-38 and 10-32-39; or
    - (2) By a written action of the members as provided in section 10-32-43.
  - c. "Certificate of creation" means:
    - (1) A certificate of incorporation, if the converted organization is a corporation deemed to be incorporated under chapter 10-19.1;
    - (2) A certificate of organization, if the converted organization is a limited liability company deemed to be organized under this chapter;
    - (3) A certificate of limited partnership, if the converted organization is a limited partnership deemed to be formed under chapter 45-10.2;
    - (4) The filed registration of a limited liability partnership, if the converted organization is a limited liability partnership deemed to be established under chapter 45-22; or
    - (5) A certificate of limited liability limited partnership, if the converted organization is a limited liability limited partnership deemed to be formed under chapter 45-23.

- d. "Date of origin" means the date on which:
- (1) A corporation which is:
    - (a) The converting organization was incorporated; or
    - (b) The converted organization is deemed to be incorporated;
  - (2) A limited liability company which is:
    - (a) The converting organization was organized; or
    - (b) The converted organization is deemed to be organized;
  - (3) A general partnership that is the converting organization was formed;
  - (4) A limited partnership which is:
    - (a) The converting organization was formed; or
    - (b) The converted organization is deemed to be formed;
  - (5) A limited liability partnership which is:
    - (a) The converting organization was formed; or
    - (b) The converted organization is deemed to be formed; and
  - (6) A limited liability limited partnership which is:
    - (a) The converting organization was formed; or
    - (b) The converted organization is deemed to be formed.
- e. "Filed registration" means the registration of a limited liability partnership which has been filed with the secretary of state.
- f. "General partnership" means an organization formed by two or more persons under chapters 45-13 through 45-21.
- g. "Organizational records" means for an organization that is:
- (1) A corporation, its articles of incorporation and bylaws;
  - (2) A limited liability company, its articles of organization, operating agreement or bylaws, and any member-control agreement;
  - (3) A limited partnership, its partnership agreement;
  - (4) A limited liability partnership, its partnership agreement; or

- (5) A limited liability limited partnership, its partnership agreement.
- h. "Originating records" means for an organization which is:
  - (1) A corporation, its articles of incorporation;
  - (2) A limited liability company, its articles of organization;
  - (3) A limited partnership, its certificate of limited partnership;
  - (4) A limited liability partnership, its registration; or
  - (5) A limited liability limited partnership, its certificate of limited liability limited partnership.

**SECTION 75.** Section 10-32-108.2 of the North Dakota Century Code is created and enacted as follows:

**10-32-108.2. Plan of conversion.** A plan of conversion must be in a record and must contain:

- 1. The name and form of the converting organization before conversion;
- 2. The name and form of the converted organization after conversion;
- 3. The terms and conditions of the proposed conversion;
- 4. The manner and basis of converting each ownership interest in the converting organization into ownership interests in the converted organization or, in whole or in part, into money or other property;
- 5. The organizational records of the converted organization; and
- 6. Any other provisions with respect to the proposed conversion that are deemed necessary or desirable.

**SECTION 76.** Section 10-32-108.3 of the North Dakota Century Code is created and enacted as follows:

**10-32-108.3. Plan approval and amendment.**

- 1. If the converting organization is a limited liability company, then:
  - a. A resolution containing or amending the plan of conversion must be approved by an act of the board of the converting limited liability company and must then be approved by an act of its members.
    - (1) In the action by the members, a class or series of membership interests is entitled to vote as a class or series on the approval or amendment of the plan.
    - (2) Any amendment of the plan is subject to any contractual rights.





- d. The plan of conversion without organizational records;
  - e. A copy of the originating record of the converted organization; and
  - f. If the converted organization is a foreign organization not authorized to transact business or conduct activities in this state, then the street and mailing address of an office which the secretary of state may use for the purposes of subsection 4 of section 10-32-108.6.
2. The articles of conversion must be signed on behalf of the converting organization and filed with the secretary of state.
  - a. If the converted organization is a domestic organization:
    - (1) Then the filing of the articles of conversion must also include the filing with the secretary of state of the originating record of the converted organization.
    - (2) Upon both the articles of conversion and the originating record of the converted organization being filed with the secretary of state, the secretary of state shall issue a certificate of conversion and the appropriate certificate of creation to the converted organization or its legal representative.
  - b. If the converted organization is a foreign organization:
    - (1) That is transacting business or conducting activities in this state, then:
      - a. The filing of the articles of conversion must include the filing with the secretary of state of an application for a certificate of authority by the converted organization.
      - b. Upon both the articles of conversion and the application for a certificate of authority by the converted organization being filed with the secretary of state, the secretary of state shall issue a certificate of conversion and the appropriate certificate of authority to the converted organization or the legal representative.
    - (2) That is not transacting business or conducting activities in this state, then, upon the articles of conversion being filed with the secretary of state, the secretary of state shall issue a certificate of conversion to the converted organization or its legal representative.
3. A converting organization that is the owner of a trademark or trade name, is a general partner named in a fictitious name certificate, is a general partner in a limited partnership or a limited liability limited partnership, or is a managing partner of a limited liability partnership that is on file with the secretary of state must change or amend the name of the converting organization to the name of the converted organization in each registration when filing the articles of conversion.

**SECTION 78.** Section 10-32-108.5 of the North Dakota Century Code is created and enacted as follows:

**10-32-108.5. Abandonment of conversion.**

1. If the articles of conversion have not been filed with the secretary of state, and:
  - a. If the converting organization is a limited liability company, then:
    - (1) Before a plan of conversion has been approved by the converting limited liability company as provided in section 10-32-108.3, it may be abandoned by an act of its board.
    - (2) After a plan of conversion has been approved by the converting limited liability company as provided in section 10-32-108.3, and before the effective date of the plan, it may be abandoned:
      - (a) If the members of the converting limited liability company entitled to vote on the approval of the plan as provided in section 10-32-108.3 have approved the abandonment by an act of the members; or
      - (b) If the plan provides for abandonment and if all conditions for abandonment set forth in the plan are met.
  - b. If the converting organization is not a limited liability company, then the abandonment of the plan of conversion must comply with its governing statute.
2. If articles of conversion have been filed with the secretary of state, but have not yet become effective, then the converting organization shall file with the secretary of state articles of abandonment that contain:
  - a. The name of the converting organization;
  - b. The provision of this section under which the plan is abandoned; and
  - c. If the plan is abandoned:
    - (1) By an act of the board under paragraph 1 of subdivision a of subsection 1, or by an act of the members under subparagraph a of paragraph 2 of subdivision a of subsection 1, then the text of the resolution abandoning the plan; or
    - (2) As provided in the plan under subparagraph b of paragraph 2 of subdivision a of subsection 1, then a statement that the plan provides for abandonment and that all conditions for abandonment set forth in the plan are met.

**SECTION 79.** Section 10-32-108.6 of the North Dakota Century Code is created and enacted as follows:

**10-32-108.6. Effective date of conversion - Effect.**

1. A conversion is effective when the filing requirements of subsection 2 of section 10-32-108.4 have been fulfilled or on a later date specified in the articles of conversion.
2. With respect to the effect of conversion on the converting organization and on the converted organization:
  - a. An organization that has been converted as provided in sections 10-32-108.1 through 10-32-108.6 is for all purposes the same entity that existed before the conversion.
  - b. Upon a conversion becoming effective:
    - (1) If the converted organization:
      - (a) Is a limited liability company, then the converted organization has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities, of a limited liability company organized under this chapter; or
      - (b) Is not a limited liability company, then the converted organization has all the rights, privileges, immunities, and powers, and is subject to the duties and liabilities as provided in its governing statute;
    - (2) All property owned by the converting organization remains vested in the converted organization;
    - (3) All debts, liabilities, and other obligations of the converting organization continue as obligations of the converted organization;
    - (4) An action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred;
    - (5) Except as otherwise provided by other law, all rights, privileges, immunities, and powers of the converting organization remain vested in the converted organization; and
    - (6) Except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect.
3. When a conversion becomes effective, each ownership interest in the converting organization is deemed to be converted into ownership interests in the converted organization or, in whole or in part, into money or other property to be received under the plan, subject to any dissenters' rights under section 10-32-54.
4. A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by the converting limited liability company, if before the conversion the

converting limited liability company was subject to suit in this state on the obligation.

5. A converted organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for purposes of enforcing an obligation under this subsection.

**SECTION 80. AMENDMENT.** Subsection 1 of section 10-32-114 of the North Dakota Century Code is amended and reenacted as follows:

1. If notice to creditors and claimants is given, the notice must be given by publishing the notice once each week for four successive weeks in an official newspaper as defined in chapter 46-06 in the county or counties where the registered office and the principal executive office of the limited liability company are located and by giving written notice to known creditors and claimants pursuant to subsection ~~39~~ 42 of section 10-32-02.

**SECTION 81. AMENDMENT.** Section 10-32-132 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-132. Service of process on limited liability company, foreign limited liability company, and nonresident governors.**

1. The registered agent must be an agent of the limited liability company or foreign limited liability company and any nonresident governor upon whom any process, notice, or demand required or permitted by law to be served on the limited liability company, the foreign limited liability company, or a governor may be served.
- a. When a foreign limited liability company transacts business with a certificate of authority, or when the certificate of authority of a foreign limited liability company is suspended or revoked, the secretary of state is an agent of the foreign limited liability company for service of process, notice, or demand.
- b. Acceptance of a governorship includes the appointment of the secretary of state as an agent for personal service of legal process, notice, or demand.
2. A process, notice, or demand required or permitted by law to be served upon a limited liability company or foreign limited liability company may be served ~~either:~~
- a. ~~Upon~~ On the registered agent of the limited liability company or foreign limited liability company;
- b. ~~Upon~~ On a manager of the limited liability company or foreign limited liability company; or
- c. ~~Upon~~ On any responsible person found at the registered office or at the principal executive office if located in this state; or
- d. On the secretary of state as provided in this section.

3. If neither the ~~limited liability company's~~ registered agent nor ~~an officer of the limited liability company~~ a responsible person can be found at the registered office or the principal executive office if located in this state, or if a limited liability company or foreign 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 an agent of the limited liability company or foreign limited liability company upon whom the process, notice, or demand may be served.

a. Service on the secretary of state:

- a- (1) Shall be made by registered mail or personal delivery to the secretary of state and not by electronic communication;
- b- (2) Shall include the return of the sheriff, or the affidavit of a person not a party, verifying that neither the registered agent nor a ~~manager~~ responsible person can be found at the registered office or at the principal executive office; ~~and~~
- e- (3) Is deemed personal service upon the limited liability company or foreign limited liability company and is must be made by filing with the secretary of state:
- (1) (a) Three copies of the process, notice, or demand; and
- (2) (b) The fees provided for in section 10-32-150; and
- (4) Is returnable in not less than thirty days notwithstanding a shorter period specified in the process, notice, or demand.
- b. The secretary of state shall immediately forward, by registered mail, addressed to the limited liability company at its registered office or principal executive office, a copy of the process, notice, or demand. ~~Service on the secretary of state is returnable in not less than thirty days notwithstanding a shorter period specified in the process, notice, or demand.~~

4. Process, notice, or demand may be served on a dissolved limited liability company as provided in this subsection. The court shall determine if service is proper. If a limited liability company has voluntarily dissolved or a court has entered a decree of dissolution, service may be made according to subsection 2 so long as claims are not finally barred under section 10-32-128. If a limited liability company has been involuntarily dissolved pursuant to section 10-32-149, then service may be made according to subsection 2.

5. A The secretary of state shall maintain a record ~~must be maintained in the office of the secretary of state of all processes, notices every process, notice, and demands~~ demand served upon the secretary of state under this section, including the date of service and the action taken with reference to ~~it~~ the process, notice, or demand.

- 5- 6. Nothing in this section limits the right of a person to serve any process, notice, or demand required or permitted by law to be served upon a

limited liability company or foreign limited liability company in any other manner permitted by law.

**SECTION 82. AMENDMENT.** Subsection 1 of section 10-32-144 of the North Dakota Century Code is amended and reenacted as follows:

1. The certificate of authority of a foreign limited liability company to transact business in this state may be revoked by the secretary of state upon the occurrence of either of these events:
  - a. The foreign limited liability company has failed to appoint and maintain a registered agent as required by this chapter, file a report upon any change in the name or business address of the registered agent, or file in the office of the secretary of state any amendment to its application for a certificate of authority as specified in section 10-32-140; or
  - b. A misrepresentation has been made of any material matter in any application, report, affidavit, or other document record submitted by the foreign limited liability company pursuant to this chapter.

**SECTION 83. AMENDMENT.** Section 10-32-148 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-148. Service of process on a foreign limited liability company.** Service of process on a foreign limited liability company must be as provided in section 10-32-132. ~~When the certificate of authority of a foreign limited liability company is suspended or revoked, the secretary of state is an agent of the foreign limited liability company for service of process, notice, or demand.~~

**SECTION 84. AMENDMENT.** Subsections 1, 2, 3, 4, and 7 of section 10-32-149 of the North Dakota Century Code are amended and reenacted as follows:

1. Each limited liability company, and each foreign limited liability company authorized to transact business in this state, shall file, within the time ~~prescribed~~ provided by subsection 3, an annual report setting forth:
  - a. The name of the limited liability company or foreign limited liability company and the state or country under the laws of which it is organized.
  - b. The address of the registered office of the limited liability company or foreign limited liability company in this state, the name of its registered agent in this state at that address, and the address of its principal executive office.
  - c. A brief statement of the character of the business in which the limited liability company or foreign limited liability company is actually engaged in this state.
  - d. The names and respective addresses of the managers and governors of the limited liability company or foreign limited liability company or the name or names and respective address or addresses of the managing member or members of the limited liability company or foreign limited liability company.

2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as ~~prescribed~~ provided in subsection ~~53~~ 56 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.
3. The annual report of a limited liability company or foreign limited liability company must be delivered to the secretary of state before November sixteenth of each year, except that the first annual report of a limited liability company or foreign limited liability company must be delivered before November sixteenth of the year following the calendar year in which the certificate of organization or certificate of authority was issued by the secretary of state.
  - a. An annual report in a sealed envelope postmarked by the United States postal service before November sixteenth, or an annual report in a sealed packet with a verified shipment date by any other carrier service before November sixteenth, is in compliance with this requirement.
  - b. The secretary of state must file the report if the report conforms to the requirements of subsection 2.
    - (1) If the report does not conform, it must be returned to the limited liability company or foreign limited liability company for any necessary corrections.
    - (2) If the report is filed before the deadlines ~~prescribed~~ provided 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.
  - c. The secretary of state may extend the annual filing date of any limited liability company or foreign limited liability company, if a written application for an extension is delivered before November sixteenth.
4. After the date established under subsection 3, the secretary of state shall notify any limited liability company or foreign limited liability company failing to file its annual report that its certificate of organization or certificate of authority is not in good standing and that it may be terminated or revoked pursuant to subsection 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 liability company or foreign limited liability company files its annual report after the notice is mailed, together with the annual report filing fee and late filing penalty fee as ~~prescribed~~ provided by section 10-32-150, the secretary of state will restore its certificate of organization or certificate of authority to good standing.
- 7. A limited liability company that was terminated for failure to file an annual report, or a foreign limited liability company whose authority was forfeited by failure to file an annual report, may be reinstated by filing a past-due report, together with the statutory filing and penalty fees for an annual report and a reinstatement fee as ~~prescribed~~ provided in section 10-32-150. The fees must be paid and the report filed within one year following the involuntary dissolution 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 85. AMENDMENT.** Section 10-32-150 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-150. Secretary of state - Fees and charges.**

- 4. The secretary of state shall charge and collect for:
  - a. 1. Filing articles of organization and issuing a certificate of organization, one hundred twenty-five dollars.
  - b. 2. Filing articles of amendment, fifty dollars.
  - 3. Filing articles of correction, fifty dollars.
  - e. 4. Filing restated articles of organization, one hundred twenty-five dollars.
  - 5. Filing articles of conversion of a limited liability company, fifty dollars and:
    - a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or
    - b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.
  - 6. Filing abandonment of conversion, fifty dollars.
  - d. 7. Filing articles of merger and issuing a certificate of merger, fifty dollars.
  - e. 8. Filing abandonment of merger or exchange, fifty dollars.
  - f. 9. Filing an application to reserve a name, ten dollars.
  - g. 10. Filing a notice of transfer of a reserved name, ten dollars.

- ~~h.~~ 11. Filing a cancellation of reserved name, ten dollars.
- ~~i.~~ 12. Filing a consent to use of name, ten dollars.
- ~~j.~~ 13. Filing a statement of change of address of registered office or change of registered agent or both, ten dollars.
- ~~k.~~ 14. Filing a statement of change of address of registered office by registered agent, ten dollars for each limited liability company affected by such change.
- ~~l.~~ 15. Filing a registered agent's consent to serve in such capacity, ten dollars.
- ~~m.~~ 16. Filing a resignation as registered agent, ten dollars.
- ~~n.~~ 17. Filing a resolution for the establishment of a class or series of membership interest, fifty dollars.
- ~~o.~~ 18. Filing a notice of dissolution, ten dollars.
- ~~p.~~ 19. Filing a statement of revocation of voluntary dissolution proceedings, ten dollars.
- ~~q.~~ 20. Filing articles of dissolution and termination, twenty dollars.
- ~~r.~~ 21. Filing an application of a foreign limited liability company for a certificate of authority to transact business in this state and issuing a certificate of authority, one hundred twenty-five dollars.
- ~~s.~~ 22. Filing an amendment to the certificate of authority by a foreign limited liability company, fifty dollars.
- ~~t.~~ 23. Filing a certificate of fact stating a merger of a foreign limited liability company holding a certificate of authority to transact business in this state, fifty dollars.
- 24. Filing a certified statement of conversion of foreign limited liability company, fifty dollars.
- ~~u.~~ 25. Filing an application for withdrawal of a foreign limited liability company and issuing a certificate of withdrawal, twenty dollars.
- ~~v.~~ 26. Filing an annual report of a limited liability company or foreign limited liability company, fifty dollars.
  - a. The secretary of state shall charge and collect additional fees for late filing of the annual report as follows:
    - (1) After the date ~~prescribed~~ provided in subsection 3 of section 10-32-149, fifty dollars; and
    - (2) After the termination of the limited liability company, or the revocation of the certificate of authority of a foreign limited liability company, the reinstatement fee of one hundred twenty-five dollars.

- ~~b.~~ Fees paid to the secretary of state according to this subsection are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 10-32-149, or the annual report lacks sufficient payment as required by this subsection.
- ~~w.~~ 27. Filing any process, notice, or demand for service, twenty-five dollars.
- ~~x.~~ 28. Submitting any ~~document~~ record for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the ~~document~~ record.
- ~~y.~~ 29. Filing any other statement or report of a limited liability company or foreign limited liability company, ten dollars.
- ~~z.~~ The secretary of state shall charge and collect for:
- ~~a.~~ 30. Furnishing a copy of any ~~document, instrument~~ record, or paper relating to a limited liability company or a foreign limited liability company, ~~one~~:
- a. One dollar for every four pages, or fraction thereof; and
- b. Five dollars for a search of records.
- ~~b.~~ A certificate certifying a copy of reciting facts related to a limited liability company or a foreign limited liability company, twenty dollars.
31. Furnishing a certificate of good standing, existence, or authorization:
- a. Fifteen dollars; and
- b. Five dollars for a search of records.
- ~~e.~~ 32. Each page of any ~~document~~ record or form sent by electronic transmission, one dollar.

