

# CORPORATIONS

## CHAPTER 88

### SENATE BILL NO. 2083

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

AN ACT to amend and reenact subsection 8 of section 10-04-06, subsection 1 of section 10-04-08.4, and subsection 8 of section 10-04-10 of the North Dakota Century Code, relating to the manual exemption from registration of securities, and refund of filing and registration fees.

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

**SECTION 1. AMENDMENT.** Subsection 8 of section 10-04-06 of the North Dakota Century Code is amended and reenacted as follows:

8. A nonissuer transaction by or through a broker-dealer and agent, 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;
  - c. Such securities do not constitute the whole or part of an unsold allotment to, or subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution;
  - 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 investor service, incorporated, are on the OTCQX or OTCQB markets operated by OTC Markets Group Incorporated, or are filed under section 13 or 15(d) of the Securities Exchange Act of 1934 [ch. 404, title I, sec. 1; 48 Stat. 881; 15 U.S.C. 78 et seq.]; and
  - e. ~~Such securities are limited to issuers organized under the laws of any state, territory, or insular possession of the United States; and~~

f. 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.

**SECTION 2. AMENDMENT.** Subsection 1 of section 10-04-08.4 of the North Dakota Century Code is amended and reenacted as follows:

1. Any federal covered security that is subject to section 18(b)(2) of the Securities Act of 1933, as amended, may be offered and sold upon the filing of:
  - a. A copy of the issuer's registration statement or a notice of intent in writing or electronically for an indefinite or definite dollar amount for each security or class of security on a form prescribed by the commissioner.
  - b. A unit investment trust may file an initial notice filing for a definite dollar amount or an indefinite dollar amount. At the time of the initial notice filing for a definite dollar amount, the issuer shall pay a ~~nonrefundable~~ filing fee of one-tenth of one percent of the first seven hundred fifty thousand dollars and 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. In no event, however, may such filing fee be less than one hundred twenty-five dollars for each security or class of security.
  - c. An investment company or unit investment trust may file an initial notice filing for an indefinite dollar amount and pay a ~~nonrefundable~~ filing fee of four hundred dollars for each security or class of security.
  - d. A notice filing for a definite dollar amount may be increased before the expiration date on the certificate of effectiveness at the same reduced fee, which must be calculated as provided in subdivision b as a separate fee for each additional amount.
  - e. A notice filing for a definite dollar amount may be renewed for additional periods of one year by filing, at least fifteen days prior to its expiration, a renewal and sales report notice with a fee of one hundred dollars to renew the unsold balance.

- f. A notice filing for an indefinite dollar amount may be renewed by filing, within sixty days following the issuer's fiscal year, a renewal and sales report notice with a fee of one hundred twenty-five dollars.
- g. A notice filing may be terminated by the issuer upon providing the commissioner a notice of such termination.
- h. The provision for each security or class of security in this subsection is effective when the federal registration statement becomes effective with the securities and exchange commission or the date the notice of intent is received by the commissioner, whichever is later. A filing notice for a definite dollar amount is effective for a period of eighteen months from the date of effectiveness.
- i. A copy of any document filed with the securities and exchange commission as the commissioner may require.

**SECTION 3. AMENDMENT.** Subsection 8 of section 10-04-10 of the North Dakota Century Code is amended and reenacted as follows:

- 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 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 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.~~

Approved March 6, 2019

Filed March 7, 2019

## CHAPTER 89

### SENATE BILL NO. 2283

(Senators Klein, Kreun, Vedaa)  
(Representative Lefor)

AN ACT to create and enact a new section to chapter 10-04 of the North Dakota Century Code, relating to the registration of securities.

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

**SECTION 1.** A new section to chapter 10-04 of the North Dakota Century Code is created and enacted as follows:

##### **Registration by coordination.**

1. A security for which a registration statement has been filed under the federal Securities Act of 1933 [15 U.S.C. 77a et seq.] in connection with the same offering may be registered by coordination under this section. Only the issuer of the security or a broker-dealer registered under section 10-04-10 may make an application for registration of securities by coordination.
2. A registration statement and accompanying records under this section must contain or be accompanied by all of the following records in addition to the information specified in section 10-04-08, a payment of an initial filing fee in the amount as set forth in subsection 2 of section 10-04-08, and a consent to service of process conforming to the requirements of section 10-04-14:
  - a. A copy of the latest form of prospectus filed under the federal Securities Act of 1933 [15 U.S.C. 77a et seq.].
  - b. A copy of the articles of incorporation and bylaws, or substantial equivalents, currently in effect; a copy of any agreement with or among underwriters; a copy of any indenture or other instrument governing the issuance of the security to be registered; and a specimen, copy, or description of the security that is required by rule adopted or order issued under this chapter.
  - c. Copies of any other information or any other records filed by the issuer under the federal Securities Act of 1933 [15 U.S.C. 77a et seq.] requested by the commissioner.
  - d. An undertaking to forward each amendment to the federal prospectus, other than an amendment that delays the effective date of the registration statement, promptly after filing with the federal securities and exchange commission.
3. A registration statement under this section becomes effective simultaneously with or subsequent to the federal registration statement if all the following conditions are satisfied.