**SECTION 86. AMENDMENT.** Section 10-32-152 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-152. Secretary of state - Powers - Enforcement - Appeal.**

1. The secretary of state has the power and authority reasonably necessary to efficiently administer this chapter and to perform the duties imposed thereby.
2. The secretary of state may propound to any limited liability company, domestic or foreign, subject to the provisions of this chapter and to any manager or governor thereof, such interrogatories as may be reasonably necessary and proper to ascertain whether such limited liability company has complied with all provisions of this chapter applicable to such limited liability company.
- a. Such interrogatories must be answered within thirty days after mailing or within such additional time as must be fixed by the

secretary of state. The answers to such interrogatories must be full and complete and must be made in writing and under oath.

- b. If such interrogatories be directed:
    - (1) To an individual, they must be answered by that individual; or
    - (2) To a limited liability company, they must be answered by the president, vice president, secretary, or assistant secretary of the limited liability company.
  - c. The secretary of state need not file any ~~document~~ record to which such interrogatories relate until such interrogatories have been answered, and not then if the answers disclose that such ~~document~~ record is not in conformity with the provisions of this chapter.
  - d. The secretary of state shall certify to the attorney general, for such action as the attorney general may deem appropriate, all interrogatories and answers thereto, which disclose a violation of any of the provisions of this chapter.
  - e. Each manager or governor of a limited liability company, domestic or foreign, who fails or refuses within the time provided by subdivision a of subsection 2 to answer truthfully and fully all interrogatories propounded to that person by the secretary of state is guilty of an infraction.
  - f. Interrogatories propounded by the secretary of state and the answers thereto are not open to public inspection. The secretary of state may not disclose any facts or information obtained from such interrogatories or answers except insofar as may be permitted by law or insofar as is required for evidence in any criminal proceedings or other action by this state.
3. If the secretary of state rejects any ~~document~~ record required by this chapter to be approved by the secretary of state before the same may be filed, then the secretary of state shall give written notice of the rejection to the person ~~who~~ that delivered the ~~document~~ record, specifying the reasons for rejection.
- a. ~~From such rejection such person~~ Within thirty days after the service of the notice of denial, the limited liability company or foreign limited liability company, as the case may be, may appeal to the district court of the county in which the registered office of such limited liability company is, or is proposed to be, situated in the judicial district serving Burleigh County by filing with the clerk of such court a petition setting forth a copy of the ~~document~~ record sought to be filed and a copy of the written rejection of the ~~document~~ record by the secretary of state.
  - b. The matter must be tried de novo by the court. The court shall either sustain the action of the secretary of state or direct the secretary of state to take such action as the court may deem proper.

4. If the secretary of state dissolves a limited liability company or revokes the certificate of authority to transact business in this state of any foreign limited liability company, pursuant to the provisions of section 10-32-144, such then the limited liability company or foreign limited liability company may appeal to district court of the county where the registered office of such limited liability company in this state is situated in the judicial district serving Burleigh County by filing with the clerk of such court a petition setting forth a including:
  - a. A copy of ~~its~~ the limited liability company's articles of organization and a copy of the notice of dissolution given by the secretary of state; or
  - b. A copy of the foreign limited liability company's certificate of authority to transact business in this state and a copy of the notice of revocation given by the secretary of state.

The matter must be tried de novo by the court. The court shall either sustain the action of the secretary of state or direct the secretary of state to take such action as the court may deem proper.

5. If the court order sought is one for reinstatement of a limited liability company that has been dissolved as provided in subsection 5 of section 10-32-149, or for reinstatement of the certificate of authority of a foreign limited liability company that has been revoked as provided in subsection 6 of section 10-32-149, then together with any other actions the court deems proper, any such order which reverses the decision of the secretary of state shall require the limited liability company or foreign limited liability company to:
  - a. File all past-due annual reports;
  - b. Pay the fees to the secretary of state for each annual report as provided in subsection 26 of section 10-32-150; and
  - c. Pay the reinstatement fee to the secretary of state as provided in subsection 26 of section 10-32-150.
6. Appeals from all final orders and judgments entered by the district court under this section in review of any ruling or decision of the secretary of state may be taken as in other civil actions.

**SECTION 87.** Section 10-32-152.1 of the North Dakota Century Code is created and enacted as follows:

**10-32-152.1. Delivery to and filing of records by secretary of state and effective date.**

1. A record authorized or required to be delivered to the secretary of state for filing under this chapter must be captioned to describe the purpose of the record, be in a medium permitted by the secretary of state, and be delivered to the secretary of state. If the secretary of state determines that a record complies with the filing requirements of this chapter, then the secretary of state shall file the record and return a copy of the filed record to the person that delivered it to the secretary of state for filing.

That person shall then send a copy of the filed record to the person on whose behalf the record was filed.

2. Upon request and payment of a fee provided in section 10-32-150, the secretary of state shall send to the requester a certified copy of the requested record.
3. Except as otherwise specifically provided in this chapter, a record delivered to the secretary of state for filing under this chapter may specify a delayed effective date within ninety days. Except as otherwise provided in this chapter, a record filed by the secretary of state is effective:
  - a. If the record does not specify a delayed effective date within ninety days, then on the date the record is filed as evidenced by the endorsement of the secretary of state of the date on the record.
  - b. If the record specifies a delayed effective date within ninety days, then on the specified date.

**SECTION 88.** Section 10-32-152.2 of the North Dakota Century Code is created and enacted as follows:

**10-32-152.2. Correcting a filed record.** With respect to correction of a filed record:

1. Whenever a record authorized by this chapter to be filed with the secretary of state has been filed and inaccurately records the action referred to in the record, contains an inaccurate or erroneous statement, or was defectively or erroneously signed, sealed, acknowledged, or verified, the record may be corrected by filing a statement of correction.
2. A statement of correction:
  - a. Must:
    - (1) Be signed by:
      - (a) The person that signed the original record; or
      - (b) By a person authorized to sign on behalf of that person;
    - (2) Set forth the name of the limited liability company that filed the record;
    - (3) Identify the record to be corrected by description and by the date of its filing with the secretary of state;
    - (4) Identify the inaccuracy, error, or defect to be corrected; and
    - (5) Set forth a statement in corrected form of the portion of the record to be corrected.
  - b. May not revoke or nullify the record.

3. The statement of correction must be filed with the secretary of state.
4. With respect to the effective date of correction:
  - a. A certificate issued by the secretary of state before a record is corrected, with respect to the effect of filing the original record, is considered to be applicable to the record as corrected as of the date the record as corrected is considered to have been filed under this subsection.
  - b. After a statement of correction has been filed with the secretary of state, the original record as corrected is considered to have been filed:
    - (1) On the date the statement of correction was filed:
      - (a) As to persons adversely affected by the correction; and
      - (b) For the purposes of subsection 3 of section 10-32-02.2; and
    - (2) On the date the original record was filed as to all other persons and for all other purposes.

**SECTION 89. AMENDMENT.** Section 10-32-153 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-153. Secretary of state - Certificates and certified copies to be received in evidence.**

1. All certificates issued by the secretary of state and all copies of ~~documents~~ records filed in accordance with this chapter, when certified by the secretary of state, must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated.
2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to limited liability companies which would not appear from a certified copy of any of the foregoing ~~documents~~ records or certificates, must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts stated therein.

**SECTION 90. AMENDMENT.** Section 10-32-153.1 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-153.1. Secretary of state - Confidential records.** Any social security number or federal tax identification number disclosed or contained in any ~~document~~ record filed with the secretary of state under this chapter is confidential. The secretary of state shall delete or obscure any social security number or federal tax identification number before a copy of any ~~document~~ record is released to the public.

**SECTION 91. AMENDMENT.** Section 10-32-154 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-154. Secretary of state - Forms.** All annual reports required by this chapter to be filed in the office of the secretary of state must be made on forms prescribed by the secretary of state. Forms for all other ~~documents~~ records to be filed in the office of the secretary of state may be furnished by the secretary of state upon request. However, the use of such ~~documents~~ forms, unless otherwise specifically required by law, is not mandatory.

**SECTION 92. 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. "Activity" or "activities" means, in a corporation organized under this chapter, the functional equivalent of "business" in a corporation organized under chapter 10-19.1.
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 any other case, the mailing address, including a zip code.
3. "Articles" means:
  - a. In the case of a corporation incorporated under or governed by this chapter, articles of incorporation, articles of amendment, a resolution of election to become governed by this chapter, a statement of change of registered office, registered agent, or name of registered agent, articles of merger, articles of consolidation, articles of abandonment, articles of dissolution, and any annual report in which a registered office or registered agent has been established or changed.
  - b. In the case of a foreign corporation, the term includes all ~~documents~~ records serving a similar function required to be filed with the secretary of state or other officer of the corporation's state of incorporation.
4. "Authenticated electronic communication" means:
  - a. That the electronic communication is delivered:
    - (1) To the principal place of activity of the corporation; or
    - (2) To an officer or agent of the corporation authorized by the corporation to receive the electronic communication; and
  - b. That the electronic communication sets forth information from which the corporation can reasonably conclude that the electronic communication was sent by the purported sender.
5. "Ballot" means a written ballot or a ballot transmitted by electronic communication.



6. "Board" means the board of directors of a corporation.
- ~~6.~~ 7. "Board member" means an individual serving on the board.
- ~~7.~~ 8. "Bylaws" means the code adopted for the regulation or management of the internal affairs of a corporation, regardless of how designated.
- ~~8.~~ 9. "Corporation" means a corporation, other than a foreign corporation, that is incorporated under or governed by this chapter.
- ~~9.~~ 10. "Director" means a member of the board.
- ~~40.~~ 11. "Domestic organization" means an organization created under the laws of this state.
- ~~44.~~ 12. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- ~~42.~~ 13. "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
  - b. That may be directly reproduced in paper form by the recipient through an automated process.
- ~~43.~~ 14. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
- ~~44.~~ 15. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and ~~executed~~ signed or adopted by a person with the intent to sign the record.
- ~~45.~~ 16. "Filed with the secretary of state" means except as otherwise permitted by law or rule:
- a. That a ~~document~~ record meeting the applicable requirements of this chapter, together with the fees provided in section 10-33-140, 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~~ did then:
    - (1) Record the actual date on which the ~~document~~ is record was filed, and if different, the effective date of filing; and
    - (2) Record the ~~document~~ record in the office of the secretary of state.
- ~~46.~~ 17. "Foreign corporation" means a corporation that is formed under laws other than the laws of this state for a purpose for which a corporation may be organized under this chapter.

- 47- 18. "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.
- 48- 19. "Good faith" means honesty in fact in the conduct of an act or transaction.
- 49- 20. "Intentionally" means the person referred to has a purpose to do or fail to do the act or cause the result specified, or believes the act or failure to act, if successful, will cause that result. A person intentionally violates a statute:
- 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.
- 20- 21. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended from time to time, and successive federal revenue acts.
- 21- ~~"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. "Legal representative" means a person empowered to act for another person, including an agent, manager, officer, partner, or associate of an organization; a trustee of a trust; a personal representative; a trustee in bankruptcy; or a receiver, guardian, custodian, or conservator.
23. "Member" means a person with membership rights in a corporation under its articles or bylaws, regardless of how the person is identified.
24. "Members with voting rights" means members or a class of members that has voting rights with respect to the purpose or matter involved.
25. "Nonprofit purpose" or "nonprofit activity" means a purpose or activity not involving pecuniary gain to any officer, director, or member, other than a member that is a nonprofit organization or subdivision, unit, or agency of the United States or a state or local government.
26. "Notice":
- a. Is given by a member of a corporation to the corporation or an officer of the corporation:
    - (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; or
    - (2) When given by a form of electronic communication consented to by the corporation to which the notice is given if by:

- (a) ~~If by facsimile~~ Facsimile communication, when directed to a telephone number at which the corporation has consented to receive notice.
  - (b) ~~If by electronic~~ Electronic mail, when directed to an electronic mail address at which the corporation has consented to receive notice.
  - (c) ~~If by posting~~ 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~~ Any other form of electronic communication by which the corporation has consented to receive notice, when directed to the corporation.
- b. Is given, 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;
  - (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) ~~If by facsimile~~ Facsimile communication, when directed to a telephone number at which the person has consented to receive notice; ~~;~~
    - (b) ~~If by electronic~~ Electronic mail, when directed to an electronic mail address at which the person has consented to receive notice; or
    - (c) ~~If by posting~~ 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; or

(5) When the method is fair and reasonable when all of the circumstances are considered.

- c. Is given by mail when deposited in the United States mail with sufficient postage affixed.
  - d. Is deemed received when it is given.
27. "Officer" means an individual who is more than eighteen years of age and who is:
- a. Elected, appointed, or otherwise designated as an officer by the board or the members; or
  - b. Considered elected as an officer pursuant to section 10-33-52.
28. "Organization" means:
- a. Whether domestic or foreign, a corporation, whether domestic or foreign, incorporated in or authorized to do business in this state under 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; or any other legal or commercial entity person having a governing statute; but
  - b. Excludes any nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under this chapter or a foreign nonprofit corporation which is incorporated in another jurisdiction.
29. "Principal executive office" means:
- a. If the corporation has an elected or appointed president, then an office where the elected or appointed president of the corporation has an office; or
  - b. If the corporation has no elected or appointed president, then the registered office of the corporation.
30. "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.
31. "Registered office" means the place in this state designated in the a corporation's articles of incorporation or in a corporation foreign corporation's certificate of authority as the registered office of the corporation.
32. "Related organization" means an organization that controls, is controlled by, or is under common control with another organization with control existing if an organization:

- a. Owns, directly or indirectly, at least fifty percent of the shares, membership interests, or other ownership interests of another organization;
  - b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or more of the voting members of the governing body of another organization; or
  - c. Has the power, directly or indirectly, to direct or cause the direction of the management and policies of another organization, whether through the ownership of voting interests, by contract, or otherwise.
33. "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.
34. "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 telecommunication or electronically, or in any other manner reproduced on the document record, is placed on a document record, as provided under section 41-01-09; and
  - b. With respect to a document record required by this chapter to be filed with the secretary of state, that:
    - (1) The document record is signed by a person authorized to do so by this chapter, the articles, or bylaws, a resolution approved by the directors as required by section 10-33-42, or the members with voting rights, if any, as required by section 10-33-72; and
    - (2) The signature and the document record are communicated by a method or medium of communication acceptable by the secretary of state.
35. "Subsidiary" of a specified corporation means:
- a. A corporation or a foreign 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 corporation; or
  - b. A limited liability company or a foreign 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 organizations, by the specified limited liability company.
36. "Surviving corporation" means the domestic corporation or foreign corporation resulting from a merger which:
- a. May preexist the merger; or

- b. May be created by the merger.
- 37. "Vote" includes authorization by written action.
- 38. "Written action" means:
  - a. A written ~~document~~ record signed by all of the persons required to take the action; or
  - b. The counterparts of a written ~~document~~ record signed by any of the persons taking the action.
    - (1) Each counterpart constitutes the action of the persons signing it; and
    - (2) All the counterparts are one written action by all of the persons signing them.

**SECTION 93.** Section 10-33-01.2 of the North Dakota Century Code is created and enacted as follows:

**10-33-01.2. Knowledge and notice.**

- 1. A person knows or has knowledge of a fact if the person has actual knowledge of it. A person does not know or have knowledge of a fact merely because the person has reason to know or have knowledge of the fact.
- 2. A person has notice of a fact if the person:
  - a. Knows of the fact;
  - b. Has received notice of the fact as provided in subsection 18 of section 10-33-01;
  - c. Has reason to know the fact exists from all of the facts known to the person at the time in question; or
  - d. Has notice of it under subsection 3.
- 3. Subject to subsection 8, a person has notice of:
  - a. The intention of a corporation to dissolve, ninety days after the effective date of the filed notice of intent to dissolve stating that the corporation intends to dissolve;
  - b. The dissolution of a corporation, ninety days after the effective date of the filed articles of dissolution; and
  - c. A merger under sections 10-33-86 through 10-33-92, ninety days after the effective date of the filed articles of merger.
- 4. A person notifies or gives a notification to another person by taking the steps provided in subsection 18 of section 10-33-01, whether or not the other person learns of it.

5. A person receives a notification as provided in subsection 18 of section 10-33-01.
6. Except as otherwise provided in subsection 7 and except as otherwise provided in subsection 18 of section 10-33-01, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the person knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the attention of the individual if the person had exercised reasonable diligence.
  - a. A person other than an individual exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the person and there is reasonable compliance with the routines.
  - b. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the regular duties of the individual or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.
7. Knowledge, notice, or receipt of a notification of a fact relating to the corporation by an officer or director is effective immediately as knowledge of, notice to, or receipt of a notification by the corporation, except in the case of a fraud on the corporation committed by or with the consent of the officer or director. Knowledge, notice, or receipt of a notification of a fact relating to the corporation by a member who is not an officer or director, is not effective as knowledge by, notice to, or receipt of a notification by the corporation.
8. Notice otherwise effective under subsection 3 does not affect the power of a person to transfer real property held in the name of a corporation unless at the time of transfer a certified copy of the relevant statement, amendment, or articles, as filed with the secretary of state, has been recorded in the office of the county recorder in the county in which the real property affected by the statement, amendment, or articles is located.
9. With respect to notice given by a form of electronic communication:
  - a. Consent by an officer or director to notice given by electronic communication may be given in writing or by authenticated electronic communication. The corporation is entitled to rely on any consent so given until revoked by the officer or director. However, no revocation affects the validity of any notice given before receipt by the corporation of revocation of the consent.
  - b. An affidavit of an officer or director or an authorized agent of the corporation, 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.

**SECTION 94. AMENDMENT.** Subsection 3 of section 10-33-06 of the North Dakota Century Code is amended and reenacted as follows:

3. The following articles govern a corporation unless modified by the articles:
  - a. A corporation has a general purpose of engaging in any lawful nonprofit activity as provided in section 10-33-04;
  - b. A corporation has perpetual existence and certain powers as provided in section 10-33-21;
  - c. The power to initially adopt, amend, or repeal the bylaws is vested in the board as provided in section 10-33-26;
  - d. The affirmative vote of a majority of the directors present is required for an action of the board as provided in section 10-33-42;
  - e. A written action by the board taken without a meeting must be signed by all directors as provided in section 10-33-43; ~~and~~
  - f. Members are of one class as provided in section 10-33-57; and
  - g. A written action by the members must be signed by all members as provided in section 10-33-73.

<sup>77</sup> **SECTION 95. 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. d. May not contain a word or phrase that indicates or implies that ~~it is~~ the corporation:
    - (1) Is incorporated for a purpose other than ~~a legal~~;

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<sup>77</sup> Section 10-33-10 was also amended by section 4 of House Bill No. 1273, chapter 384.





3. 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.
4. Subsection 3 does not affect the right of a 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.
- ~~4.~~ 5. 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.~~ 6. A corporation that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another 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 conduct activities or transact business 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~~ 45-10.2-11, 45-13-04.2, or 45-22-05;
  - d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
  - e. Holds a trade name registered in the manner provided in chapter 47-25.
- ~~6.~~ 7. The use of a name by a corporation in violation of this section does not affect or vitiate its corporate existence, but a court in this state may, upon application of the state or of an interested or affected person,

enjoin the corporation from conducting activities under a name assumed in violation of this section, although its articles may have been filed with the secretary of state and a certificate of incorporation issued.

- ~~7.~~ 8. ~~If a corporation's~~ A corporation whose period of existence has expired or ~~that~~ is involuntarily dissolved by the secretary of state pursuant to section 10-33-139; ~~the corporation~~ may reacquire the right to use that name by refiling articles of incorporation pursuant to section 10-33-08; ~~amending pursuant to section 10-33-118; or reinstating pursuant to section 10-33-139.~~ If unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 2. A corporation that cannot reacquire the use of its corporate name must adopt a new corporate name that complies with the provisions of this section:

- a. By refiling articles of incorporation pursuant to section 10-33-08;
- b. By amending pursuant to section 10-33-14; or
- c. By reinstating pursuant to section 10-33-139.

9. Subject to section 10-33-126, this section applies to any foreign corporation transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.

**SECTION 96. AMENDMENT.** Subsection 2 of section 10-33-12 of the North Dakota Century Code is amended and reenacted as follows:

2. A corporation shall appoint and continuously maintain a registered agent. The registered agent may be an individual residing in this state, ~~a domestic~~ another corporation whether incorporated under this chapter or under another ~~provision~~ chapter of this code, a limited liability company, a foreign corporation whether authorized to do business or conduct activities in the state under this chapter or under another provision of this code, or foreign limited liability company authorized to conduct activities in this state. The registered agent shall maintain a business office that is identical with the registered office. Proof of the registered agent's consent to serve in that capacity must be filed with the secretary of state, together with the fees provided in section 10-33-140.

**SECTION 97. AMENDMENT.** Subsection 4 of section 10-33-13 of the North Dakota Century Code is amended and reenacted as follows:

4. With respect to fees:
- a. The fee ~~prescribed~~ provided in section 10-33-140 for change of registered office must be refunded if in the secretary of state's opinion a change of address of registered office results from rezoning or postal reassignment.
  - b. The fees ~~prescribed~~ provided in section 10-33-140 for change of registered agent, change of registered office, and consent of

registered agent do not apply if the registered agent or registered office is established or changed in the annual report.

**SECTION 98. AMENDMENT.** Section 10-33-18 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-18. Filing articles of amendment.** An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to the filing requirements of this chapter and that all fees have been paid as provided in section 10-33-140, then the articles of amendment must be recorded in the office of the secretary of state. A corporation that amends the corporate name and which is the owner of a trademark or trade name, is a general partner named in a fictitious name certificate, is a general partner in a limited partnership or a limited liability limited partnership, or is a managing partner of a limited liability partnership that is on file with the secretary of state must change or amend the corporation's name in each registration when the corporation files an amendment.

**SECTION 99. AMENDMENT.** Section 10-33-22 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-22. Corporate seal.** A corporation may, but need not, have a corporate seal. The use or nonuse of a corporate seal does not affect the validity, recordability, or enforceability of a document record or act. If a corporation has a corporate seal, the use of the seal by the corporation on a document record is not necessary.

**SECTION 100. AMENDMENT.** Section 10-33-34 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-34. Cumulative voting for directors.** Unless the articles provide otherwise or except as provided in ~~section 4 of~~ article XII of the Constitution of North Dakota, there is no cumulative voting.

**SECTION 101. AMENDMENT.** Subsections 3 and 5 of section 10-33-39 of the North Dakota Century Code are amended and reenacted as follows:

3. Unless the articles or bylaws provide for a different time period, a director may call a board meeting by giving at least ten days' notice or, in the case of organizational meetings pursuant to subsection 2 of section 10-33-25, at least three days' notice, to all directors of the date, time, and place of the meeting.
  - a. The notice need not state the purpose of the meeting unless the articles or bylaws require it.
  - b. Any notice to a director given under any provision of this chapter, the articles, or the bylaws by a form of electronic communication consented to by the director to whom the notice is given is effective when given.
  - c. Consent by a director to notice given by electronic communication may be given in writing or by authenticated electronic communication. Any consent so given may be relied upon until revoked by the director, provided that no revocation affects the

validity of any notice given before receipt of revocation of the consent.

5. A director may waive notice of a meeting of the board. A waiver of notice by a director entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, by authenticated electronic communication, or by attendance. Attendance by a director at a meeting is a waiver of notice of that meeting, except when the director 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 102. AMENDMENT.** Section 10-33-47 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-47. Immunity of officers, directors, and trustees.** Any person ~~who~~ that serves as a director, officer, or trustee of a corporation that is, or would qualify as a nonprofit organization that is described in paragraphs 3, 4, 5, 6, 7, 10, and 19 of section ~~501(c)(3)~~ 501(c) of the Internal Revenue Code of 1954, as amended [26 U.S.C. 501(c)(3), (4), (5), (6), (7), (10), and (19)], is immune from civil liability for any act or omission resulting in damage or injury if at the time of the act or omission all of the following are met:

1. The officer, director, or trustee was acting in good faith and in the scope of that person's official duties as a director, officer, or trustee.
2. The act or omission did not constitute willful misconduct or gross negligence on the part of the officer, director, or trustee.
3. The officer, director, or trustee did not receive or expect to receive reimbursement for or payment of expenses in excess of two thousand dollars per year for expenses actually incurred as a result of providing services as a director, officer, or trustee, and did not receive or expect to receive compensation or anything in lieu of compensation as payment for services provided as a director, officer, or trustee.

**SECTION 103. AMENDMENT.** Section 10-33-51 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-51. Multiple offices.** Any number of offices or functions of those offices may be held or exercised by the same individual. If a document record must be signed by individuals holding different offices or functions and an individual holds or exercises more than one of those offices or functions, that individual may sign the document record in more than one capacity, but only if the document record indicates each capacity in which the individual signs.

**SECTION 104. AMENDMENT.** Section 10-33-72 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-72. Act of the members.**

1. Unless this chapter or the articles or bylaws require a greater vote or voting by class and except for the election of directors which is governed by section 10-32-34, the members shall take action by the affirmative vote of the greater of:

- a. A majority of the members with voting rights present and entitled to vote on that item of business; or
- b. A majority of the voting power of the minimum number of members with voting rights that would constitute a quorum for the transaction of business at the meeting.

If the articles or bylaws require a larger proportion or number than is required by this chapter for a particular action, then the articles or bylaws control.

2. Unless otherwise provided in the articles or bylaws, members may take action at a meeting:
  - a. By voice or ballot.
  - b. By action without a meeting pursuant to section 10-33-73.
  - c. By ~~written~~ ballot pursuant to section 10-33-74.
  - d. By ~~electronic~~ remote communication pursuant to section 10-33-75.

**SECTION 105. AMENDMENT.** Section 10-33-73 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-73. Action without a meeting by the members.** 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. After the adoption of the initial articles, an amendment to the articles to permit written action to be taken by less than all members requires the approval of all members entitled to vote on the amendment.
  - b. 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 no later than five days after the effective time of the action.
  - ~~b.~~ c. Failure to provide the notice does not invalidate the written action.
  - ~~c.~~ d. 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 this chapter requires or permits a certificate concerning an action to be filed with the secretary of state, the certificate must indicate if the action was taken under this section.

**SECTION 106. AMENDMENT.** Section 10-33-74 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-74. Action Member action by written ballot.**

1. Except as provided in subsection 5 and unless prohibited or limited by the articles or bylaws, an action that may be taken at a regular or special meeting of members may be taken without a meeting if the corporation mails or delivers a ~~written~~ ballot to every member entitled to vote on the matter.
2. A ~~written~~ ballot must set forth each proposed action and provide an opportunity to vote for or against each proposed action.
3. Approval by ~~written~~ ballot under this section is valid only if:
  - a. The number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action; and
  - b. The number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.
4. Solicitations for votes by ~~written~~ ballot must:
  - a. Indicate the number of responses needed to meet the quorum requirements;
  - b. State the percentage of approvals necessary to approve each matter other than election of directors; and
  - c. Specify the time by which a ballot must be received by the corporation in order to be counted.
5. Except as otherwise provided in the articles or bylaws, a ~~written~~ ballot may not be revoked.
6. With respect to a ballot by electronic communication:
  - a. A corporation may deliver a ballot by electronic communication only if the corporation complies with subsection 4 of section 10-33-68 as if the ballot were a notice.
  - b. Consent by a member to receive notice by electronic communication in a certain manner constitutes consent to receive a ballot by electronic communication in the same manner.

**SECTION 107. AMENDMENT.** Subsections 2, 5, and 7 of section 10-33-80 of the North Dakota Century Code are amended and reenacted as follows:

2. A member or a director, or the agent or attorney of a member or a director, may inspect all ~~documents~~ records referred to in subsection 1 or 3 for any proper purpose at any reasonable time. A proper purpose is one reasonably related to the interest of the person as a member or director of the corporation.
5. The corporation may charge the requesting party a reasonable fee to cover the expenses of providing copies of ~~documents~~ records under this section.
7. A member or a director who is wrongfully denied access to or copies of ~~documents~~ records under this section may bring an action for injunctive relief, damages, and costs and reasonable attorney's fees.

**SECTION 108. AMENDMENT.** Section 10-33-120 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-120. Service of process on corporation, foreign corporation, and nonresident directors.**

1. The registered agent must be an agent of the corporation or foreign corporation, and any nonresident director upon whom any process, notice, or demand required or permitted by law to be served on the corporation, the foreign corporation, or a director may be served.
  - a. When a foreign corporation transacts business without a certificate of authority, or when the certificate of authority of a foreign corporation is suspended or revoked, the secretary of state is an agent of the foreign corporation for service of process, notice, or demand.
  - b. Acceptance of a directorship includes the appointment of the secretary of state as an agent for personal service of legal process, notice, or demand.
2. A process, notice, or demand required or permitted by law to be served upon a corporation or foreign corporation may be served ~~either upon~~:
  - a. On the registered agent of the corporation; or upon foreign corporation;
  - b. On an officer of the corporation; or upon foreign corporation;
  - c. On any responsible person found at the registered office or at the principal executive office if located in this state; or
  - d. On the secretary of state as provided in this section.
3. If neither the ~~corporation's~~ registered agent nor ~~an officer of the corporation~~ a responsible person 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~~ responsible person cannot be found at the registered principal executive office if located in this state, then the secretary of state is ~~the an~~ agent of the corporation upon whom the process, notice, or demand may be served.



- a. Service on the secretary of state:
    - a- (1) Shall be made by registered mail or personal delivery to the secretary of state and not by electronic communication;
    - b- (2) Shall include the return of the sheriff, or the affidavit of a ~~person~~ an individual who is not a party, verifying that neither the registered agent nor ~~an officer~~ a responsible person can be found at the registered office or at the principal executive office if located in this state; and
    - e- (3) Is deemed personal service upon the corporation or foreign corporation and must be made by filing with the secretary of state:
      - (4) (a) Three copies of the process, notice, or demand; and
      - (2) (b) The fees provided in section 10-33-140; and
      - (4) Is returnable in not less than thirty days notwithstanding a shorter period specified in the process, notice, or demand.
  - b. The secretary of state shall immediately forward, by registered mail, addressed to the corporation or foreign 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.~~
4. Process, notice, or demand may be served on a dissolved corporation as provided in this subsection. The court shall determine if service is proper. If a corporation has voluntarily dissolved or a court has entered a decree of dissolution, service may be made according to subsection 2 as long as claims are not finally barred under section 10-33-115. If a corporation has been involuntarily dissolved pursuant to section 10-33-139, service may be made according to subsection 2.
5. A ~~The secretary of state shall maintain a record of all processes, notices, and demands~~ every process, notice, and demand served upon on the secretary of state under this section, including the date of service and the action taken with reference to it, ~~must be maintained in the office of the secretary of state~~ the process, notice, or demand.
6. ~~Nothing in this~~ This section limits ~~does not limit~~ the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation or foreign corporation in any other manner permitted by law.

**SECTION 109. AMENDMENT.** Subsections 1 and 2 of section 10-33-123 of the North Dakota Century Code are amended and reenacted as follows:

1. When it appears to the attorney general it is in the public interest that an investigation should be made to ascertain whether a proceeding by the attorney general, as provided in this chapter, should be commenced, the attorney general may:

- a. Examine under oath any person in connection with the affairs of the corporation.
  - b. Examine any record, book, ~~document~~, account, or paper as the attorney general determines necessary.
  - c. Pursuant to an order of the district court, impound any record, book, ~~document~~, account, or paper, and retain it in the attorney general's possession until the completion of all proceedings undertaken under this chapter.
2. To accomplish the objectives and to carry out the duties ~~prescribed~~ provided by this chapter, the attorney general may issue subpoenas to any person.

**SECTION 110. AMENDMENT.** Subsection 1 of section 10-33-134 of the North Dakota Century Code is amended and reenacted as follows:

1. The certificate of authority of a foreign corporation to conduct activities in this state may be revoked by the secretary of state if:
  - a. The foreign corporation has failed to:
    - (1) Maintain a registered office as required by this chapter;
    - (2) Appoint and maintain a registered agent as required by this chapter;
    - (3) File a report upon any change in the address of its registered office;
    - (4) File a report upon any change in the name or business address of the registered agent; or
    - (5) File in the office of the secretary of state any amendment to its application for a certificate of authority as specified in section 10-33-130; or
  - b. A misrepresentation has been made of any material matter in any application, report, affidavit, or other ~~document~~ record submitted by the foreign corporation pursuant to this chapter.

**SECTION 111. AMENDMENT.** Section 10-33-138 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-138. Foreign corporation - Service of process.** Service of process on a foreign corporation must be as provided in section 10-33-120. ~~When the certificate of authority of a foreign corporation is suspended or revoked, the secretary of state is an agent of the foreign corporation for service of process, notice, or demand.~~

**SECTION 112. AMENDMENT.** Section 10-33-139 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-139. Secretary of state - Annual report of corporations and foreign corporations.**

1. Each corporation, and each foreign corporation authorized to conduct activities in this state, shall file, within the time ~~prescribed by~~ provided in subsection 3, an annual report setting forth:
  - a. The name of the corporation or foreign corporation and the state or country under the laws of which it is incorporated.
  - b. The address of the registered office of the corporation or foreign corporation in this state, the name of its registered agent in this state at that address, and the address of its principal executive office.
  - c. A brief statement of the character of the activities in which the corporation or foreign corporation is actually engaged in this state.
  - d. The names and respective addresses of the officers and directors of the corporation or foreign corporation.
  - e. The section of the Internal Revenue Code by which its tax status is established.
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~~ provided in subsection 34 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.
3. The annual report must be delivered to the secretary of state before February first of each year, except that the first annual report must be delivered before February first of the year following the calendar year in which the certificate of incorporation or certificate of authority was issued by the secretary of state.
  - a. An annual report in a sealed envelope postmarked by the United States postal service before February first, or an annual report in a sealed packet with a verified shipment date by any other carrier service before February first, complies with this requirement. When the filing date falls on a Saturday or holiday as defined in section 1-03-01, a postmark or verified shipment date on the next business day complies with this requirement.
  - b. The secretary of state must file the report if the report conforms to the requirements of subsection 2.
    - (1) If the report does not conform, it must be returned to the corporation for any necessary corrections.
    - (2) If the report is filed before the deadlines ~~prescribed~~ provided 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.

- c. The secretary of state may extend the annual filing date of any corporation or foreign corporation if a written application for an extension is delivered before February first.
4. After the date established under subsection 3, the secretary of state shall notify any corporation or foreign corporation failing to file its annual report that its certificate of incorporation or certificate of authority is not in good standing and that it may be dissolved or revoked pursuant to subsections 5 and 6. The secretary of state must mail the notice to the last registered agent at the last registered office of record. If the corporation or foreign corporation files its annual report after the notice is mailed, together with the annual report filing fee and late filing penalty fee as ~~prescribed~~ provided in section 10-33-140, the secretary of state shall restore its certificate of incorporation or certificate of authority to good standing.
5. A corporation that does not file its annual report, along with the statutory filing and penalty fees, within one year after the date established in subsection 3 ceases to exist and is considered involuntarily dissolved by operation of law.
  - a. ~~The Thereafter, the~~ secretary of state shall note the termination of the corporation's certificate of incorporation on the records of the secretary of state and shall give notice of the action to the dissolved corporation.
  - b. Notice by the secretary of state must be mailed to the last registered agent at the last registered office of record.
6. A foreign corporation that does not file its annual report, along with the statutory filing and penalty fees, within one year after the date established by subsection 3 forfeits its authority to conduct activities in this state.
  - a. The secretary of state shall note the revocation of the foreign corporation's certificate of authority on the records of the secretary of state and shall give notice of the action to the foreign corporation.
  - b. Notice by the secretary of state must be mailed to the foreign corporation's last registered agent at the last registered office of record.
  - c. The decision by the secretary of state that a certificate of authority must be revoked under this subsection is final.
7. A corporation that was dissolved for failure to file an annual report, or a foreign corporation whose authority was forfeited by failure to file an annual report, may be reinstated by filing a past-due report, together with the statutory filing and penalty fees for an annual report and a reinstatement fee as ~~prescribed~~ provided in section 10-33-140. The

fees must be paid and the report filed within one year following the involuntary dissolution or revocation. Reinstatement under this subsection does not affect the rights or liability for the time from the dissolution or revocation to the reinstatement.

8. The secretary of state may waive any penalties provided in ~~the~~ this section when an annual report form could not be delivered to the corporation.

**SECTION 113. AMENDMENT.** Section 10-33-140 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-140. Secretary of state - Fees and charges.**

1. The secretary of state shall charge and collect for:
  - a. Filing articles of incorporation and issuing a certificate of incorporation, thirty dollars.
  - b. Filing articles of amendment, twenty dollars.
  - c. Filing articles of correction, twenty dollars.
  - d. Filing restated articles of incorporation, thirty dollars.
  - ~~d.~~ e. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, fifty dollars.
  - ~~e.~~ f. Filing an intent to dissolve, ten dollars.
  - ~~f.~~ g. Filing articles of dissolution, twenty dollars.
  - ~~g.~~ h. Filing a statement of change of address of registered office or change of registered agent, or both, ten dollars.
  - ~~h.~~ i. Filing a registered agent's consent to serve in that capacity, ten dollars.
  - ~~i.~~ j. Filing a resignation as registered agent, ten dollars.
  - ~~j.~~ k. Filing an application to reserve a corporate name, ten dollars.
  - ~~k.~~ l. Filing a notice of transfer of a reserved corporate name, ten dollars.
  - ~~l.~~ m. Filing a cancellation of reserved corporate name, ten dollars.
  - ~~m.~~ n. Filing a consent to use of a deceptively similar name, ten dollars.
  - ~~n.~~ o. Filing an application of a foreign corporation for a certificate of authority to conduct affairs in this state and issuing a certificate of authority, forty dollars.
  - ~~o.~~ p. Filing an application of a foreign corporation for an amended certificate of authority, forty dollars.

- ~~p.~~ q. Filing a certified statement of merger of a foreign corporation holding a certificate of authority to conduct activities in this state, fifty dollars.
- ~~q.~~ r. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, twenty dollars.
- ~~r.~~ s. Filing an annual report of a domestic or foreign corporation, ten dollars.