- a. A stop order under subsection 4 or issued by the federal securities and exchange commission is not in effect and a proceeding is not pending against the issuer under section 10-04-09.
  - b. The registration statement has been on file for at least twenty days or a shorter period provided by rule adopted or order issued under this chapter.
4. The registrant promptly shall notify the commissioner in a record of the date the federal registration statement becomes effective and the content of any price amendment and promptly shall file a record containing the price amendment. If the notice is not timely received, the commissioner may issue a stop order, without prior notice or hearing, retroactively denying effectiveness to the registration statement or suspending the registration statement's effectiveness until compliance with this section. The commissioner promptly shall notify the registrant of an order by sending a copy of the order to the registrant and if the registrant subsequently complies with the notice requirements of this section, the stop order is void as of the date of issuance.
5. If the federal registration statement becomes effective before each of the conditions in this section is satisfied or is waived by the commissioner, the registration statement is automatically effective under this chapter at the time all the conditions are satisfied or waived. If the registrant notifies the commissioner of the date the federal registration statement is expected to become effective, the commissioner promptly shall notify the registrant and promptly confirm this notice by a record, indicating whether all the conditions are satisfied or waived and whether the commissioner intends the institution of a proceeding under section 10-04-09. The notice by the commissioner does not preclude the institution of such a proceeding.
6. Registration under this section is effective for a period of one year. A renewal fee of one hundred fifty dollars must be paid for the renewal of the registration of the securities for additional periods of one year.

Approved March 14, 2019

Filed March 14, 2019

## CHAPTER 90

### SENATE BILL NO. 2200

(Senators Wardner, Heckaman)  
(Representatives Boschee, Pollert)

AN ACT to amend and reenact subsection 1 of section 10-06.1-01 of the North Dakota Century Code, relating to the definition of farming or ranching.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 10-06.1-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Farming or ranching" means cultivating land for production of agricultural crops or livestock, or the raising or producing of livestock or livestock products, poultry or poultry products, milk or dairy products, or fruit or horticultural products. It does not include production of timber or forest products, ~~nor does it include the growing or processing of marijuana under chapter 19-24.1, or a contract whereby a processor or distributor of farm~~ products or supplies provides grain, harvesting, or other farm services.

Approved March 19, 2019

Filed March 20, 2019

## CHAPTER 91

### HOUSE BILL NO. 1388

(Representatives McWilliams, Howe, Jones, Pyle, D. Ruby, Simons, Skroch)  
(Senators O. Larsen, Osland)

AN ACT to amend and reenact section 10-06.1-12 of the North Dakota Century Code, relating to persons eligible for corporate farm ownership.

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

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

#### **10-06.1-12. Corporation or limited liability company allowed to engage in the business of farming or ranching - Requirements.**

This chapter does not prohibit a domestic corporation or a domestic limited liability company from owning real estate and engaging in the business of farming or ranching, if the corporation meets all the requirements of chapter 10-19.1 or the limited liability company meets all the requirements of chapter 10-32.1 which are not inconsistent with this chapter. The following requirements also apply:

1. If a corporation, the corporation must not have more than fifteen shareholders. If a limited liability company, the limited liability company must not have more than fifteen members.
2. Each shareholder or member must be related to each of the other shareholders or members within one of the following degrees of kinship or affinity: parent, son, daughter, stepson, stepdaughter, grandparent, grandson, granddaughter, brother, sister, uncle, aunt, nephew, niece, great-grandparent, great-grandchild, first cousin, second cousin, or the spouse of a person so related.
3. Each shareholder or member must be an individual or one of the following:
  - a. A trust for the benefit of an individual or a class of individuals who are related to every shareholder of the corporation or member of the limited liability company within the degrees of kinship or affinity specified in this section.
  - b. An estate of a decedent who was related to every shareholder of the corporation or member of the limited liability company within the degrees of kinship or affinity specified in this section.
4. A trust or an estate may not be a shareholder or member if the beneficiaries of the trust or the estate together with the other shareholders or members are more than fifteen in number.
5. Each individual who is a shareholder or member must be a citizen of the United States or a permanent resident alien of the United States.