(1) The secretary of state shall charge and collect additional fees for late filing of the annual report:

~~(4)~~ (a) After the date ~~prescribed~~ provided in subsection 3 of section 10-33-139, five dollars; and

~~(2)~~ (b) After the dissolution of a corporation, or the revocation of the certificate of authority of a foreign corporation, the reinstatement fee of forty dollars.

(2) Fees paid to the secretary of state according to this subdivision are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 10-33-139, or the annual report lacks sufficient payment as required by this subdivision.

~~s.~~ t. Submitting any record for approval before the actual time of submission for filing, one-half of the fee provided in this subsection for filing the record.

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

2. The secretary of state shall charge and collect:

- a. For furnishing a certified copy of any ~~document record~~, instrument, or paper relating to a corporation, one dollar for every four pages or fraction thereof and fifteen dollars for the certificate and affixing the seal to the certificate.
- b. At the time of any service of process on the secretary of state as resident agent of a corporation, twenty-five dollars, which may be recovered as taxable costs by the party to the claim for relief causing the service to be made if that party prevails in the suit or action.

**SECTION 114. AMENDMENT.** Section 10-33-141 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-141. Secretary of state - Enforcement - Penalty - Appeal.**

- 1. The secretary of state may administer this chapter.
- 2. The secretary of state may propound to any corporation or foreign corporation that is subject to this chapter and to any officer, director, or

employee thereof any interrogatory as may be reasonably necessary and proper to ascertain whether the corporation has complied with this chapter applicable to the corporation.

- a. The interrogatory must be answered within thirty days after mailing or within any additional time as must be fixed by the secretary of state. The answers to the interrogatory must be full and complete and must be made in writing and under oath.
  - b. If the interrogatory is directed:
    - (1) To an individual, it must be answered by that individual; or
    - (2) To a corporation, it must be answered by the president, vice president, secretary, or assistant secretary of the corporation.
  - c. The secretary of state need not file any ~~document~~ record to which the interrogatory relates until the interrogatory has been answered, and not then if the answers disclose that the ~~document~~ record is not in conformity with this chapter.
  - d. The secretary of state shall certify to the attorney general, for action the attorney general may deem appropriate, an interrogatory and answers thereto, which discloses a violation of this chapter.
  - e. Each officer, director, or employee of a corporation or foreign corporation who fails or refuses within the time provided by subdivision a to answer truthfully and fully an interrogatory propounded to that person by the secretary of state is guilty of an infraction.
  - f. An interrogatory propounded by the secretary of state and the answers are not open to public inspection. The secretary of state may not disclose any facts or information obtained from the interrogatory or answers except insofar as may be permitted by law or insofar as is required for evidence in any criminal proceedings or other action by this state.
3. If the secretary of state rejects any ~~document~~ record required by this chapter to be approved by the secretary of state before the ~~document~~ record may be filed, then the secretary of state shall give written notice of the rejection to the person ~~who~~ that delivered the ~~document~~ record, specifying the reasons for rejection.
- a. ~~From such rejection the person~~ Within thirty days after the service of the notice of denial, the corporation or foreign corporation as the case may be, may appeal to the district court of the county in which the registered office of such corporation is, or is proposed to be, situated in the judicial district serving Burleigh County by filing with the clerk of the court a petition setting forth a copy of the ~~document~~ record sought to be filed and a copy of the written rejection of the ~~document~~ record by the secretary of state.

- b. The matter must be tried de novo by the court. The court shall either sustain the action of the secretary of state or direct the secretary of state to take the action the court determines proper.
4. If the secretary of state dissolves a corporation or revokes the certificate of authority to conduct activities in this state of any foreign corporation, pursuant to section 10-33-134, then, the corporation or foreign corporation may appeal to the district court of the county where the registered office of the foreign corporation in this state is situated in the judicial district serving Burleigh County by filing with the clerk of the court a petition ~~setting forth~~ a including:
  - a. A copy of the corporation's articles of incorporation and a copy of the notice of dissolution given by the secretary of state; or
  - b. A copy of the foreign corporation's certificate of authority to conduct activities in this state and a copy of the notice of revocation given by the secretary of state. The matter must be tried de novo by the court. The court shall sustain the action of the secretary of state or shall direct the secretary of state to take the action the court determines proper.
5. If the court order sought is one for reinstatement of a corporation that has been dissolved as provided in subsection 5 of section 10-33-139, or for reinstatement of the certificate of authority of a foreign corporation that has been revoked as provided in subsection 6 of section 10-33-139, then together with any other actions the court deems proper, any such order which reverses the decision of the secretary of state shall require the corporation or foreign corporation to:
  - a. File all past-due annual reports;
  - b. Pay the fees to the secretary of state for each annual report as provided in subdivision s of subsection 1 of section 10-33-140; and
  - c. Pay the reinstatement fee to the secretary of state as provided in subdivision s of subsection 1 of section 10-33-140.
6. Appeals from all final orders and judgments entered by the district court under this section in review of any ruling or decision of the secretary of state may be taken as in other civil actions.

**SECTION 115.** Section 10-33-141.1 of the North Dakota Century Code is created and enacted as follows:

**10-33-141.1. Delivery to and filing of records by secretary of state and effective date.**

1. A record authorized or required to be delivered to the secretary of state for filing under this chapter must be captioned to describe the purpose of the record, be in a medium permitted by the secretary of state, and be delivered to the secretary of state. If the secretary of state determines that a record complies with the filing requirements of this chapter, then the secretary of state shall file the record and return a copy of the filed record to the person that delivered it to the secretary of state for filing.



That person shall then send a copy of the filed record to the person on whose behalf the record was filed.

2. Upon request and payment of a fee provided in section 10-33-139, the secretary of state shall send to the requester a certified copy of the requested record.
3. Except as otherwise specifically provided in this chapter, a record delivered to the secretary of state for filing under this chapter may specify a delayed effective date within ninety days. Except as otherwise provided in this chapter, a record filed by the secretary of state is effective:
  - a. If the record does not specify a delayed effective date within ninety days, then on the date the record is filed as evidenced by the endorsement of the secretary of state of the date on the record.
  - b. If the record specifies a delayed effective date within ninety days, then on the specified date.

**SECTION 116.** Section 10-33-141.2 of the North Dakota Century Code is created and enacted as follows:

**10-33-141.2. Correcting a filed record.** With respect to correction of a filed record:

1. Whenever a record authorized by this chapter to be filed with the secretary of state has been filed and inaccurately records the action referred to in the record, contains an inaccurate or erroneous statement, or was defectively or erroneously signed, sealed, acknowledged, or verified, the record may be corrected by filing a statement of correction.
2. A statement of correction:
  - a. Must:
    - (1) Be signed by:
      - (a) The person that signed the original record; or
      - (b) By a person authorized to sign on behalf of that person;
    - (2) Set forth the name of the corporation that filed the record;
    - (3) Identify the record to be corrected by description and by the date of its filing with the secretary of state;
    - (4) Identify the inaccuracy, error, or defect to be corrected; and
    - (5) Set forth a statement in corrected form of the portion of the record to be corrected.
  - b. May not revoke or nullify the record.
3. The statement of correction must be filed with the secretary of state.

4. With respect to the effective date of correction:

- a. A certificate issued by the secretary of state before a record is corrected, with respect to the effect of filing the original record, is considered to be applicable to the record as corrected as of the date the record as corrected is considered to have been filed under this subsection.
- b. After a statement of correction has been filed with the secretary of state, the original record as corrected is considered to have been filed:
  - (1) On the date the statement of correction was filed:
    - (a) As to persons adversely affected by the correction; and
    - (b) For the purposes of subsection 3 of section 10-33-01.2; and
  - (2) On the date the original record was filed as to all other persons and for all other purposes.

**SECTION 117. AMENDMENT.** Section 10-33-142 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-142. Secretary of state - Evidence.**

- 1. All certificates issued by the secretary of state and all copies of ~~documents~~ records filed in accordance with this chapter, when certified by the secretary of state, must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts stated.
- 2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing ~~documents~~ records or certificates, must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts stated.

**SECTION 118. AMENDMENT.** Section 10-33-142.1 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-142.1. Secretary of state - Confidential records.** Any social security number or federal tax identification number disclosed or contained in any ~~document~~ record filed with the secretary of state under this chapter is confidential. The secretary of state shall delete or obscure any social security number or federal tax identification number before a copy of any ~~document~~ record is released to the public.

**SECTION 119. AMENDMENT.** Section 10-33-143 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-143. Secretary of state - Forms.** All annual reports required by this chapter to be filed in the office of the secretary of state must be made on forms prescribed by the secretary of state. Forms for all other ~~documents~~ records to be filed in the office of the secretary of state may be furnished by the secretary of state

upon request. However, the use of the forms, unless otherwise specifically required by law, is not mandatory.

**SECTION 120. AMENDMENT.** Subsection 2 of section 10-33-145 of the North Dakota Century Code is amended and reenacted as follows:

2. Upon receipt of a notice under section 10-33-144, the attorney general may review the proposed agreement or transaction to determine whether consummation of the proposed agreement or transaction by the nonprofit corporation or entity operating or controlling a hospital or nursing home is consistent with the purposes of the nonprofit corporation or entity operating or controlling a hospital or nursing home and the fiduciary obligations of the officers and directors of the nonprofit corporation or entity operating or controlling a hospital or nursing home and is in accordance with law. The attorney general shall consider the following factors in reviewing and evaluating a proposed agreement or transaction:
  - a. Whether appropriate steps were taken by the nonprofit corporation or entity operating or controlling a hospital or nursing home to safeguard restricted assets transferred to the acquiring entity;
  - b. Whether appropriate steps were taken by the nonprofit corporation or entity operating or controlling a hospital or nursing home to ensure that any proceeds of the proposed agreement or transaction are used for purposes consistent with restrictions placed on assets of and with the purposes of the nonprofit corporation or entity operating or controlling a hospital or nursing home;
  - c. Whether the terms and conditions of the proposed agreement or transaction are fair and reasonable to the nonprofit corporation or entity operating or controlling a hospital or nursing home, including whether the nonprofit corporation or entity operating or controlling the hospital or nursing home will receive fair market value for its assets and, in a proposed agreement or transaction involving a nursing home, whether the proposed agreement or transaction constitutes a bona fide transaction;
  - d. Whether any conflict of interest or breach of fiduciary duty exists or was disclosed, including any conflict of interest or breach of fiduciary duty related to directors and officers of, executives of, and experts retained by the nonprofit corporation or entity operating or controlling a hospital or nursing home and any other party to the agreement or transaction;
  - e. Whether the agreement or transaction will result in inurement, pecuniary gain, or excess benefit to any person associated with the nonprofit corporation or entity operating or controlling a hospital or nursing home or to any other person;
  - f. Whether the transaction is in the best interests of the nonprofit corporation or entity operating or controlling a hospital or nursing home; and

- g. Whether the transaction is authorized by the nonprofit corporation's governing ~~documents~~ records.

**SECTION 121. AMENDMENT.** Section 45-13-01 of the North Dakota Century Code is amended and reenacted as follows:

**45-13-01. (101) Definitions.** ~~In~~ For the purposes of chapters 45-13 through 45-21 unless the context or ~~subject matter~~ 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 any other case, the mailing address, including the zip code.
2. "Authenticated electronic communication" means:
  - a. That the electronic communication is delivered:
    - (1) To the principal place of business of the partnership; or
    - (2) To a managing partner or agent of the partnership authorized by the partnership to receive the electronic communication; and
  - b. That the electronic communication sets forth information from which the partnership can reasonably conclude that the electronic communication was sent by the purported sender.
3. "Ballot" means a written ballot or a ballot transmitted by electronic communication.
- ~~4.~~ 5. "Business" includes every trade, occupation, and profession.
- ~~4.~~ 5. "Debtor in bankruptcy" means a person ~~who~~ that is the subject of:
  - a. An order for relief under title 11 of the United States Code or a comparable order under a successor statute of general application; or
  - b. A comparable order under federal, state, or foreign law governing insolvency.
- ~~5.~~ 6. "Distribution" means a transfer of money or other property from a partnership to a partner in the ~~partner's~~ partner's capacity of the partner as a partner or to the ~~partner's~~ transferee of the partner.
- ~~6.~~ 7. "Domestic organization" means an organization created under the laws of this state.
- ~~7.~~ 8. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

- 8- 9. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper:
- That creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
  - That may be directly reproduced in paper form by the recipient through an automated process.
- 9- 10. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
- 40- 11. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and ~~executed~~ signed or adopted by a person with the intent to sign the record.
- 44- 12. "Filed with the secretary of state" means, except as otherwise permitted by law or rule:
- That a ~~document~~ record meeting the applicable requirements of this chapter together with the fees provided in section 45-13-05 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.
  - That the secretary of state ~~shall~~ did then:
    - Record the actual date on which the ~~documents are~~ record was filed, and if different, the effective date of filing; and
    - Record the ~~document~~ record in the office of the secretary of state.
- 42- 13. "Foreign limited liability partnership" means a partnership that is formed under laws other than the laws of this state and has the status of a limited liability partnership under those laws.
- 43- 14. "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.
- 44- 15. "Limited liability partnership" means a partnership that filed a registration under chapter 45-22 and does not have a similar statement in effect in any other jurisdiction.
- 45- 16. "Managing partner" means ~~one of the partners~~ a partner charged with the management of the partnership in this state and if no partners are specifically so designated, then all partners.
- 46- 17. "Notice":
- Is given to a partnership ~~or to a partner of a partnership~~:

- (1) When in writing and mailed or delivered to ~~the partnership or to the partner~~ at the principal executive office of the partnership; or
  - (2) When given by a form of electronic communication consented to by ~~the partnership or a~~ managing partner to which the notice is given if by:
    - (a) ~~If by facsimile~~ Facsimile communication, when directed to a telephone number at which the ~~partnership or a~~ managing partner has consented to receive notice-;
    - (b) ~~If by electronic~~ Electronic mail, when directed to an electronic mail address at which the ~~partnership or a~~ managing partner has consented to receive notice-;
    - (c) ~~If by posting~~ Posting on an electronic network on which the ~~partnership or a~~ managing partner has consented to receive notice, together with separate notice to the ~~partnership or a~~ managing partner if of the specific posting, upon the later of:
      - [1] The posting; or
      - [2] The giving of the separate notice-; or
    - (d) ~~If by any~~ Any other form of electronic communication by which the ~~partnership or a~~ managing partner has consented to receive notice, when directed to the partnership.
- b. Is given; ~~in all other cases~~ to a partner of the partnership:
- (1) When in writing and mailed or delivered to the ~~person~~ partner at an address designated by the person or at the last-known the principal executive office address of the ~~person~~ partnership; or
  - (2) When ~~handed to the person;~~ given by a form of electronic communication consented to by the partner to which the notice is given if by:
    - (a) Facsimile communication, when directed to a telephone number at which the partner has consented to receive notice;
    - (b) Electronic mail, when directed to an electronic mail address at which the partner has consented to receive notice;
    - (c) 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:

[1] The posting; or

[2] The giving of the separate notice; or

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

c. Is given 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;

(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 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 if by:

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

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

(c) ~~If by posting~~ 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-; or

(d) ~~If by any~~ Any other form of electronic communication by which the person has consented to receive notice, when directed to the person-; or

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

d. ~~Is deemed received when it is given.~~

(5) When the method is fair and reasonable when all circumstances are considered.

~~47-~~ 18. "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 person subject to a governing statute; 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.

~~48-~~ 19. "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.

~~49-~~ 20. "Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

~~20-~~ 21. "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.

~~24-~~ 22. "Partnership interest" or "partner's interest in the partnership" means all of ~~a partner's~~ the interests of a partner in the partnership, including the ~~partner's~~ transferable interest of the partner and all management and other rights.

~~22-~~ 23. "Principal executive office" means an office from which the partnership conducts business.

~~23-~~ 24. "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

~~24-~~ 25. "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-~~ 26. "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 telecommunication or electronically, or in any other manner reproduced on the ~~document~~ record, is placed on a ~~document~~ record, as provided under section 41-01-09; and
- b. With respect to a ~~document~~ record required by this chapter to be filed with the secretary of state, that:



- (1) The document record 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
  - (2) The signature and the document record are communicated by a method or medium of communication acceptable by the secretary of state.
- ~~26.~~ 27. "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.
- ~~27.~~ 28. "Statement" means:
- a. A statement of partnership authority under section 45-15-03;
  - b. A statement of denial under section 45-15-04;
  - c. A statement of dissociation under section 45-19-04;
  - d. A statement of dissolution under section 45-20-05;
  - e. A statement of conversion under section 45-21-04;
  - f. A statement of merger under section 45-21-07; or
  - f. g. An amendment or cancellation of any of the foregoing.
29. "Surviving organization" means an organization into which one or more other organizations are merged and which:
- a. May preexist the merger; or
  - b. Are created by the merger.
- ~~28.~~ 30. "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

**SECTION 122.** 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 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;
4. If a provision requires a signature, an electronic signature satisfies the requirement; and

5. The provisions of this chapter relating to electronic records and electronic transactions do not limit or supersede chapter 9-16.

**SECTION 123. AMENDMENT.** Section 45-13-02 of the North Dakota Century Code is amended and reenacted as follows:

**45-13-02. (102) Knowledge and notice.**

1. A person knows a fact if the person has actual knowledge of it. A person does not know or have knowledge of a fact merely because the person has reason to know or have knowledge of the fact.
2. A person has notice of a fact if the person:
  - a. Knows of ~~it~~ the fact;
  - b. Has received ~~a notification of~~ notice of the fact as provided in subsection 17 of section 45-13-01; or
  - c. Has reason to know ~~it~~ the fact exists from all of the facts known to the person at the time in question.
3. A person notifies or gives a notification to another by taking the steps reasonably required to inform the other person in ordinary course provided in subsection 17 of section 45-13-01, whether or not the other person learns of it.
4. A person receives a notification ~~when the notification:~~ as provided in subsection 17 of section 45-13-01.
  - a. ~~Comes to the person's attention; or~~
  - b. ~~Is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.~~
5. Except as otherwise provided in subsection 6, and except as otherwise provided in subsection 17 of section 45-13-01, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction ~~for the person~~ knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the ~~individual's~~ individual's attention of the individual if the person had exercised reasonable diligence. ~~The~~
  - a. A person other than an individual exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the person and there is reasonable compliance with the routines.
  - b. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the ~~individual's~~ individual's regular duties of the individual or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

6. ~~A partner's knowledge~~ Knowledge, notice, or receipt of a notification of a fact relating to the partnership by a managing partner is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.
7. With respect to notice given by a form of electronic communication:
  - a. Consent by a managing partner to notice given by electronic communication may be given in writing or by authenticated electronic communication. The partnership is entitled to rely on any consent so given until revoked by the managing partner. However, no revocation affects the validity of any notice given before receipt by the partnership of revocation of the consent.
  - b. An affidavit of a managing partner or an 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.

<sup>78</sup> **SECTION 124. AMENDMENT.** Section 45-13-04.1 of the North Dakota Century Code is amended and reenacted as follows:

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

1. A partnership name filed in a statement under section 45-13-05:
  - a. Must be in the English language or in any other language expressed in English letters or characters;
  - b. ~~May not contain a word or phrase indicating or implying the partnership may not be organized under this chapter~~ the name of any partner;
  - c. ~~May not contain a the word or phrase indicating or implying the partnership is organized for a purpose other than a legal business purpose for which a partnership may be organized under this chapter~~ "corporation", "company", "incorporated", "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words;
  - d. ~~May not contain the a word "corporation", "company", "incorporated", "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words; and or phrase that indicates or implies that the partnership:~~
    - (1) Is organized for a purpose other than a lawful purpose for which a partnership may be organized under this chapter; or

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<sup>78</sup> Section 45-13-04.1 was also amended by section 8 of House Bill No. 1273, chapter 384.

- (2) May not be formed under this chapter; and
- e. May not be the same as, or deceptively similar to:
  - (1) The name, whether foreign and authorized to do business in this state or domestic, unless filed with the statement is a ~~document~~ record which complies with subsection 3 of:
    - (a) Another partnership;
    - (b) A limited liability company;
    - (c) A corporation;
    - (d) A limited partnership;
    - (e) A limited liability partnership; or
    - (f) A limited liability limited partnership;
  - (2) A name, the right of which is, at the time of filing, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, ~~45-10.1-03~~ 45-10.2-11, 45-13-04.2, or 45-22-05;
  - (3) A fictitious name registered in the manner provided in chapter 45-11; or
  - (4) A trade name registered in the manner provided in chapter 47-25.
- 2. The secretary of state shall determine whether a partnership name is deceptively similar to another name for purposes of this chapter.
- 3. ~~This subsection does not affect the right of a domestic partnership existing on July 1, 1999, or a foreign partnership authorized to do business in this state on July 1, 1999, to continue the use of the foreign partnership's name.~~ If the secretary of state determines a partnership name is deceptively similar to another name for purposes of this chapter, then the partnership name may not be used unless there is filed with the statement:
  - a. The written consent of the holder of the rights to the name to which the proposed name is determined to be deceptively similar; or
  - b. A certified copy of a judgment of a court in this state establishing the earlier right of the applicant to the use of the name in this state.
- 4. This section does not affect the right of a partnership existing on July 1, 1999, or a foreign partnership authorized to do business in this state on July 1, 1999, to continue the use of the foreign partnership's name.
- 5. This section and section 45-13-04.2 do not:
  - a. Abrogate or limit the law of unfair competition or unfair practices; chapter 47-25; the laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks,

service names, service marks; or any other rights to the exclusive use of a name or symbol.

b. Derogate the common law or any principle of equity.

~~5-~~ 6. A partnership that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another 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. 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~~ 10-19.1-14, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;

d. Holds a fictitious name registered in the manner provided in chapter 45-11; or

e. Holds a trade name registered in the manner provided in chapter 47-25.

~~6-~~ 7. The use of a name by a partnership in violation of this section does not affect or vitiate the 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.

~~7-~~ 8. If ~~a partnership's~~ a partnership's the period of existence of the partnership is expired or a partnership's statement of a partnership filed under section 45-13-05 is expired, ~~then~~ the partnership may reacquire the right to use that name by refiling a statement pursuant to section 45-13-05, unless the name was adopted for use or reserved by another person, in which case the filing must be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection ~~2~~ 3. A partnership that cannot reacquire the use of ~~the partnership's~~ its partnership name shall adopt a new partnership name that complies with this section.

**SECTION 125. AMENDMENT.** Subsections 3 and 4 of section 45-13-04.2 of the North Dakota Century Code are amended and reenacted as follows:

3. The right to the exclusive use of a 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 45-13-05.~~

4. The right to the exclusive use of a 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 the cancellation ~~together with the fees provided in section 45-13-05.~~

**SECTION 126. AMENDMENT.** Subsection 8 of section 45-13-05 of the North Dakota Century Code is amended and reenacted as follows:

8. a. The secretary of state shall charge and collect a fee for:
  - (1) Filing a statement under this section, one hundred dollars.
  - (2) Filing an amendment under this section, forty dollars.
  - (3) Filing a cancellation under this section, twenty-five dollars.
  - (4) Filing a renewal under this section, forty dollars.
  - (5) Filing a request to reserve a partnership name, ten dollars.
  - (6) Filing a notice of transfer of a reserved partnership name, ten dollars.
  - (7) Filing a cancellation of reserved partnership name, ten dollars.
  - (8) Filing a statement of conversion or abandonment of conversion, fifty dollars and:
    - (a) If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or
    - (b) If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.
  - (9) Filing a statement of merger, fifty dollars.
  - (10) Any ~~document~~ record submitted for approval before the actual time of submission for filing, half of the fee provided in this section for filing the ~~document~~ record.
- b. The officer responsible for recording transfers of real property may collect a fee for recording a statement.

<sup>79</sup> **SECTION 127. AMENDMENT.** Section 45-21-01 of the North Dakota Century Code is amended and reenacted as follows:

**45-21-01. (901) Definitions - Conversions and Mergers.** ~~For the purposes of this chapter, unless the context otherwise requires:~~

1. "Certificate of creation" means:
  - a. A certificate of incorporation, if the converted organization is a corporation deemed to be incorporated under chapter 10-19.1;
  - b. A certificate of organization, if the converted organization is a limited liability company deemed to be organized under chapter 10-32;
  - c. A certificate of limited partnership, if the converted organization is a limited partnership deemed to be formed under chapter 45-10.2;
  - d. The filed registration, if the converted organization is a limited liability partnership deemed to be established under chapter 45-22; or
  - e. A certificate of limited liability limited partnership, if the converted organization is a limited liability limited partnership deemed to be formed under chapter 45-23.
2. "Constituent organization" means an organization that is party to a merger.
3. "Constituent partnership" means a constituent organization that is a partnership.
4. "Converted organization" means the organization into which a converting organization converts pursuant to sections 45-21-01 through 45-21-07.1.
5. "Converting organization" means an organization that converts into another organization pursuant to sections 45-21-01 through 45-21-07.1.
6. "Converting partnership" means a converting organization that is a partnership.
7. "Date of origin" means the date on which:
  - a. A corporation that is:
    - (1) The converting organization was incorporated; or
    - (2) The converted organization is deemed to be incorporated;

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<sup>79</sup> Section 45-21-01 was also amended by section 9 of House Bill No. 1273, chapter 384.

- b. A limited liability company that is:
  - (1) The converting organization was organized; or
  - (2) The converted organization is deemed to be organized;
- c. A general partnership that is the converting organization was formed;
- d. A general partnership that is the converted organization was formed;
- e. A limited partnership that is:
  - (1) The converting organization was formed; or
  - (2) The converted organization is deemed to be formed;
- f. A limited liability partnership that is:
  - (1) The converting organization was established; or
  - (2) The converted organization is deemed to be established; and
- g. A limited liability limited partnership that is:
  - (1) The converting organization was formed; or
  - (2) The converted organization was deemed to be formed.
- 8. "Filed registration" means the registration of a limited liability partnership that has been filed with the secretary of state.
- 9. "General partner" means a partner in a partnership and a general partner in a limited partnership.
- 10. "General partnership" means an organization formed by two or more persons under chapters 45-13 through 45-21.
- 11. "Governing statute" means:
  - a. With respect to a domestic organization, the following chapters of this code which govern the internal affairs of the organization:
    - (1) If a corporation, then chapter 10-19.1;
    - (2) If a limited liability company, then chapter 10-32;
    - (3) If a limited partnership, then chapter 45-10.2;
    - (4) If a general partnership, then chapters 45-13 through 45-21;
    - (5) If a limited liability partnership, then chapter 45-22; and



- (6) If a limited liability limited partnership, then chapter 45-23; and
    - b. With respect to a foreign organization, the laws of the jurisdiction under which the organization is created and under which the internal affairs of the organization are governed.
- ~~2-~~ 12. "Limited partner" means a limited partner in a limited partnership.
- ~~3-~~ 13. "Limited partnership" means a ~~limited~~ partnership ~~created~~ that is formed by two or more persons under chapter ~~45-10.1~~ 45-10.2, predecessor law, or comparable law of another jurisdiction and which has one or more general partners and one or more limited partners.
- 14. "Organizational records" means for an organization that is:
  - a. A corporation, its articles of incorporation and bylaws;
  - b. A limited liability company, its articles of organization, operating agreement or bylaws, and any member-control agreement;
  - c. A limited partnership, its partnership agreement;
  - d. A general partnership, its partnership agreement;
  - e. A limited liability partnership, its partnership agreement; or
  - f. A limited liability limited partnership, its partnership agreement.
- 15. "Originating record" means for an organization that is:
  - a. A corporation, its articles of incorporation;
  - b. A limited liability company, its articles of organization;
  - c. A limited partnership, its certificate of limited partnership;
  - d. A limited liability partnership, its registration; or
  - e. A limited liability limited partnership, its certificate of limited liability limited partnership.
- 16. "Ownership interest" means for an organization which is:
  - a. A corporation, its shares;
  - b. A limited liability company, its membership interests;
  - c. A limited partnership, its partnership interests;
  - d. A general partnership, its partnership interests;
  - e. A limited liability partnership, its partnership interests; or
  - f. A limited liability limited partnership, its partnership interests.

4. 17. "Partner" includes both a general partner and a limited partner.
18. "Surviving organization" means an organization into which one or more other organizations are merged and which:
- May preexist the merger; or
  - Be created by the merger.

<sup>80</sup> **SECTION 128. AMENDMENT.** Section 45-21-02 of the North Dakota Century Code is amended and reenacted as follows:

**45-21-02. (902) Conversion of partnership to limited partnership.**

4. A partnership ~~Other organizations may be converted not convert~~ to a limited partnership. However, a partnership may convert to another organization pursuant to this section: sections 45-21-01 through 45-21-07.1 and a plan of conversion, if:
- The governing statute of the other organization authorizes the conversion;
  - The terms and conditions of a conversion of a partnership to a limited partnership must be approved by all of the partners or by a number or percentage specified for conversion in the partnership agreement: is not prohibited by the law of the jurisdiction that enacted the governing statute; and
  - After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership in the jurisdiction in which the limited partnership is to be formed. The certificate must include: The other organization complies with its governing statute in effecting the conversion.
    - A statement that the partnership was converted to a limited partnership from a partnership;
    - Its former name; and
    - A statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement.
  - The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate.
  - A general partner who becomes a limited partner as a result of the conversion remains liable as a general partner for an obligation incurred by the partnership before the conversion takes effect. If the other party

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<sup>80</sup> Section 45-21-02 was also amended by section 10 of House Bill No. 1273, chapter 384.

to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the limited partner is liable for an obligation incurred by the limited partnership within ninety days after the conversion takes effect. The limited partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner as provided in chapter 45-10.1.

**SECTION 129.** Section 45-21-02.1 of the North Dakota Century Code is created and enacted as follows:

**45-21-02.1. Plan of conversion.** A plan of conversion must be in a record and must include:

1. The name and form of the converting organization before conversion;
2. The name and form of the converted organization after conversion;
3. The terms and conditions of the conversion;
4. The manner and basis for converting each ownership interest in the converting organization into ownership interests in the converted organization, or in whole or in part, into money or other property;
5. The organizational records of the converted organization; and
6. Any other provisions with respect to the proposed conversion that are deemed to be necessary or desirable.

**SECTION 130. AMENDMENT.** Section 45-21-03 of the North Dakota Century Code is amended and reenacted as follows:

**45-21-03. (903) Conversion of limited partnership to partnership Plan of conversion approval and amendment.**

1. ~~A limited~~ If the converting organization is a partnership may be converted to a partnership pursuant to this section, then:
  - a. A plan of conversion must be consented to by all of the partners of a converting partnership.
  - b. ~~Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of~~ Subject to any contractual rights, after a conversion of a limited partnership to a partnership must be is approved by all of the partners, and at any time before a filing is made under section 45-21-04, a converting partnership may amend the plan or abandon the planned conversion:
    - (1) As provided in the plan; and
    - (2) Except as prohibited by the plan, by the same consent as was required to approve the plan.
2. If the converting organization is not a partnership, then the approval and the amendment of the plan of conversion must comply with the governing statute in effecting the conversion.

3. After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership.
4. The conversion takes effect when the certificate of limited partnership is canceled.
5. A limited partner who becomes a general partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. The partner is liable as a general partner for an obligation of the partnership incurred after the conversion takes effect.

**SECTION 131. AMENDMENT.** Section 45-21-04 of the North Dakota Century Code is amended and reenacted as follows:

**45-21-04. (904) Effect of Statement of conversion - Entity unchanged.**

1. A partnership or limited partnership that has been converted pursuant to this chapter is for all purposes the same entity that existed before the  
Upon receiving the approval required by section 45-21-03, a statement of conversion must be prepared in a record that must contain:
  - a. A statement that the converting organization is being converted into another organization, including:
    - (1) The name of the converting organization immediately before the filing of the statement of conversion;
    - (2) The name to which the name of the converting organization is to be changed, which must be a name that satisfies the laws applicable to the converted organization;
    - (3) The form of organization that the converted organization will be; and
    - (4) The jurisdiction of the governing statute of the converted organization;
  - b. A statement that the plan of conversion has been approved by the converting organization as provided in section 45-21-03;
  - c. A statement that the plan of conversion has been approved as required by the governing statute of the converted organization;
  - d. The plan of conversion without organizational records;
  - e. A copy of the originating record of the converted organization; and
  - f. If the converted organization is a foreign organization not authorized to transact business or conduct activities in this state, then the street and mailing address of an office which the secretary of state may use for the purposes of subsection 3 of section 45-21-03.

2. When a The statement of conversion takes effect: must be signed on behalf of the converting organization and filed with the secretary of state.
  - a. All property owned by the converting partnership or limited partnership remains vested in the converted entity; If the converted organization is a domestic organization, then:
    - (1) The filing of the statement of conversion must also include the filing with the secretary of state of the originating record of the converted organization.
    - (2) Upon both the statement of conversion and the originating record of the converted organization being filed with the secretary of state, the secretary of state shall issue a certificate of conversion and the appropriate certificate of creation to the converted organization or its legal representative.
  - b. All obligations of If the converting partnership or limited partnership continue as obligations of the converted entity; and organization is a foreign organization:
    - (1) That is transacting business or conducting activities in this state, then:
      - (a) The filing of the statement of conversion must include the filing with the secretary of state of an application for certificate of authority by the converted organization.
      - (b) Upon both the statement of conversion and the application for a certificate of authority by the converted organization being filed with the secretary of state, the secretary of state shall issue a certificate of conversion and the appropriate certificate of authority to the converted organization or the legal representative.
    - (2) That is not transacting business or conducting activities in this state, then upon the statement of conversion being filed with the secretary of state, the secretary of state shall issue the appropriate certificate of conversion to the converted organization or its legal representative.
  - e. An action or proceeding pending against the converting partnership or limited partnership may be continued as if the conversion had not occurred.
3. A converting organization that is the owner of a trademark or trade name, is a general partner named in a fictitious name certificate, is a general partner in a limited partnership or a limited liability limited partnership, or is a managing partner of a limited liability partnership that is on file with the secretary of state must change or amend the name of the converting organization to the name of the converted

organization in each registration when filing the statement of conversion.

**SECTION 132.** Section 45-21-04.1 of the North Dakota Century Code is created and enacted as follows:

**45-21-04.1. Abandonment of conversion.**

1. If the statement of conversion has not been filed with the secretary of state, and:
  - a. If the converting organization is a partnership, then subject to any contractual rights, after a conversion is approved, and at any time before the effective date of the plan, a converting partnership may abandon the planned conversion:
    - (1) As provided in the plan; and
    - (2) Except as provided otherwise by the plan, by the same consent as was required to approve the plan.
  - b. If the converting organization is not a partnership, then the abandonment of the plan of conversion must comply with its governing statute.
2. If the statement of conversion has been filed with the secretary of state, but has not yet become effective, then the converting organization shall file with the secretary of state articles of abandonment that contain:
  - a. The name of the converting organization;
  - b. The provision of this section under which the plan is abandoned; and
  - c. If the plan is abandoned:
    - (1) By the consent of all of the partners, then the text of the resolution abandoning the plan; or
    - (2) As provided in the plan, then a statement that the plan provides for abandonment and that all conditions for abandonment set forth in the plan are met.

**SECTION 133.** Section 45-21-04.2 of the North Dakota Century Code is created and enacted as follows:

**45-21-04.2. Effective date of conversion - Effect.**

1. A conversion is effective when the filing requirements of subsection 2 of section 45-21-04 have been fulfilled or on a later date specified in the statement of conversion.
2. With respect to the effect of conversion on the converting organization and on the converted organization:

- a. An organization that has been converted as provided in sections 45-21-01 through 45-21-07.1 is for all purposes the same entity that existed before the conversion.
- b. Upon a conversion becoming effective:
  - (1) If the converted organization is not a partnership, then the converted organization has all the rights, privileges, immunities, and powers, and is subject to the duties and liabilities as provided in its governing statute;
  - (2) All property owned by the converting organization remains vested in the converted organization;
  - (3) All debts, liabilities, and other obligations of the converting organization continue as obligations of the converted organization;
  - (4) An action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred;
  - (5) Except as otherwise provided by other law, all rights, privileges, immunities, and powers of the converting organization remain vested in the converted organization;
  - (6) Except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and
  - (7) Except as otherwise agreed, the conversion does not dissolve a converting partnership for the purposes of sections 45-20-01 through 45-20-07.
3. When a conversion becomes effective, each ownership interest in the converting organization is deemed to be converted into ownership interests in the converted organization or, in whole or in part, into money or other property to be received under the plan.
4. A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligations owed by the converting partnership, if before the conversion the converting partnership was subject to suit in this state on the obligation.
5. A converted organization that is a foreign organization and not authorized to transact business or conduct activities in this state appoints the secretary of state as its agent for service of process for purposes of enforcing an obligation under this subsection.

**SECTION 134. AMENDMENT.** Section 45-21-05 of the North Dakota Century Code is amended and reenacted as follows:

**45-21-05. (905) Merger of partnerships.**

1. Pursuant to a plan of merger approved as provided in subsection 3, a partnership may be merged with one or more other organizations.

2. The plan of merger must set forth:
  - a. The name of:
    - (1) The partnership;
    - (2) Each other constituent organization proposing to merge; and
    - (3) The surviving organization into which the other organizations will merge;
  - b. The status of each partner;
  - c. The terms and conditions of the merger;
  - d. The manner and basis of converting the ownership interests of each ~~party to the merger~~ constituent organization into ownership interests or obligations of the surviving organization, or into money or other property in whole or part; and
  - e. The street address of the principal executive office of the surviving organization.
3. The plan of merger must be approved:
  - a. In the case of a partnership that is a party to the merger, by all of the partners, or a number or percentage specified for merger in the partnership agreement; and
  - b. In the case of a ~~limited~~ constituent organization other than a partnership that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the limited partnership governing statute of the constituent organization in the jurisdiction in which the constituent organization is organized and, in the absence of such a specifically applicable law, by all of the partners, notwithstanding a provision to the contrary in the partnership agreement.
4. After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.
5. The merger takes effect on the later of:
  - a. The approval of the plan of merger by all ~~parties to the merger~~ constituent organizations, as provided in subsection 3;
  - b. The filing of all ~~documents~~ records required by law to be filed as a condition to the effectiveness of the merger; or
  - c. Any effective date specified in the plan of merger.