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

Approved April 17, 2019

Filed April 18, 2019



## CHAPTER 92

### SENATE BILL NO. 2326

(Senators Dwyer, Luick)  
(Representatives Klemin, Lefor)

AN ACT to create and enact a new subsection to section 10-19.1-26, a new subsection to section 10-32.1-08, a new section to chapter 43-51 of the North Dakota Century Code, relating to general powers of a corporation and limited liability company and registration requirements; and to amend and reenact sections 10-06.1-17, subsection 4 of section 10-15-53.1, subsection 1 of section 10-19.1-47, subsection 3 of section 10-19.1-146, subsection 2 of section 10-31-02.2, subsections 5 and 6 of section 10-31-13, subsection 3 of section 10-32.1-89, subsection 3 of section 10-33-139, section 10-35-29, subsection 3 of section 10-36-07, section 43-54-05, subsection 3 of section 45-10.2-108, section 45-11-04.1, subsection 4 of section 45-22-03, and subsection 3 of section 45-22-21.1, and section 47-22-05 of the North Dakota Century Code, relating to registration and reports of corporations, limited liability companies, and partnerships.

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

<sup>23</sup> **SECTION 1. AMENDMENT.** Section 10-06.1-17 of the North Dakota Century Code is amended and reenacted as follows:

##### **10-06.1-17. Annual report - Contents - Filing requirements.**

Before April sixteenth of each year, every corporation engaged in farming or ranching after June 30, 1981, and every limited liability company engaged in farming or ranching shall file with the secretary of state an annual report signed as provided in subsection 54 of section 10-19.1-01 if a corporation and subsection 47 of section 10-32.1-02 if a limited liability company. If the corporation or limited liability company is in the hands of a receiver or trustee, it must be signed on behalf of the corporation or limited liability company by the receiver or trustee. ~~An annual report in a sealed envelope postmarked by the United States postal service before the date provided in this section or an annual report in a sealed packet with a verified shipment date by any other carrier service before the date provided in this section meets the filing date requirement.~~ An annual report must include the following information with respect to the preceding calendar year:

1. The name of the corporation or limited liability company.
2. The name of the registered agent of the corporation or limited liability company as provided in chapter 10-01.1 and, if a noncommercial registered agent, the address of the registered office of the corporation or limited liability company in this state.
3. With respect to each corporation:

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<sup>23</sup> Section 10-06.1-17 was also amended by section 4 of House Bill No. 1045, chapter 94.

- a. A statement of the aggregate number of shares the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
  - b. 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.
4. With respect to each shareholder or member:
  - a. The name and address of each, including the names and addresses and relationships of beneficiaries of trusts and estates which own shares or membership interests;
  - b. The number of shares or membership interests or percentage of shares or membership interests owned by each;
  - c. The relationship of each;
  - d. A statement of whether each is a citizen or permanent resident alien of the United States; and
  - e. A statement of whether at least one is an individual residing on or operating the farm or ranch.
5. With respect to management:
  - a. If a corporation, then the names and addresses of the officers and members of the board of directors; or
  - b. If a limited liability company, then the names and addresses of the managers and members of the board of governors.
6. A statement listing the acreage [hectarage] and location listed by section, township, range, and county of all land in the state owned or leased by the corporation or limited liability company and used for farming or ranching. The statement must also designate which, if any, of the acreage [hectarage] is leased from or jointly owned with any shareholder or member and list the name of the shareholder or member with that acreage [hectarage].
7. A statement of the percentage of the annual average gross income of the corporation or limited liability company which has been derived from farming or ranching operations over the previous five years or for each year of existence if less than five years.
8. A statement of the percentage of gross income of the corporation or limited liability company derived from nonfarm rent, nonfarm royalties, dividends, interest, and annuities during the period covered by the report.
9. A corporation engaged in farming which fails to file an annual report is subject to the penalties for failure to file an annual report as provided in chapter 10-19.1, except that the penalties must be calculated from the date of the report required by this section.

10. A limited liability company engaged in farming which fails to file an annual report is subject to the penalties for failure to file an annual report as provided in chapter 10-32.1, except that the penalties must be calculated from the date of the report required by this section.

**SECTION 2. AMENDMENT.** Subsection 4 of section 10-15-53.1 of the North Dakota Century Code is amended and reenacted as follows:

4. The annual report must be delivered to the secretary of state with the fees provided in section 10-15-54 before April first of each year, except the first annual report of a cooperative or foreign cooperative must be delivered before April 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 April first, an annual report in a sealed packet with a verified shipment date by any other carrier service before April first, or an annual report electronically transmitted to the secretary of state with a transmission time before April first is in compliance with this requirement. When a filing date falls on a Saturday, Sunday, or other holiday as defined in section 1-03-01, a postmark or verified shipment or transmission date on the next business day complies with this requirement.~~
  - b. The secretary of state shall file the report if the report conforms to the requirements of subsections 1 and 2.
- (1)a. If the report does not conform to those requirements, the report must be returned to the cooperative or foreign cooperative for any necessary corrections.
- (2)b. If the report is filed before the deadlines provided in this section, any penalty for the failure to file a report within the time provided does not apply if the report is corrected to conform to the requirements of subsections 1 and 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for corrections.

**SECTION 3.** A new subsection to section 10-19.1-26 of the North Dakota Century Code is created and enacted as follows:

A corporation only may seek to obtain a license or permit required of the state after the articles of incorporation are filed with the secretary of state.

**SECTION 4. AMENDMENT.** Subsection 1 of section 10-19.1-47 of the North Dakota Century Code is amended and reenacted as follows:

1. An action required or permitted to be taken at a board meeting may be taken by written action signed by all of the directors. If the articles so provide, any action, other than an action requiring shareholder approval, may be taken by written action signed, or consented to by authenticated electronic communication, by the number of directors that would be required to take ~~written action, signed by all of the directors, if the articles so provide,~~ the same action at a meeting of the board at which all directors were present.

<sup>24</sup> **SECTION 5. AMENDMENT.** Subsection 3 of section 10-19.1-146 of the North Dakota Century Code is amended and reenacted as follows:

3. Except for the first annual report, the annual report must be delivered to the secretary of state:
  - a. By a corporation, before August second of each year; and
  - b. By a foreign corporation, before May sixteenth of each year.

The first annual report of either a corporation or foreign corporation must be delivered before the date provided in the year following the calendar year in which the certificate of incorporation or certificate of authority was issued by the secretary of state, or in the case of a corporation, in the year following the calendar year of the effective date stated in the articles of incorporation. ~~An annual report in a sealed envelope postmarked by the United States postal service before the date provided in this subsection, or an annual report in a sealed packet with a verified shipment date by any other carrier service before the date provided in this subsection, is compliance with this requirement. When the filing date falls on Saturday, Sunday, or other holiday as defined in section 1-03-01, a postmark or verified shipment date on the next business day is compliance with this requirement.~~

**SECTION 6. AMENDMENT.** Subsection 2 of section 10-31-02.2 of the North Dakota Century Code is amended and reenacted as follows:

2. At the time the registration is filed with the secretary of state, the professional limited liability partnership or foreign limited liability partnership also shall file a:
  - a. A certificate from the regulating board of the profession involved that each of the partners who will practice the profession in this state is licensed to practice the profession in this state; or
  - b. If there is one or more minority owners, a certificate from the regulating board of the profession of the limited liability partnership certifying that each of the partners who will practice the profession in this state, if any, is licensed to practice the profession in this state and a certificate from the limited liability partnership identifying the minority owners and the express law authorizing minority ownership.

**SECTION 7. AMENDMENT.** Subsections 5 and 6 of section 10-31-13 of the North Dakota Century Code are amended and reenacted as follows:

5. In order to regulate organizations that have minority ownership, the secretary of state ~~shall~~may collect one thousand dollars for articles of incorporation for a corporation, articles of organization for a limited liability company, or articles of amendment related to an organization that has a minority owner. This fee is in addition to the fees provided for these filings under section 10-19.1-147 or 10-32.1-92. Fees collected by the secretary of state under this subsection must be deposited in the secretary of state's general services operating fund.

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<sup>24</sup> Section 10-19.1-146 was also amended by section 16 of House Bill No. 1045, chapter 94.

6. In order to regulate organizations that have ownership that renders more than one professional service, the secretary of state ~~shall~~may collect one thousand dollars for articles of incorporation for a corporation, articles of organization for a limited liability company, or articles of amendment related to an organization that has ownership that renders more than one professional service. This fee is in addition to the fees provided for these filings under section 10-19.1-147 or 10-32.1-92. Fees collected by the secretary of state under this subsection must be deposited in the secretary of state's general services operating fund.

**SECTION 8.** A new subsection to section 10-32.1-08 of the North Dakota Century Code is created and enacted as follows:

A limited liability company only may seek to obtain a license or permit required by the state after the articles of organization are filed with the secretary of state and the limited liability company has one or more members.

**SECTION 9. AMENDMENT.** Subsection 3 of section 10-32.1-89 of the North Dakota Century Code is amended and reenacted as follows:

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, an annual report in a sealed packet with a verified shipment date by any other carrier service before November sixteenth, or an annual report electronically transmitted to the secretary of state with a transmission time 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 subsections 1 and 2.
- ~~(1)a.~~ If the report does not conform, then it must be returned to the limited liability company or foreign limited liability company for any necessary corrections.
- ~~(2)b.~~ If the report is filed before the deadlines provided in this subsection, then 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 subsections 1 and 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for correction.

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

3. The annual report must be delivered to the secretary of state before February ~~first~~second of each year, except that the first annual report must be delivered before February ~~first~~second 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)~~a.~~ If the report does not conform, it must be returned to the corporation for any necessary corrections.
- (2)~~b.~~ If the report is filed before the deadlines 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.