**SECTION 135. AMENDMENT.** Section 45-21-06 of the North Dakota Century Code is amended and reenacted as follows:

**45-21-06. (906) Effect of merger.**



1. When a merger takes effect:
  - a. The separate existence of ~~every partnership or limited~~ each constituent partnership that is a party to the merger, other than the surviving entity organization, ceases;
  - b. All property owned by each of the ~~merged partnerships or limited~~ constituent partnerships vests in the surviving entity organization;
  - c. All obligations of ~~every partnership or limited~~ each constituent partnership ~~that is a party to the merger~~ become the obligations of the surviving entity organization; and
  - d. An action or proceeding pending against a constituent partnership ~~or limited partnership that is a party to the merger~~ may be continued as if the merger had not occurred, or the surviving entity organization may be substituted as a party to the action or proceeding.
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 constituent organization. The surviving entity organization shall promptly notify the secretary of state of the mailing address of its 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~~.
3. A general partner of the surviving partnership ~~or limited partnership~~ is liable for:
  - a. All obligations of a party to the merger for which the general partner was personally liable before the merger;
  - b. All other obligations of the surviving entity organization incurred before the merger by a ~~party to the merger~~ constituent organization, but those obligations may be satisfied only out of property of the entity surviving organization; and
  - c. All obligations of the surviving entity organization incurred after the merger takes effect; ~~but those obligations may be satisfied only out of property of the entity if the partner is a limited partner.~~
4. If the obligations incurred before the merger by a ~~party to the merger~~ constituent partnership are not satisfied out of the property of the surviving ~~partnership or limited partnership organization~~, then the general partners of that party the constituent partnership immediately before the effective date of the merger shall contribute the amount necessary to satisfy ~~that party's~~ the obligations of the constituent partnership to the surviving entity organization, in the manner provided in section 45-20-07 ~~or in the Limited Partnership Act of the jurisdiction in which the party was formed, as the case may be, as if the merged party were dissolved.~~

5. A partner of a ~~party to a merger~~ constituent partnership who does not become a partner receive an ownership interest of the surviving ~~partnership or limited partnership~~ organization is dissociated from the ~~entity partnership~~, of which that partner was a partner, as of the date the merger takes effect. The surviving ~~entity~~ organization shall cause the ~~partner's ownership interest~~ of the partner in the ~~entity~~ constituent partnership to be purchased under section 45-19-01 or another statute specifically applicable to that ~~partner's ownership interest~~ of that partner with respect to a merger. The surviving ~~entity~~ organization is bound under section 45-19-02 by an act of a general partner dissociated under this subsection, and the partner is liable under section 45-19-03 for transactions entered into by the surviving ~~entity~~ organization after the merger takes effect.

**SECTION 136. AMENDMENT.** Section 45-21-07 of the North Dakota Century Code is amended and reenacted as follows:

**45-21-07. (907) Statement of merger.**

1. After a merger, the surviving organization may file a statement that one or more partnerships or ~~limited partnerships~~ other constituent organizations have merged into the surviving organization.
2. A statement of merger must be accompanied by the plan of merger without organizational records and must contain:
  - a. The name of:
    - (1) The partnership;
    - (2) Each other constituent organization that is a party to the merger; and
    - (3) The surviving organization into which the other constituent organizations were merged-;
  - b. The form of organization that the surviving organization will be;
  - c. The jurisdiction of the governing statute of the surviving organization; and
  - d. The street address of the principal executive office of the surviving organization and of an office in this state, if any.
3. Except as otherwise provided in subsection 4, for the purposes of section 45-15-02, property of the surviving ~~partnership or limited partnership~~ organization which before the merger was held in the name of another party to the merger is property held in the name of the surviving ~~entity~~ organization upon filing a statement of merger.
4. For the purposes of section 45-15-02, real property of the surviving ~~partnership or limited partnership~~ organization which before the merger was held in the name of another ~~party to the merger~~ constituent organization is property held in the name of the surviving ~~entity~~ organization upon recording a certified copy of the statement of merger in the office for recording transfers of that real property.

5. A filed and, if appropriate, recorded statement of merger, executed signed and declared to be accurate pursuant to subsection 3 of section 45-13-05, stating the name of a constituent partnership or limited partnership that is a party to the merger constituent organization in whose name property was held before the merger and the name of the surviving entity organization, but not containing all of the other information required by subsection 2, operates with respect to the partnerships or limited partnerships named constituent partnership and the surviving organization to the extent provided in subsections 3 and 4.

**SECTION 137.** Section 45-21-07.1 of the North Dakota Century Code is created and enacted as follows:

**45-21-07.1. Liability of general partner after conversion or merger.**

1. A conversion or merger under this chapter does not discharge any liability under sections 45-15-06, 45-15-07, and 45-15-08 of a person that was a general partner in or dissociated as a general partner from a converting or constituent partnership, but:
  - a. The provisions of this chapter pertaining to the collection or discharge of the liability continue to apply to the liability;
  - b. For the purposes of applying those provisions, the converted or surviving organization is deemed to be the converting or constituent partnership; and
  - c. If a person is required to pay any amount under this subsection, then:
    - (1) The person has a right of contribution from each other person that was liable as a general partner under section 45-15-06 when the obligation was incurred and has not been released from the obligation under section 45-20-06; and
    - (2) The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligations were incurred as provided in section 45-20-07.
2. In addition to any other liability provided by law:
  - a. A person that immediately before a conversion or merger became effective was a general partner in a converting or constituent partnership is personally liable for each obligation of the converted or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective, if, at the time the third party enters into the transaction, the third party:
    - (1) Does not have notice of the conversion or merger; and
    - (2) Reasonably believes that:
      - (a) The converted or surviving organization or business is the converting or constituent partnership; and

- (b) The person is a general partner in the converting or constituent partnership; and
- b. A person that was dissociated as a general partner from a converting or constituent partnership before the conversion or merger became effective is personally liable for each obligation of the converted or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective, if at the time the third party enters into the transaction less than two years have passed since the person dissociated as a general partner and the third party:
  - (1) Does not have notice of the dissociation;
  - (2) Does not have notice of the conversion or merger; and
  - (3) Reasonably believes that:
    - (a) The converted or surviving organization or business is the converting or constituent partnership; and
    - (b) The person is a general partner in the converting or constituent partnership.

**SECTION 138. 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 the 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~~ formed by two or more persons ~~under the laws of this state~~

- chapter with a registration in effect and which is not a foreign limited liability partnership.
4. "Domestic organization" means an organization created under the laws of this state.
  5. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
  6. "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
    - b. That may be directly reproduced in paper form by the recipient through an automated process.
  7. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
  8. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and ~~executed~~ signed or adopted by a person with the intent to sign the record.
  9. "Filed with the secretary of state" means, except as otherwise permitted by law or rule:
    - a. That a ~~document~~ record meeting the applicable requirements of this chapter, together with the fees provided in section 45-22-23, has been delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and has been determined by the secretary of state to conform to law.
    - b. That the secretary of state ~~shall~~ did then:
      - (1) Record the actual date on which the ~~document is~~ record was filed, and if different, the effective date of filing; and
      - (2) Record the ~~document~~ record in the office of the secretary of state.
  10. "Foreign limited liability partnership" means a partnership ~~organized formed by two or more persons as a limited liability partnership under the laws of a jurisdiction other than the laws of this state which is in good standing in the partnership's~~ its jurisdiction of origin.
  11. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which ~~an~~ the 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.

13. "Limited liability partnership" means a domestic limited liability partnership or a foreign limited liability partnership.
14. "Managing partner" means ~~one of the partners~~ a partner charged with the management of the limited liability partnership or foreign limited liability partnership in this state and if no partners are so specifically designated, then all partners.
15. "Notice":
- a. Is given to a limited liability ~~partnership or to a partner of the limited liability partnership~~:
    - (1) When in writing and mailed or delivered to ~~the limited liability partnership or the~~ a managing 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~~ a managing partner of the limited liability partnership to which the notice is given if by:
      - (a) ~~If by facsimile~~ Facsimile communication, when directed to a telephone number at which a managing partner of the limited liability partnership or the partner has consented to receive notice.
      - (b) ~~If by electronic~~ Electronic mail, when directed to an electronic mail address at which a managing partner of the limited liability partnership or the partner has consented to receive notice.
      - (c) ~~If by posting~~ Posting on an electronic network on which a managing partner of 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.
    - (d) ~~If by any~~ Any other form of electronic communication by which ~~the limited liability partnership or a managing partner of the limited liability partnership~~ has consented to receive notice, when directed to the limited liability partnership.
  - b. Is given, ~~in all other cases~~ to a partner of the limited liability partnership:
    - (1) When in writing and mailed or delivered to the ~~person~~ partner at ~~an address designated by the person~~ the

registered office or at the last-known address of the person principal executive office of the limited liability partnership; or

- (2) When ~~handed~~ given by a form of electronic communication consented to ~~the person~~; by the partner to which the notice is given if by:
- (a) Facsimile communication, when directed to a telephone number at which the partner has consented to receive notice;
  - (b) Electronic mail, when directed to an electronic mail address at which the partner has consented to receive notice;
  - (c) 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:
    - [1] The posting; or
    - [2] The giving of the separate notice; or
  - (d) Any other form of electronic communication by which the partner has consented to receive notice, when directed to the partner.

c. Is given 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;
- (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 if by:
  - (a) ~~If by facsimile~~ Facsimile communication, when directed to a telephone number at which the person has consented to receive notice-;
  - (b) ~~If by electronic~~ Electronic mail, when directed to an electronic mail address at which the person has consented to receive notice-;

- (c) ~~If by posting~~ 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-; or
    - (d) ~~If by any~~ Any other form of electronic communication by which the person has consented to receive notice, when directed to the person-; or
  - e. ~~Is given when deposited in the United States mail with sufficient postage affixed.~~
  - d. ~~Is deemed received when given.~~
  - (5) When the method is fair and reasonable when all circumstances are considered.
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, general 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 or~~ any other person subject to a governing statute; 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~~ record establishing the limited liability partnership status of the foreign limited liability partnership in the jurisdiction of origin of the foreign limited liability ~~partnership's jurisdiction of origin~~ partnership.
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.
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.



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 domestic limited liability partnership to be created; or
  - A foreign limited liability partnership to be authorized to transact business in this state.
22. "Registered office" means the place in this state designated as the registered office of the limited liability partnership or foreign limited liability partnership.
23. "Registration" means the ~~document~~ record which, when filed with the secretary of state, causes:
- A domestic limited liability partnership to be created; or
  - A foreign limited liability partnership to be authorized to do business in this state.
24. "Signed" means:
- 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~~ record, is placed on a ~~document~~ record, as provided under section 41-01-09; and
  - With respect to a ~~document~~ record required by this chapter to be filed with the secretary of state means that:
    - The ~~document~~ record 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; and
    - The signature and the ~~document~~ record are communicated by a method or medium of communication acceptable by the secretary of state.

<sup>81</sup> **SECTION 139. AMENDMENT.** Section 45-22-04 of the North Dakota Century Code is amended and reenacted as follows:

**45-22-04. Limited liability partnership - Name.**

- The name of a limited liability partnership:

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<sup>81</sup> Section 45-22-04 was also amended by section 11 of House Bill No. 1273, chapter 384.

- a. Must be in the English language or in any other language, expressed in English letters or characters.
- b. Must contain:
  - (1) ~~The~~ the words "limited liability partnership" or the abbreviation "L.L.P." or the abbreviation "LLP", either of which abbreviations may be used interchangeably for all purposes authorized by this chapter, including real estate matters, contracts, and filings with the secretary of state; ~~or~~
  - (2) ~~In the case of a foreign limited liability partnership, any other words or abbreviations as may be authorized or required under the laws of the jurisdiction of origin.~~
- ~~e.~~ c. ~~May not contain a word or phrase indicating or implying the limited liability partnership may not be formed under this chapter.~~
- ~~d.~~ c. May not contain the word "corporation", "company", "incorporated", "limited liability company", "limited partnership", "limited liability limited partnership", or any abbreviation of these words.
- ~~e.~~ d. May not contain a word or phrase ~~indicating that indicates or implying that implies that~~ the limited liability partnership is:
  - (1) ~~Is formed for a purpose other than one or more business purposes for which a:~~
    - (a) A lawful purpose for which a limited liability partnership may be formed under North Dakota law this chapter; or
    - (b) For a purpose stated in its registration; or
  - (2) May not be formed under this chapter.
- ~~f.~~ e. May not be the same as or deceptively similar to:
  - (1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the registration a ~~document~~ record that complies with subsection 3 of this section, of:
    - (a) Another limited liability partnership;
    - (b) A corporation;
    - (c) A limited liability company;
    - (d) A limited partnership; or
    - (e) A limited liability limited partnership;
  - (2) A name, the right to which is at the time of registration reserved in the manner provided in section 10-19.1-14,

- 10-32-11, 10-33-11, ~~45-10-1-03~~ 45-10.2-11, 45-13-04.2, 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.
- ~~g.~~ f. Need not be filed as provided in chapter 45-11 except if transacting business under a name other than the name as registered under this chapter.
- 2. The secretary of state shall determine whether a name is deceptively similar to another name for purposes of this ~~section~~ chapter.
  - 3. If the secretary of state determines that a limited liability partnership name is deceptively similar to another name for purposes of this chapter, the limited liability partnership name may not be used unless there is filed with the registration:
    - a. The written consent of the holder of the rights to the name to which the proposed name has been determined to be deceptively similar; or
    - b. A certified copy of a judgment of a court in this state establishing the earlier right of the applicant to the use of the name in this state.
  - 4. This section and section 45-22-05 do not:
    - a. Abrogate or limit:
      - (1) The law of unfair competition or unfair practices;
      - (2) Chapter 47-25;
      - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, and service marks; or
      - (4) Any other rights to the exclusive use of names or symbols.
    - b. Derogate the common law or principles of equity.
  - 5. A limited liability partnership that is the surviving organization in a merger with one or more 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 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:
    - 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~~ 45-10.2-11, 45-13-04.2, or 45-22-05;
  - d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
  - e. Holds a trade name registered in the manner provided in chapter 47-25.
6. The use of a name by a limited liability partnership in violation of this section does not affect or vitiate the limited liability partnership's status as a limited liability partnership. However, a court of this state may, upon application of the state or of an interested or affected person, enjoin the limited liability partnership from doing business under a name assumed in violation of this section, even though the limited liability partnership's registration may have been filed with the secretary of state.
7. A limited liability partnership whose registration has expired or whose registration has been forfeited as provided in section 45-22-21.1 may reacquire the right to use that name by refiling a registration as provided in section 45-22-03 unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 3. A limited liability partnership that cannot reacquire the use of its limited liability partnership name shall adopt a new limited liability partnership name that complies with this section:
  - a. By refiling a registration as provided in section 45-22-03;
  - b. By amending its registration as provided in section 45-22-03; or
  - c. By reinstating the limited liability partnership pursuant to section 45-22-21.1, unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment as provided in subsection 3.
8. With respect to foreign limited liability partnerships:
  - a. A foreign limited liability partnership may register under any name that would be available to a domestic limited liability partnership, regardless of whether the name is the same under which the foreign limited liability partnership is authorized in the jurisdiction of original registration.
  - b. A fictitious name certificate must be filed as provided in chapter 45-11 only if registering under a name other than the name as authorized in the jurisdiction of original registration.

**SECTION 140. 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 destroy ~~any~~ all reserved name ~~request requests and name request~~ the index thereof one year after expiration.

**SECTION 141. AMENDMENT.** Section 45-22-17 of the North Dakota Century Code is amended and reenacted as follows:

**45-22-17. Service of process on a limited liability partnership or a foreign limited liability partnership and on a nonresident partner.**

1. The registered agent must be an agent of the limited liability partnership or foreign limited liability partnership and any nonresident partner upon whom any process, notice, or demand required or permitted by law to be served on the limited liability partnership, the foreign limited liability partnership, or a partner may be served.
  - a. When a foreign limited liability partnership transacts business without a registration or when the registration of a foreign limited liability partnership is suspended or revoked, the secretary of state is an agent of the foreign limited liability partnership for service of process, notice, or demand.
  - b. Acceptance of a managing partnership status in a limited liability partnership or foreign limited liability partnership includes the appointment of the secretary of state as an agent for personal service of legal process, notice, or demand.

2. A process, notice, or demand required or permitted by law to be served on a limited liability partnership or foreign limited liability partnership may be served ~~on~~:
  - a. On the registered agent or ~~on~~;
  - b. On any responsible person found at the registered office or ~~on~~ at the principal executive office if located in this state;
  - c. On a managing partner of the partnership; or
  - d. On the secretary of state as provided in this section.
- ~~2.~~ 3. 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 or foreign limited liability partnership cannot be found at the principal place of business in this state, then the secretary of state is ~~the~~ an agent of the limited liability partnership or foreign limited liability partnership on whom the process, notice, or demand may be served.
  - a. Service on the secretary of state:
    - a- (1) Shall be made by registered mail or personal delivery to the secretary of state and not by electronic communication.
    - b- (2) 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.
    - e- (3) Is deemed personal service on the limited liability partnership or foreign limited liability partnership and may be made by filing with the secretary of state:
      - (4) (a) Three copies of the process, notice, or demand; and
      - (2) (b) The fees provided in section 45-22-22.
      - (4) Is returnable in not less than thirty days, notwithstanding a shorter period specified in the process, notice, or demand.
  - d. b. The secretary of state immediately shall forward, by ~~certified~~ registered mail addressed to the limited liability partnership or foreign limited liability partnership at the ~~limited liability 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.~~
4. Process, notice, or demand may be served on a limited liability partnership or foreign limited liability partnership that has voluntarily withdrawn its registration or which has forfeited its registration as

provided in section 45-22-21.1. The court shall determine if service is proper:

- a. If a limited liability partnership or foreign limited liability partnership has voluntarily withdrawn its registration, then service may be made as provided in subsection 2.
  - b. If a limited liability partnership or foreign limited liability partnership has forfeited its registration as provided in section 45-22-21.1, then service may be made as provided in subsection 3.
3. 5. 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. 6. This section does not limit the right of a person to serve process, notice, or demand required or permitted by law to be served on a limited liability partnership or foreign limited liability partnership in any other manner permitted by law.

<sup>82</sup> **SECTION 142. AMENDMENT.** Section 45-22-21.1 of the North Dakota Century Code is amended and reenacted as follows:

**45-22-21.1. Secretary of state - Annual report of domestic limited liability partnership and foreign limited liability partnership.**

1. Each domestic limited liability partnership and each foreign limited liability partnership authorized to transact business in this state, shall file, within the time ~~prescribed~~ provided by subsection 3, an annual report setting forth:
  - a. The name of the limited liability partnership and ~~the~~ its jurisdiction of origin.
  - b. The address of the registered office of the limited liability partnership in this state, and the name of the limited liability partnership's registered agent in this state at that address.
  - c. The address of the limited liability partnership's chief executive office.
  - d. A brief statement of the character of the business in which the limited liability partnership is actually engaged in this state.
  - e. The name and respective address of each managing partner of the domestic limited liability partnership or foreign limited liability partnership.

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<sup>82</sup> Section 45-22-21.1 was also amended by section 2 of House Bill No. 1253, chapter 385.