**SECTION 11. AMENDMENT.** Section 10-35-29 of the North Dakota Century Code is amended and reenacted as follows:

**10-35-29. Filing of annual report and payment of publicly traded corporation franchise fee.**

1. Except for the first annual report and publicly traded corporation franchise fee, the annual report and publicly traded corporation franchise fee must be delivered to the secretary of state before December second of each year. The first annual report and payment of the publicly traded corporation franchise fee must be delivered before the date provided in the year following the calendar year in which the statement described in subdivision b of subsection 6 of section 10-35-02 takes effect.
2. ~~An annual report and publicly traded corporation franchise fee in a sealed envelope postmarked by the United States postal service before the date provided in subsection 1, or an annual report in a sealed packet with a verified shipment date by any other carrier service before the date provided in subsection 1, is compliance with this requirement. When the filing date falls on Saturday, Sunday, or other holiday as defined in section 1-03-01, a postmark or verified shipment date on the next business day is compliance with this requirement.~~
3. The secretary of state must file the annual report if the annual report conforms to the requirements of section 10-35-28 and the publicly traded corporation franchise fee has been paid.
  - a. If the annual report does not conform or adequate payment has not been made, the secretary of state must notify the publicly traded corporation of any necessary corrections or payment.
  - b. If the annual report is corrected and filed with the payment before the date provided in subsection 1, or within thirty days after the publicly traded corporation was notified of corrections or payment by the secretary of state, then the penalties provided in section 10-35-31 for failure to file an annual report within the time provided do not apply.

- ~~4.3.~~ The secretary of state may extend the annual report filing date provided in subsection 1 for a period not to exceed eleven months after the filing date provided in subsection 1 if a written application for an extension is delivered before the date provided in subsection 1.

**SECTION 12. AMENDMENT.** Subsection 3 of section 10-36-07 of the North Dakota Century Code is amended and reenacted as follows:

3. The annual report must be delivered to the secretary of state before February second of each year, except that the first annual report must be delivered before February second 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 February second, or an annual report in a sealed packet with a verified shipment date by any other carrier service before February second, 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.
- ~~(4)a.~~ If the report does not conform, it must be returned to the nonprofit limited liability company or foreign nonprofit limited liability company for any necessary corrections.
- ~~(2)b.~~ If the report is filed before the deadlines 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.

**SECTION 13.** A new section to chapter 43-51 of the North Dakota Century Code is created and enacted as follows:

**Definition - Registration - Obtaining a license or permit.**

1. For purposes of this section "occupational or professional certificate, permit, or license" means a certificate, permit, or license issued by or on behalf of the state by any of the state's licensing authorities or occupational or professional boards.
2. A business entity that has a registration requirement with the secretary of state only may seek to obtain an occupational or professional certificate, permit, or license required of the state after the registration is filed with the secretary of state.

**SECTION 14. AMENDMENT.** Section 43-54-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-54-05. Renewal of registration.**

A registration issued under this chapter expires June thirtieth of each calendar year and may be renewed upon submission of a renewal fee of fifty dollars and provision of proof of continuous insurance coverage as required for registration. The application for renewal must be ~~postmarked~~delivered to the secretary of state before July first of each year. The registrar shall cancel the registration of an individual who fails to file a timely application for the renewal of registration. The cancellation must be without notice or opportunity for hearing. An individual whose registration has been canceled and who desires to reregister must file an initial application, pay the initial application fee, and provide proof of current errors and omissions insurance. An individual registered under this chapter may not engage in any activity under this chapter after June thirtieth of any year unless that individual has a valid registration.

**SECTION 15. AMENDMENT.** Subsection 3 of section 45-10.2-108 of the North Dakota Century Code is amended and reenacted as follows:

3. The annual report of a limited partnership or foreign limited partnership must be delivered to the secretary of state before April first of each year, except the first annual report of a limited partnership or foreign limited partnership must be delivered before April first of the year following the calendar year in which the certificate of limited partnership or certificate of authority was filed by the secretary of state.
  - a. ~~An annual report in a sealed envelope postmarked by the United States postal service on or before April first or an annual report in a sealed packet with a verified shipment date by any other carrier service on or before April first, complies with the delivery requirement under this subsection.~~
  - b. The secretary of state shall file the report if the report conforms to the requirements of subsection 2.
- (1)~~a.~~ If the report does not conform, then the report must be returned to the limited partnership or foreign limited partnership for any necessary corrections.
- (2)~~b.~~ If the report is filed before the deadlines provided in this subsection, then 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.

**SECTION 16. AMENDMENT.** Section 45-11-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**45-11-04.1. Renewal.**

A fictitious name certificate filed under this chapter must be renewed every five years from the date of the initial filing. The statement of renewal must be executed by the partnership on forms prescribed by the secretary of state ~~which are sent to the address of the principal place of business at least ninety days before the deadline for filing.~~ The statement must include the fictitious name of the partnership, the state or country of organization, the address of the principal place of business, a brief description of the nature of business in which the partnership is engaged in this state, the names and addresses of all general partners, and a statement that the partnership is still in existence and continues to transact business in this state. If the secretary of state finds that the statement conforms to the requirements of this section, and the filing fee of twenty-five dollars has been paid, the secretary of state



shall file the statement. If the secretary of state finds that it does not so conform, the secretary of state shall promptly return the statement to the partnership for any necessary corrections, in which event, the fictitious name certificate is subject to cancellation if the statement is not returned corrected within thirty days after the statement was returned for corrections. If the statement of renewal reflects a change of membership, the statement of renewal may not be filed until payment of the fees required for these changes are paid as required by section 45-11-05.1. The secretary of state shall provide notice sent to the address of the principal place of business at least ninety days before the deadline for filing the state of renewal. If a partnership fails to file the statement of renewal when due, the fictitious name certificate must be canceled by the secretary of state and notice of the cancellation must be mailed to the address of the principal place of business.

**SECTION 17. AMENDMENT.** Subsection 4 of section 45-22-03 of the North Dakota Century Code is amended and reenacted as follows:

4. An original of the registration must be filed with the secretary of state.
  - a. If the secretary of state finds the registration conforms to law and the fees provided in section 45-22-22 are paid, the secretary of state shall endorse on the original the word "filed" and the day, month, and year of the filing and shall file the original in the office of the secretary of state.
  - b. If any statement in the registration is false when made or becomes inaccurate after the registration is filed, making the registration false or inaccurate in any respect, the limited liability partnership shall file promptly with the secretary of state an amended or corrected registration ~~or reflect the changes on the limited liability partnership's next annual report.~~ If only a change of address of the principal executive office is required, an amended or corrected registration need not be filed. However, the change of address of the principal executive office must be reported in the next annual report filed after the change or be submitted in writing to the secretary of state without a filing fee.
  - c. In the case of a change in a foreign limited liability partnership's name, a foreign limited liability partnership shall file promptly with the secretary of state a certificate to that effect authenticated by the proper officer of the jurisdiction of origin.
  - d. In the case of a termination or merger:
    - (1) A foreign limited liability partnership that is not the surviving organization need not file an amended registration but, within thirty days after the merger or termination becomes effective, shall file with the secretary of state a certificate to that effect authenticated by the proper officer of the foreign limited liability partnership's jurisdiction of origin.
    - (2) It is not necessary for any foreign limited liability partnership, which is the surviving organization in a merger, to procure a new or amended registration unless the name of the foreign limited liability partnership is changed or unless the foreign limited liability partnership desires to pursue in this state purposes other than those which the foreign limited liability partnership is authorized to transact in this state.

**SECTION 18. AMENDMENT.** Subsection 3 of section 45-22-21.1 of the North Dakota Century Code is amended and reenacted as follows:

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)~~a.~~ If the annual report does not conform, the annual report must be returned to the limited liability partnership for any necessary corrections.
- (2)~~b.~~ If the annual report is filed before the deadlines 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.

**SECTION 19. AMENDMENT.** Section 47-22-05 of the North Dakota Century Code is amended and reenacted as follows:

**47-22-05. Duration and renewal.**

Registration of a mark hereunder is effective for a term of ten years from the date of registration and, upon application filed prior to the expiration of such term, on a form to be furnished by the secretary of state, the registration may be renewed in the same manner as a new application for a like term. A renewal fee of thirty dollars for one class of goods or services and twenty dollars for each additional class, payable to the secretary of state, must accompany the application for renewal of the registration.

A registration may be renewed for successive periods of ten years in like manner.

The secretary of state shall notify registrants hereunder of the necessity of renewal ~~with in at least ninety days preceding before~~ the expiration of the ~~ten years from the date of~~ registration by writing to the last-known address of the registrants.

Approved March 21, 2019

Filed March 22, 2019

## CHAPTER 93

### HOUSE BILL NO. 1127

(Representatives Laning, B. Anderson, Tveit)  
(Senator Anderson)

AN ACT to amend and reenact sections 10-15-08.1, 10-19.1-13, and 10-32.1-11, subsection 14 of section 10-32.1-92, section 10-33-10, subdivision I of subsection 1 of section 10-33-140, subsection 3 of section 10-34-04, subdivision I of subsection 1 of section 10-36-08, section 45-10.2-10, subsection 13 of section 45-10.2-109, sections 45-11-01, 45-13-04.1, 45-22-04, and 45-23-03, subsection 13 of section 45-23-08, and section 47-25-03 of the North Dakota Century Code, relating to the names of cooperatives, corporations, limited liability companies, domestic and foreign real estate investment trusts, limited partnerships, fictitious partnerships, and limited liability partnerships; and to provide a contingent effective date.