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~~ provided in subsection 24 of section 45-22-01, the partnership agreement, or in a resolution approved by the affirmative vote of the required proportion or number of partners. If the limited liability partnership is in the hands of a receiver or trustee, the annual report must be signed on behalf of the limited liability partnership by the receiver or trustee. The secretary of state may destroy any annual report provided for in this section after the annual report is on file for six years.
3. The annual report of a limited liability partnership must be delivered to the secretary of state before April first of each year, except the first annual report of a limited liability partnership must be delivered before April first of the year following the calendar year in which the registration is filed by the secretary of state. A limited liability partnership in existence on July 1, 1999, shall file the first annual report before April first in the year of the expiration of the registration in effect on July 1, 1999.
  - a. An annual report in a sealed envelope postmarked by the United States postal service before April first, or an annual report in a sealed packet with a verified shipment date by any other carrier service before April first, complies with this requirement.
  - b. The secretary of state must file the annual report if the annual report conforms to the requirements of subsection 2.
    - (1) If the annual report does not conform, the annual report must be returned to the limited liability partnership for any necessary corrections.
    - (2) If the annual report is filed before the deadlines ~~prescribed~~ provided in this subsection, penalties for the failure to file a report within the time provided do not apply if the annual 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 liability partnership failing to file an annual report that the limited liability partnership's registration is not in good standing and that the registration of the limited liability partnership may be revoked pursuant to subsection 5.
  - a. The secretary of state shall mail notice of revocation to the last registered agent at the last registered office of record.
  - b. If the limited liability partnership files an annual report after the notice is mailed, together with the annual report filing fee and late filing penalty fee as ~~prescribed~~ provided by section 45-22-22, the secretary of state shall restore the limited liability partnership's registration to good standing.



5. A domestic limited liability 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, forfeits the limited liability partnership's registration.
  - a. The secretary of state shall note the revocation of the domestic limited liability partnership's registration on the records of the secretary of state and shall give notice of the action to the revoked domestic limited liability partnership.
  - b. Notice by the secretary of state must be mailed to the domestic limited liability partnership's last registered agent at the last registered office of record.
6. A foreign limited liability 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 foreign limited liability partnership's registration and authority to transact business in this state.
  - a. The secretary of state shall note the revocation of the foreign limited liability partnership's registration and authority on the records of the secretary of state and shall give notice of the action to the foreign limited liability partnership.
  - b. Notice by the secretary of state must be mailed to the foreign limited liability partnership's last registered agent at the last registered office of record.
  - c. The secretary of state's decision that a registration must be revoked under this subsection is final.
7. A domestic limited liability partnership with a registration that is revoked for failure to file an annual report or a foreign limited liability partnership with registration and authority that are forfeited by failure to file an annual report may be reinstated by filing a past-due report, together with the statutory filing and penalty fees for an annual report and a reinstatement fee as ~~prescribed~~ provided in section 45-22-22. The fees must be paid and the report filed within one year following the revocation. Reinstatement under this subsection does not affect any right or liability of a domestic limited liability partnership or a foreign limited liability partnership for the time from the revocation to the reinstatement.

**SECTION 143. AMENDMENT.** Section 45-22-22 of the North Dakota Century Code is amended and reenacted as follows:

**45-22-22. Secretary of state - Fees and charges.**

1. The secretary of state shall charge and collect for:
  - a. Filing a registration as a domestic limited liability partnership, twenty-five dollars. If there are more than two managing partners, an additional three dollars must be paid for each additional managing partner not to exceed two hundred fifty dollars.

- b. Filing a registration as a foreign limited liability partnership, fifty dollars.
- c. Filing an annual report of a domestic limited liability partnership or foreign limited liability partnership, twenty-five dollars.
  - (1) The secretary of state shall charge and collect additional fees for late filing of an annual report as follows:
    - (4) (a) After the date ~~prescribed~~ provided in subsection 3 of section 45-22-21.1, twenty dollars; and
    - (2) (b) After the revocation of the domestic limited liability partnership registration or the foreign limited liability partnership registration, the reinstatement fee of fifty dollars.
  - (2) Fees paid to the secretary of state according to this subdivision are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 45-22-21.1 or the annual report lacks sufficient payment as required by this subdivision.
- d. Filing a statement of correction or amended registration, twenty-five dollars.
- e. Filing an application to reserve a name, ten dollars.
- f. Filing a notice of transfer of a reserved name, ten dollars.
- g. Filing a cancellation of reserved name, ten dollars.
- h. Filing a consent to use of name, ten dollars.
- i. Filing a statement of change of address of registered office or change of registered agent or both, ten dollars.
- j. Filing a statement of change of address of registered office by registered agent, ten dollars for each domestic limited liability partnership or foreign limited liability partnership affected by the change.
- k. Filing a registered agent's consent to serve in the capacity of registered agent, ten dollars.
- l. Filing a resignation as registered agent, ten dollars.
- m. Filing a notice of withdrawal, ten dollars.
- n. Filing a certificate of fact stating a merger of a foreign limited liability partnership registered with the secretary of state, fifty dollars.
- o. Filing any other statement of a domestic limited liability partnership, ten dollars.

- p. Filing any process, notice, or demand for service, twenty-five dollars.
  - q. Any ~~document~~ record submitted for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the ~~document~~ record.
2. The secretary of state shall charge and collect for:
- a. Furnishing a copy of any ~~document, instrument, record~~ or paper relating to a domestic limited liability partnership or foreign limited liability partnership, one dollar for every four pages, or fraction of pages.
  - b. A certificate certifying a copy or reciting facts related to a domestic limited liability partnership or foreign limited liability partnership, twenty dollars.
  - c. Each page of any ~~document~~ record or form sent by electronic transmission, one dollar.

**SECTION 144. AMENDMENT.** Section 45-22-23 of the North Dakota Century Code is amended and reenacted as follows:

**45-22-23. Secretary of state - Powers - Enforcement - Penalty - Appeal.**

- 1. The secretary of state shall administer this chapter.
- 2. The secretary of state may propound to any limited liability partnership subject to this chapter and to any partner, any interrogatory reasonably necessary and proper to ascertain whether the partnership has complied with this chapter.
  - a. Any interrogatory must be answered within thirty days after mailing or within any additional time fixed by the secretary of state. Every answer to the interrogatory must be full and complete and be made in writing and under oath.
  - b. If an interrogatory is directed:
    - (1) To an individual, the interrogatory must be answered by that individual;
    - (2) To a domestic limited liability partnership, the interrogatory must be answered by a managing partner; or
    - (3) To a foreign limited liability partnership, the interrogatory must be answered by a resident partner or, if no partner is a resident partner, a partner designated by the foreign limited liability partnership.
  - c. The secretary of state need not file any ~~document~~ record to which an interrogatory relates until the interrogatory is answered, except if the answers disclose the ~~document~~ record is not in conformity with this chapter.

- d. The secretary of state shall certify to the attorney general, for any action the attorney general determines appropriate, any interrogatory and answers that disclose a violation of this chapter.
  - e. Each managing partner of a domestic limited liability partnership or a resident partner or designated partner of a foreign limited liability partnership who fails or refuses within the time provided by this section to answer truthfully and fully every interrogatory propounded to that person by the secretary of state is guilty of an infraction.
  - f. Any interrogatory propounded by the secretary of state and the answers are not open to public inspection under section 44-04-18. The secretary of state may not disclose any fact or information obtained from an interrogatory except to the extent permitted by law or required for evidence in any criminal proceeding or other action by this state.
3. If the secretary of state rejects any document record required by this chapter to be approved by the secretary of state before the document record may be filed, the secretary of state shall give written notice of the rejection to the person ~~who that~~ delivered the document record, specifying the reasons for rejection. ~~That person~~
  - a. Within thirty days after the service of the notice of denial, the limited liability partnership may appeal to the district court of the county in which the registered office of the domestic limited liability partnership or foreign limited liability partnership is, or is proposed to be, situated judicial district serving Burleigh County by filing with the clerk of that court a petition setting forth a copy of the document record sought to be filed and a copy of the written rejection of the document record by the secretary of state. The court shall try the matter de novo.
  - b. The court shall sustain the action of the secretary of state or direct the secretary of state to take any action the court determines proper.
4. If the secretary of state revokes the registration of any foreign limited liability partnership pursuant to section 45-22-16, then the foreign limited liability partnership may appeal to district court ~~of the county where the registered office of the foreign limited liability partnership in this state is situated~~ in the judicial district serving Burleigh County by filing with the clerk of that court a petition setting forth a, including:
  - a. A copy of the foreign limited liability partnership's registration; and  
a
  - b. A copy of the notice of revocation given by the secretary of state. The court shall try the matter de novo. The court shall sustain the action of the secretary of state or direct the secretary of state to take any action the court determines proper.
5. If the court order sought is one for reinstatement of a domestic limited liability partnership registration that has been revoked as provided in subsection 5 of section 45-22-22.1, or for reinstatement of the

registration of a foreign limited liability partnership that has been revoked as provided in subsection 6 of section 45-22-21.1, then, together with any other action the court deems proper, any such order which orders the reinstatement of the registration of a domestic or foreign limited liability partnership registration shall require the domestic or foreign limited liability partnership to:

- a. File all past-due annual reports;
  - b. Pay the fees to the secretary of state for each annual report as provided in subsection 1 of section 45-22-22; and
  - c. Pay the reinstatement fee to the secretary of state as provided in subsection 1 of section 45-22-22.
6. The attorney general may maintain an action to restrain a foreign limited liability partnership from transacting business in this state in violation of this chapter.

**SECTION 145.** Section 45-22-23.1 of the North Dakota Century Code is created and enacted as follows:

**45-22-23.1. Delivery to and filing of records by secretary of state and effective date.**

1. A record authorized or required to be delivered to the secretary of state for filing under this chapter must be captioned to describe the purpose of the record, be in a medium permitted by the secretary of state, and be delivered to the secretary of state. If the secretary of state determines that a record complies with the filing requirements of this chapter, then the secretary of state shall file the record and return a copy of the filed record to the person that delivered it to the secretary of state for filing. That person shall then:
  - a. For a statement of dissociation, send a copy of the filed statement:
    - (1) To the person which the statement indicates has dissociated as a partner; and
    - (2) To the limited liability partnership; and
  - b. For all other records, send a copy of the filed record to the person on whose behalf the record was filed.
2. Upon request and payment of a fee provided in section 45-22-22, the secretary of state shall send to the requester a certified copy of the requested record.
3. Except as otherwise specifically provided in this chapter, a record delivered to the secretary of state for filing under this chapter may specify a delayed effective date within ninety days. Except as otherwise provided in this chapter, a record filed by the secretary of state is effective:

- a. If the record does not specify a delayed effective date within ninety days, then on the date the record is filed as evidenced by the endorsement of the secretary of state of the date on the record.
- b. If the record specifies a delayed effective date within ninety days, then on the specified date.

**SECTION 146.** Section 45-22-23.2 of the North Dakota Century Code is created and enacted as follows:

**45-22-23.2. Correcting a filed record.** With respect to correction of a filed record:

1. Whenever a record authorized by this chapter to be filed with the secretary of state has been filed and inaccurately records the action referred to in the record, contains an inaccurate or erroneous statement, or was defectively or erroneously signed, sealed, acknowledged, or verified, the record may be corrected by filing a statement of correction.
2. A statement of correction:
  - a. Must:
    - (1) Be signed by:
      - (a) The person that signed the original record; or
      - (b) By a person authorized to sign on behalf of that person;
    - (2) Set forth the name of the limited liability partnership that filed the record;
    - (3) Identify the record to be corrected by description and by the date of its filing with the secretary of the state;
    - (4) Identify the inaccuracy, error, or defect to be corrected; and
    - (5) Set forth a statement in corrected form of the portion of the record to be corrected.
  - b. May not revoke or nullify the record.
3. The statement of correction must be filed with the secretary of state.
4. With respect to the effective date of correction:
  - a. A certificate issued by the secretary of state before a record is corrected, with respect to the effect of filing the original record, is considered to be applicable to the record as corrected as of the date the record as corrected is considered to have been filed under this subsection.
  - b. After a statement of correction has been filed with the secretary of state, the original record as corrected is considered to have been filed:

- (1) On the date the statement of correction was filed:
  - (a) As to persons adversely affected by the correction; and
  - (b) For the purposes of subsections 3 and 4 of section 45-10.2-06; and
- (2) On the date the original record was filed as to all other persons and for all other purposes.

<sup>83</sup> **SECTION 147. AMENDMENT.** Section 45-23-01 of the North Dakota Century Code is amended and reenacted as follows:

**45-23-01. Definitions.** ~~h~~ For the purposes of this chapter, unless the context otherwise requires:

1. "Address" means:
  - a. In case of a registered office or principal executive office, the mailing address of the actual office location which may not be only a post-office box; and
  - b. In all other cases, the mailing address, including the 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 limited partnership; or
    - (2) To a partner or agent of the limited liability limited partnership authorized by the limited liability limited partnership to receive the electronic communication; and
  - b. That the electronic communication sets forth information from which the limited liability limited partnership can reasonably conclude that the electronic communication was sent by the purported sender.
3. ~~"Domestic limited liability limited partnership" means a limited liability limited partnership that is formed under this chapter.~~
4. "Domestic organization" means an organization created under the laws of this state.
- ~~5.~~ 4. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

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<sup>83</sup> Section 45-23-01 was also amended by section 12 of House Bill No. 1273, chapter 384.

- 6- 5. "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
  - b. That may be directly reproduced in paper form by the recipient through an automated process.
- 7- 6. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
- 8- 7. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record ~~and executed~~ which is signed or adopted by a person with the intent to sign the record.
- 9- 8. "Filed with the secretary of state" means, except as otherwise permitted by law or rule:
- a. That a ~~document~~ record 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~~ did then:
    - (1) Record the actual date on which the ~~document is~~ record was filed, and if different, the effective date of filing; and
    - (2) Record the ~~document~~ record in the office of the secretary of state.
- 10- 9. "Foreign limited liability limited partnership" means a ~~limited liability limited~~ partnership that is formed by two or more persons under the laws of a jurisdiction other than this state, and:
- a. ~~Organized under the laws other than the laws of this state for~~ Which is required by those laws to have one or more general partners and one or more limited partners;
  - b. Whose general partners and limited partners have limited liability for the obligations of the foreign limited liability limited partnership under provisions similar to this chapter;
  - c. For a purpose or purposes for which a limited liability limited partnership may be organized formed under this chapter; and
- b- d. ~~In~~ Is in good standing in the jurisdiction of origin.
- 44- 10. "Foreign limited partnership" means a ~~limited~~ partnership that is:
- a. Organized formed by two or more persons under laws other than the laws of this state ~~for~~;



- a. Which is required by those laws to have one or more general partners and one or more limited partners;
- b. Whose general partners have personal liability for the obligations of the foreign limited partnership under provisions similar to chapter 45-10.2;
- c. For a purpose for which a limited partnership may be organized under chapter ~~45-10.4~~ 45-10.2; and
- ~~b-~~ d. Authorized to transact business in this state as provided in chapter ~~45-10.4~~ Is in good standing in its jurisdiction of origin.

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

12. "General partner" means:

- a. With respect to a limited liability limited partnership, a person:
  - (1) That becomes a general partner under section 45-10.2-37 and has not become dissociated as a general partner under section 45-10.2-57; or
  - (2) That was a general partner in a limited partnership when the limited partnership became subject to chapter 45-10.2 under section 45-10.2-03 and has not become dissociated as a general partner under section 45-10.2-57; and
- b. With respect to a foreign limited liability limited partnership, a person that has rights, powers, and obligations similar to those of a general partner in a limited liability limited partnership.

13. "Governing statute" means:

- a. With respect to a domestic organization, the following chapters of this code which govern the internal affairs of the organization:
  - (1) If a corporation, then chapter 10-19.1;
  - (2) If a limited liability company, then chapter 10-32;
  - (3) If a limited partnership, then chapter 45-10.2;
  - (4) If a general partnership, then chapters 45-13 through 45-21;
  - (5) If a limited liability partnership, then chapter 45-22; and
  - (6) If a limited liability limited partnership, then this chapter; and
- b. With respect to a foreign organization, the laws of the jurisdiction under which the organization is created and under which the internal affairs of the organization are governed.

- 43- 14. "Jurisdiction of origin" refers to the jurisdiction in which the limited liability limited partnership status of a foreign limited liability limited partnership was ~~created~~ established.
- 44- 15. "Limited liability limited partnership", except in the phrase "foreign limited liability limited partnership", means a ~~domestic limited liability limited~~ partnership formed by two or more persons having one or more general partners and one or more limited partners which is formed under or elects to become subject to this chapter.
16. "Limited partner" means:
- a. With respect to a limited liability limited partnership, a person that:
    - (1) Becomes a limited partner under section 45-10.2-31 and has not become dissociated as a limited partner under section 45-10.2-55; or
    - (2) Was a limited partner in a limited partnership when the limited partnership became subject to chapter 45-10.2 under section 45-10.2-03 and has not become dissociated as a limited partner under section 45-10.2-55; and
  - b. With respect to a foreign limited liability limited partnership, a person that has rights, powers, and obligations similar to those of a limited partner in a limited liability limited partnership.
- 45- 17. "Limited partnership", except in the phrase "foreign limited partnership" and "foreign limited liability limited partnership", means a ~~limited~~ partnership formed under chapter 45-10.4 having one or more general partners and one or more limited partners which is formed under or elects to become subject to chapter 45-10.2.
- 46- 18. "Notice":
- a. Is given to a limited liability limited partnership ~~or to a partner of the limited liability limited partnership~~:
    - (1) When in writing and mailed or delivered to ~~the limited liability limited partnership or to the~~ a general partner at the registered office or principal executive office of the ~~limited liability limited~~ partnership; or
    - (2) When given by a form of electronic communication consented to by ~~the limited liability limited partnership or a~~ general partner of the limited liability limited partnership to which the notice is given if by:
      - (a) If by facsimile Facsimile communication, when directed to a telephone number at which ~~a general partner~~ the limited liability limited partnership ~~or a partner~~ has consented to receive notice;
      - (b) If by electronic Electronic mail, when directed to an electronic mail address at which ~~a general partner of~~

the limited liability limited partnership ~~or a partner~~ has consented to receive notice-;

- (c) ~~If by posting~~ Posting on an electronic network on which a general partner of 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 of the specific posting, upon the later of:

[1] The posting; or

[2] The giving of the separate notice-; or

- (d) ~~If by any~~ Any other form of electronic communication by which the partnership or a general partner of the limited liability limited partnership has consented to receive notice, when directed to the limited liability limited partnership;

- b. Is given in all other cases to a partner of the limited liability limited partnership:

- (1) When in writing and mailed or delivered to the person partner at an address designated by the person or at the last known address of the person the registered office or principal executive office of the limited liability limited partnership; or
- (2) When handed given by a form of electronic communication consented to by the person; partner to which the notice is given if by:

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

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

(c) 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:

[1] The posting; or

[2] The giving of the separate notice; or

(d) Any other form of electronic communication by which the partner has consented to receive notice when directed to the partner;

- c. Is given 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;
- (3) When left at the office of the person with a clerk or other person in charge of the office; or if:
  - (a) If there is no one in charge, when left in a conspicuous place in the office ~~and if;~~ 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 if by:
  - (a) ~~If by facsimile~~ Facsimile communication, when directed to a telephone number at which the person has consented to receive notice;
  - (b) ~~If by electronic~~ Electronic mail, when directed to an electronic mail address at which the person has consented to receive notice;
  - (c) ~~If by posting~~ 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; or
  - (d) ~~If by any~~ Any other form of electronic communication by which the person has consented to receive notice, when directed to the person; or
- (5) When the method is fair and reasonable when all circumstances are considered;

~~e.~~ d. Is given when deposited in the United States mail with sufficient postage affixed; and

~~d.~~ e. Is deemed received when given.