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

**SECTION 1. AMENDMENT.** Section 10-15-08.1 of the North Dakota Century Code is amended and reenacted as follows:

##### **10-15-08.1. Cooperative name.**

##### **1. The cooperative name:**

- a. Must be expressed in letters or characters used in the English language as those letters or characters appear in the American standard code for information interchange (ASCII) table.
- b. May contain the word "corporation" or "incorporated" or an abbreviation of either of those words.
- c. May not contain a word or phrase ~~that indicates indicating or implies that implying~~ it is organized for a purpose other than one or more business purposes for which a cooperative association may be organized under this chapter.
- d. ~~May not be the same as, or deceptively similar to,~~ Must be distinguishable in the records of the secretary of state from the name, whether foreign and authorized to do business in this state, or domestic, unless there is filed with the articles of association of a domestic cooperative or the application for authority of a foreign cooperative, a record in compliance with subsection 2 of:

(1) Another cooperative association;

(2) A corporation;

(3) A limited liability company;

(4) A limited liability partnership;

- (5) A limited partnership;
  - (6) A limited liability limited partnership;
  - (7) A name the right to which is, at the time of organization, in some manner reserved;
  - (8) A fictitious name registered with the secretary of state as provided in chapter 45-11;
  - (9) A trade name registered with the secretary of state as provided in chapter 47-25; or
  - (10) A trademark or service mark registered in the manner provided in chapter 47-22.
2. If the secretary of state determines a cooperative name is ~~deceptively similar to~~indistinguishable from another name for purposes of this chapter, then the cooperative name may not be used unless there is filed with the articles of association or application for authority:
- a. A written consent to use the name obtained from the domestic or foreign corporation, limited liability company, limited liability partnership, limited liability limited partnership, or limited partnership authorized to do business in this state having a ~~deceptively similar~~an indistinguishable name, or the holder of a reserved name, registered trade name, fictitious name, or trademark or service mark; 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.
3. The secretary of state shall determine whether a cooperative name is ~~deceptively similar to~~indistinguishable in the secretary of state's records from another name for purposes of this chapter and may adopt rules reasonable or necessary for making these determinations.
4. This section and section 10-15-08.2 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; or
  - b. Derogate the common law or the principles of equity.
5. A cooperative that is involuntarily dissolved by the secretary of state under section 10-15-53.2 may reacquire the right to use that name by reinstating the cooperative within the time provided in section 10-15-53.3 or by refiling articles of association, unless the name has been 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 as provided in ~~subdivision d of~~ subsection 42. A cooperative that is unable to reacquire the use of its name shall adopt a new name that complies with this section.

6. A cooperative that files its articles of association with an effective date later than the date of filing as provided in section 10-15-07 shall maintain the right to the name until the effective date.

**SECTION 2. 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 expressed in letters or characters used in the English language as those letters or characters appear in the American standard code for information interchange (ASCII) table.
  - b. Must contain the word "company", "corporation", "incorporated", "limited", or an abbreviation of one or more of these words.
  - c. May not contain the words "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or ~~any~~an abbreviation of these words.
  - d. May not contain a word or phrase ~~that indicates~~indicating or ~~implies~~implying the corporation:
    - (1) Is incorporated for a purpose other than:
      - (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.
  - e. ~~May not be the same as, or deceptively similar to~~Must be distinguishable in the records of the secretary of state from:
    - (1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the articles a record that complies with subsection 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, 10-32.1-12, 10-33-11, 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;
  - (4) A trade name registered in the manner provided in chapter 47-25; or
  - (5) A trademark or service mark registered in the manner provided in chapter 47-22.
2. The secretary of state shall determine whether a corporate name is "deceptively similar" to distinguishable in the secretary of state's records from another name for purposes of this chapter and may adopt rules reasonable or necessary for making these determinations.
3. If the secretary of state determines ~~that~~ a corporate name is "deceptively similar" to distinguishable in the secretary of state's records from 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~~indistinguishable; 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~~section 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, and 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.
6. A domestic or foreign 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, 10-32.1-12, 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;
  - e. Holds a trade name registered in the manner provided in chapter 47-25; or
  - f. Holds a trademark or service mark registered in the manner provided in chapter 47-22.
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.
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 or 10-19.1-146.1 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 23. 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 10-19.1-17; or
  - c. By reinstating pursuant to section 10-19.1-146.
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.
10. An amendment that only changes the name of the corporation may be authorized by a resolution approved by the board and may, ~~but need not~~, be submitted to and approved by the shareholders as provided in section 10-19.1-18.
11. A corporation that files its articles of incorporation with an effective date later than the date of filing as provided in section 10-19.1-12 shall maintain the right to the name until the effective date.

**SECTION 3. AMENDMENT.** Section 10-32.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**10-32.1-11. Limited liability company name.**