~~47.~~ 19. "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, general partnership, limited partnership, limited liability partnership, limited liability limited partnership, ~~joint venture, association, business trust,~~

~~estate, trust, enterprise, and or any other legal or commercial entity person subject to a governing statute; 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.

~~48-~~ 20. "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.

~~49-~~ 21. "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-~~ 22. "Registered office" means the place in this state designated as the registered office of the limited liability limited partnership or foreign limited liability limited partnership.

~~24-~~ 23. "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-~~ 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 facsimile or electronically, or in any other manner reproduced on the ~~document~~ record, is placed on a ~~document~~ record, as provided under section 41-01-09; and
- b. With respect to a ~~document~~ record required by this chapter to be filed with the secretary of state, that:
  - (1) The ~~document~~ record 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
  - (2) The signature and the ~~document~~ record are communicated by a method or medium acceptable by the secretary of state.

<sup>84</sup> **SECTION 148. AMENDMENT.** Section 45-23-02 of the North Dakota Century Code is amended and reenacted as follows:

**45-23-02. Applicability of chapter ~~45-10.1~~ 45-10.2.**

1. In any case not provided for in this chapter, chapter ~~45-10.1~~ 45-10.2 governs.
2. If applying chapter ~~45-10.1~~ 45-10.2 to a limited liability limited partnership and unless the context otherwise requires:
  - a. All references in chapter ~~45-10.1~~ 45-10.2 to "limited partnership" refer to "limited liability limited partnership"; and
  - b. All references in chapter ~~45-10.1~~ 45-10.2 to "foreign limited partnership" refer to "foreign limited liability limited partnership".
3. If any provision of this chapter conflicts with chapter ~~45-10.1~~ 45-10.2, that provision of this chapter takes precedence.

<sup>85</sup> **SECTION 149. AMENDMENT.** Section 45-23-03 of the North Dakota Century Code is amended and reenacted as follows:

**45-23-03. Limited liability limited partnership name.**

1. The name of each limited liability limited partnership as set forth in the limited liability limited partnership's certificate of limited liability limited partnership:
  - a. Must be in the English language or in another language expressed in English letters or characters.
  - b. Must contain:
    - (1) ~~Without~~ without abbreviation the words "limited liability limited partnership" or the abbreviation "L.L.L.P." or "LLLP", either of which abbreviation may be used interchangeably for any purpose authorized by this chapter including real estate matters, contracts, and filings with the secretary of state; ~~or,~~
    - (2) ~~In the case of a foreign limited liability limited partnership, any other words or abbreviations as may be authorized or required under the laws of the jurisdiction of origin.~~
  - c. May ~~not~~ contain the name of a ~~limited~~ any partner ~~unless:~~
    - (1) ~~The name is also the name of a general partner; or~~

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<sup>84</sup> Section 45-23-02 was also amended by section 13 of House Bill No. 1273, chapter 384.

<sup>85</sup> Section 45-23-03 was also amended by section 14 of House Bill No. 1273, chapter 384.

- ~~(2) The business of the limited liability limited partnership was carried on under that name before the admission of that limited partner.~~
- d. May not contain the word "corporation", "company", "incorporated", "limited liability company", "limited liability partnership", or any abbreviation of these words.
- e. May not contain a word or phrase indicating that indicates or implying that implies that the limited liability limited partnership may:
- (1) Is organized for a purpose other than:
- (a) A lawful purpose for which a limited liability limited partnership may be organized under this chapter; or
- (b) For a purpose stated in its certificate of limited liability limited partnership; or
- (2) May not be organized under this chapter.
- f. ~~May not contain a word or phrase indicating or implying the limited liability limited partnership is organized for a purpose other than a legal business purpose for which a limited liability limited partnership may be organized under this chapter.~~
- g- ~~May not contain a word or phrase indicating or implying the limited liability limited partnership is organized other than for a purpose stated in the certificate of the limited liability limited partnership.~~
- h- May not be the same as, or deceptively similar to:
- (1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the certificate a ~~document~~ record in compliance with subsection 3, of:
- (a) Another limited liability limited partnership;
- (b) A limited partnership;
- (c) A corporation;
- (d) A limited liability company; or
- (e) A limited liability partnership;
- (2) A name the right to which is, at the time of organization, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, ~~45-10.1-03~~ 45-10.2-11, 45-13-04.2, or 45-22-05;
- (3) A fictitious name registered in the manner provided in chapter 45-11; or

- (4) A trade name registered in the manner provided in chapter 47-25.
2. The secretary of state shall determine whether a limited liability limited partnership name is deceptively similar to another name for purposes of this chapter.
3. If the secretary of state determines a limited liability limited partnership name is deceptively similar to another name for purposes of this chapter, the limited liability limited partnership name may not be used unless there is filed with the certificate:
  - a. The written consent of the holder of the registered trade name or the holder of the rights to the name to which the proposed name has been determined to be deceptively similar; or
  - b. A certified copy of a judgment of a court in this state establishing the earlier right of the applicant to the use of the name in this state.
4. This section does not ~~abrogate~~:
  - a. Abrogate or limit ~~the~~:
    - (1) The law of unfair competition or unfair practices; ~~chapter~~
    - (2) Chapter 47-25; ~~the~~
    - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, service marks; or ~~any~~
    - (4) Any other rights to the exclusive use of any name or symbol.
  - b. This section does not derogate the common law or the principles of equity.
5. A limited liability limited partnership that is the surviving organization in a merger with one or more organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization, including 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~~ 45-10.2-11, 45-13-04.2, or 45-22-05;
  - d. Holds a fictitious name registered in the manner provided in chapter 45-11; or



- e. Holds a trade name registered in the manner provided in chapter 47-25.
6. The use of a name of a limited liability limited partnership in violation of this section does not affect or vitiate a limited liability limited partnership's existence. However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the limited liability limited partnership from doing business under a name assumed in violation of this section, although a certificate of limited liability limited partnership may have been filed with the secretary of state.
7. A limited liability limited partnership whose period of existence has expired or that is involuntarily dissolved by the secretary of state pursuant to section 45-10.2-108 may reacquire the right to use that name by refiling a certificate of limited liability limited partnership pursuant to section 45-23-04, unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment as provided in subsection 3. A limited liability limited partnership that cannot reacquire the use of its limited liability limited partnership name shall adopt a new limited liability limited partnership name that complies with the provisions of this section:
  - a. By refiling the certificate of limited liability limited partnership pursuant to section 45-23-04;
  - b. By amending pursuant to section 45-10.2-24; or
  - c. By reinstating pursuant to section 45-10.2-108, unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 3.
8. Subject to section 45-23-07, this section applies to any foreign limited liability limited partnership transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.

<sup>86</sup> **SECTION 150. AMENDMENT.** Section 45-23-04 of the North Dakota Century Code is amended and reenacted as follows:

**45-23-04. Limited liability limited partnership formation and conversion of a limited partnership to a limited liability limited partnership or conversion of a limited liability limited partnership to a limited partnership.**

1. If a limited partnership does not exist, then a limited liability limited partnership may be formed by filing with the secretary of state, together with the fees provided in section 45-23-08, a certificate of limited liability limited partnership:

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<sup>86</sup> Section 45-23-04 was also amended by section 15 of House Bill No. 1273, chapter 384.

- a. That complies with the name requirements in section 45-23-03;
  - b. That contains a statement that limited liability limited partnership status is elected; and
  - c. That otherwise conforms to the requirements of section ~~45-10.1-08~~ 45-10.2-23.
2. An existing limited partnership:
- a. May elect to ~~become~~ convert to a limited liability limited partnership:
    - (1) By obtaining ~~approval to be governed by this chapter by the vote necessary~~ the consent of each general partner to ~~amend~~ convert the limited partnership agreement ~~except, in the case of a limited partnership agreement that expressly considers contribution obligations, the vote necessary to amend those provisions;~~ a limited liability limited partnership unless:
      - (a) The certificate of limited partnership or the partnership agreement of the limited partnership provides for the conversion with the consent of less than all general partners; and
      - (b) Each general partner that does not consent to the amendment of conversion has consented to that provision of the partnership agreement.
    - A partner does not give the consent required by subparagraph a by consenting to a provision in the partnership agreement which permits the partnership agreement to be amended with the consent of fewer than all partners;
    - (2) By complying with the name requirements of section 45-23-03; and
    - (3) By filing with the secretary of state, together with the fees provided in sections ~~45-10.1-15~~ 45-10.2-109 and 45-23-08, a ~~document~~ record that is designated as both an amended certificate of limited partnership and a certificate of limited liability limited partnership which:
      - (a) Amends the limited partnership name to comply with the name requirements of section 45-23-03;
      - (b) Contains a statement that limited liability limited partnership status is elected; and
      - (c) Otherwise conforms to the requirements of section ~~45-10.1-09~~ 45-10.2-23.
  - b. ~~Continues~~ Which converts to be a limited liability limited partnership is for all purposes the same entity in existence that

existed before the filing with the secretary of state pursuant to this section conversion.

3. An existing limited liability limited partnership:

a. May elect to convert to a limited partnership:

(1) By obtaining the consent of each general partner to convert the limited liability limited partnership to a limited partnership unless:

(a) The certificate of limited liability limited partnership or the partnership agreement of the limited liability limited partnership provides for the conversion with the consent of less than all general partners; and

(b) Each general partner that does not consent to the amendment of conversion has consented to that provision of the partnership agreement.

A partner does not give the consent required by subparagraph a by consenting to a provision in the partnership agreement which permits the partnership agreement to be amended with the consent of fewer than all partners;

(2) By complying with the name requirements of section 45-10.2-11; and

(3) By filing with the secretary of state, together with the fees provided in sections 45-10.2-109 and 45-23-08, a record that is designated as both an amended certificate of limited liability limited partnership and a certificate of limited partnership which:

(a) Amends the limited liability limited partnership name to comply with the name requirements of section 45-10.2-11; and

(b) Otherwise conforms to the requirements of section 45-10.2-23.

b. Which converts to a limited partnership is for all purposes the same entity that existed before the conversion.

**SECTION 151. AMENDMENT.** Subsections 1 and 2 of section 45-23-05 of the North Dakota Century Code are amended and reenacted as follows:

1. If a limited partnership does not exist, then a limited liability limited partnership is formed on the later of the filing of the certificate of limited liability limited partnership or the date specified in the certificate of limited liability limited partnership which is within ninety days after the filing of the certificate of limited liability limited partnership.
2. An existing limited partnership electing to ~~become~~ convert to a limited liability limited partnership is governed by this chapter on the later of the

filing of the ~~document~~ record designated as both an amendment to the certificate of limited partnership and a certificate of limited liability limited partnership or the date specified in that ~~document~~ record which is within ninety days after the filing of the ~~document~~ record.

**SECTION 152. AMENDMENT.** Section 45-23-06 of the North Dakota Century Code is amended and reenacted as follows:

**45-23-06. General partner liability.** An obligation of a limited liability limited partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the limited liability limited partnership.

1. A general partner is not personally liable, directly or indirectly by way of contribution or otherwise, for an obligation of the limited liability limited partnership solely by reason of being or acting as a general partner.
2. This section applies notwithstanding anything inconsistent in the partnership agreement.

<sup>87</sup> **SECTION 153. AMENDMENT.** Section 45-23-07 of the North Dakota Century Code is amended and reenacted as follows:

**45-23-07. Foreign limited liability limited partnership - Adopting limited liability limited partnership status.** An existing ~~With respect to a foreign limited liability limited partnership authorized to transact business in this state pursuant to, in any case not provided for in this chapter, chapter 45-10.2 and section 45-10.1-52 which subsequently adopts and maintains limited liability limited partnership status in the jurisdiction of origin shall file with the secretary of state, together with the fees required in sections 45-10.1-15 and 45-23-08:~~

1. A document designated as both an amended foreign limited partnership registration as required by section ~~45-10.1-55~~ and a foreign limited liability limited partnership registration as required by section ~~45-10.1-52~~; and
2. A certificate of identification, existence, and status of a foreign limited liability limited partnership, duly certified by the proper officer of the jurisdiction of origin 45-23-02 shall govern.

<sup>88</sup> **SECTION 154. AMENDMENT.** Section 45-23-08 of the North Dakota Century Code is amended and reenacted as follows:

**45-23-08. Secretary of state - Fees for filing ~~documents~~ records.** The secretary of state shall charge and collect for:

1. Filing a certificate of limited liability limited partnership, one hundred dollars.

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<sup>87</sup> Section 45-23-07 was also amended by section 16 of House Bill No. 1273, chapter 384.

<sup>88</sup> Section 45-23-08 was also amended by section 17 of House Bill No. 1273, chapter 384.

2. Filing a certificate of limited liability limited partnership amendment, forty dollars.
3. Filing statement of conversion of a limited liability limited partnership, fifty dollars and:
  - a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or
  - b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.
4. Filing abandonment of conversion, fifty dollars.
5. Filing limited liability limited partnership articles of merger, fifty dollars.
6. Filing abandonment of merger or exchange, fifty dollars.
7. Filing limited liability limited partnership statement of correction, forty dollars.
8. Filing a certificate of limited liability limited partnership dissolution, twenty-five dollars.
4. 9. Filing a certificate of limited liability limited partnership cancellation, twenty-five dollars.
- ~~5.~~ 10. Filing a reservation of limited liability limited partnership name, ten dollars.
- ~~6.~~ 11. Filing a notice of transfer of reserved limited liability limited partnership name, ten dollars.
- ~~7.~~ 12. Filing a cancellation of a reserved limited liability limited partnership name, ten dollars.
- ~~8.~~ 13. Filing a consent to use of a deceptively similar name, ten dollars.
- ~~9.~~ 14. Filing a statement of change of address of registered office or change of registered agent, or both, ten dollars.
- ~~40.~~ 15. Filing a statement of change of address of registered office by registered agent, ten dollars for each limited liability limited partnership affected by the change.
- ~~44.~~ 16. Filing a registered agent's consent to serve in the capacity of registered agent, ten dollars.
- ~~42.~~ 17. Filing a resignation as registered agent, ten dollars.

- ~~43.~~ 18. Filing a registration of foreign limited liability limited partnership, one hundred dollars.
- ~~44.~~ 19. Filing a certified statement of amendment of foreign limited liability limited partnership, twenty-five dollars.
- ~~45.~~ 20. Filing a certified statement of dissolution of foreign limited liability limited partnership, twenty-five dollars.
21. Filing a certified statement of merger of foreign limited liability limited partnership, fifty dollars.
22. Filing a certified statement of conversion of foreign limited liability limited partnership, fifty dollars and:
- a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or
- b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.
- ~~46.~~ 23. Filing a certified statement of cancellation of foreign limited liability limited partnership, twenty-five dollars.
- ~~47.~~ 24. Filing a statement of withdrawal of foreign limited liability limited partnership, twenty-five dollars.
- ~~48.~~ 25. Filing an annual report of limited liability limited partnership, twenty-five dollars.
- a. The secretary of state shall charge and collect additional fees for late filing of the annual report as follows:
- ~~a.~~ (1) After the date ~~prescribed~~ provided in subsection 3 of section ~~45-10.1-44~~ 45-10.2-108, twenty dollars; and
- ~~b.~~ (2) After the termination of the limited liability limited partnership or the revocation of the registration of a foreign limited liability limited partnership, the reinstatement fee of one hundred dollars.
- b. Fees paid to the secretary of state according to this subsection are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 45-10.2-108 or the annual report lacks sufficient payment as required by this subsection.
- ~~49.~~ 26. Any ~~document~~ record submitted for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the ~~document~~ record.

- 27. Filing any process, notice, or demand for service, twenty-five dollars.
- 28. Furnishing a certificate of existence or authorization:
  - a. Fifteen dollars; and
  - b. Five dollars for a search of records.
- 29. Furnishing a certified copy of any record or paper relating to a limited partnership or foreign limited partnership:
  - a. One dollar for every four pages or fraction;
  - b. Fifteen dollars for the certificate and affixing the seal thereto; and
  - c. Five dollars for a search of records.

**SECTION 155. AMENDMENT.** Section 45-23-09 of the North Dakota Century Code is amended and reenacted as follows:

**45-23-09. Secretary of state - Confidential records.** Any social security number or federal tax identification number disclosed or contained in any ~~document~~ record filed with the secretary of state under this chapter is confidential. The secretary of state shall delete or obscure any social security number or federal tax identification number before a copy of any ~~document~~ record is released to the public.

**SECTION 156. REPEAL.** Section 45-22-01.1 of the North Dakota Century Code is repealed.

Approved April 12, 2005

Filed April 13, 2005

## CHAPTER 101

### HOUSE BILL NO. 1060

(Representatives Drovdal, N. Johnson, Boe)  
(Senators Espegard, Taylor, Klein)

## COMMUNITY DEVELOPMENT CORPORATIONS

AN ACT to amend and reenact sections 10-30.6-01 and 10-30.6-05 of the North Dakota Century Code, relating to community development corporation formation requirements and board of director requirements; and to declare an emergency.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 10-30.6-01 of the North Dakota Century Code is amended and reenacted as follows:

#### **10-30.6-01. Organization.**

1. To the extent permitted by federal law, any ~~three~~ one or more banks may form a community development corporation by complying with the conditions prescribed in this chapter and subscribing and acknowledging a certificate specifying:
  - a. The name, the general nature of its business, and the principal place of transacting its business. The name must distinguish the corporation from all other corporations authorized to do business in the state and must contain the words "community development corporation".
  - b. The period of its duration, which is perpetual.
  - c. The name and principal business address of each incorporator.
  - d. The names and addresses of those composing its board until the first election.
  - e. The highest amount of indebtedness or liability to which the corporation may be subject.
2. The certificate may contain any other lawful provision defining the powers and business of the corporation, its officers, directors, members, and stockholders.
3. ~~One bank may hold no more than forty-nine percent of the stock in the corporation.~~

**SECTION 2. AMENDMENT.** Section 10-30.6-05 of the North Dakota Century Code is amended and reenacted as follows:



**10-30.6-05. Board of directors.**

1. All the corporate powers of the corporation must be exercised by a board of no fewer than ~~fifteen~~ five elected directors who must be residents of this state. The number of directors and their term of office must be determined in the bylaws. If any vacancy occurs in the board of directors, the remaining directors may elect a person to fill the vacancy until the next annual meeting of the corporation.
2. The first board of directors shall adopt bylaws, which remain effective until amended or repealed by action of the board.
3. The first annual meeting must be held at a date to be fixed by the board of directors as soon as reasonably possible after a minimum of twenty-five percent of the capital stock of the corporation has been paid into its treasury. The annual meeting must be called in the manner provided by the bylaws.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 31, 2005  
Filed March 31, 2005