1. The limited liability company name:

- a. Must be expressed in letters or characters used in the English language as those letters or characters appear in the American standard code for information interchange table;
- 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:
  - (1) The word "corporation", "incorporated", "limited partnership", "limited liability partnership", "limited liability limited partnership", or anyan abbreviation of these words; or
  - (2) The words "limited" or "company" without association to the words "limited liability company" or the abbreviations of these words as provided in subsection b;
- d. May not contain a word or phrase ~~that indicates~~indicating or ~~implies that implying~~ the limited liability company:
  - (1) Is organized for a purpose other than:
    - (a) A lawful business purpose for which a limited liability company may be organized under this chapter; or
    - (b) For a purpose stated in its articles of organization; or
  - (2) May not be organized under this chapter; and
- e. ~~May not be the same as, or deceptively similar to~~Must be distinguishable in the records of the secretary of state from:
  - (1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the articles a 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, 10-32.1-12, 10-33-11, 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;
  - (4) A trade name registered in the manner provided in chapter 47-25; or
  - (5) A trademark or service mark registered in the manner provided in chapter 47-22.
2. The secretary of state shall determine whether a limited liability company name is ~~deceptively similar to~~ distinguishable in the secretary of state's records from another name for purposes of this chapter ~~and may adopt rules reasonable or necessary for making these determinations.~~
3. If the secretary of state determines that a limited liability company name is ~~deceptively similar to~~ indistinguishable in the secretary of state's records from 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~~ indistinguishable; 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 section and section 10-32.1-12 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 domestic or foreign 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, 10-32.1-12, 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;
  - e. Holds a trade name registered in the manner provided in chapter 47-25; or
  - f. Holds a trademark or service mark registered in the manner provided in chapter 47-22.
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 terminated by the secretary of state pursuant to section ~~40-32.1-89~~10-32.1-90 may reacquire the right to use that name by refiling articles of organization pursuant to section 10-32.1-20, 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 23. 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 10-32.1-20;
  - b. By amending pursuant to section 10-32.1-21; or
  - c. By reinstating pursuant to section 10-32.1-91.
8. Subject to section 10-32.1-73, 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.
9. An amendment that only changes the name of the limited liability company may be authorized by a resolution approved by the board and may, ~~but need not~~ be submitted to and approved by the members as provided in subdivision b of subsection 1 of section 10-32.1-21.
10. A limited liability company that files its articles of organization with an effective date later than the date of filing as provided in subdivision b of subsection 2 of section 10-32.1-20 shall maintain the right to the name until the effective date.

**SECTION 4. AMENDMENT.** Subsection 14 of section 10-32.1-92 of the North Dakota Century Code is amended and reenacted as follows:

- 14. Filing a consent to use ~~of a~~ name, ten dollars.

**SECTION 5. 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 letters or characters used in the English language as those letters or characters appear in the American standard code for information interchange (ASCII) table.
- b. Need not contain the word "company", "corporation", "incorporated", "limited", or an abbreviation of one or more of these words.
- c. May not contain the words "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words.
- d. May not contain a word or phrase ~~that indicates~~indicating or ~~implies~~implying the corporation:

## (1) Is incorporated for a purpose other than:

- (a) A lawful nonprofit purpose for which a corporation may be incorporated under this chapter; or
- (b) For a purpose stated in its articles; or

## (2) May not be incorporated under this chapter.

- e. ~~May not be the same as or deceptively similar to~~Must be distinguishable in the records of the secretary of state from:

## (1) The name, whether foreign and authorized to conduct activities in this state or domestic unless there is filed with the articles a record that complies with subsection 23, of:

- (a) Another corporation;
- (b) A corporation incorporated or authorized to do business in this state under another provision of this code;
- (c) A limited liability company;
- (d) A limited partnership;
- (e) A limited liability partnership; or
- (f) A limited liability limited partnership;

## (2) A name the right to which is, at the time of incorporation, reserved in the manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 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;

## (4) A trade name registered in the manner provided in chapter 47-25; or

- 
- (5) A trademark or service mark registered in the manner provided in chapter 47-22.
2. The secretary of state shall determine whether a corporate name is ~~"deceptively similar" to~~distinguishable in the secretary of state's records from another name for purposes of this chapter ~~and may adopt rules reasonable or necessary for making these determinations.~~
  3. If the secretary of state determines that a corporate name is ~~"deceptively similar" to~~distinguishable in the secretary of state's records from 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~~distinguishable; 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.
  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.
  6. A domestic or foreign 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, 10-32.1-12, 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;

- e. Holds a trade name registered in the manner provided in chapter 47-25; or
  - f. Holds a trademark or service mark registered in the manner provided in chapter 47-22.
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.
8. A corporation whose period of existence has expired or that is involuntarily dissolved by the secretary of state pursuant to section 10-33-139 may reacquire the right to use that name by refiling articles of incorporation pursuant to section 10-33-08 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 23. 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.
10. An amendment that only changes the name of the corporation may be authorized by a resolution approved by the board and may, ~~but need not~~, be submitted to and approved by the members as provided in section 10-33-15.
11. A corporation that files its articles of incorporation with an effective date later than the date of filing as provided in section 10-33-09 shall maintain the right to the name until the effective date.

**SECTION 6. AMENDMENT.** Subdivision I of subsection 1 of section 10-33-140 of the North Dakota Century Code is amended and reenacted as follows:

- I. Filing a consent to use of a ~~deceptively similar~~ name, ten dollars.

**SECTION 7. AMENDMENT.** Subsection 3 of section 10-34-04 of the North Dakota Century Code is amended and reenacted as follows:

3. A domestic or foreign real estate investment trust shall register with the secretary of state by submitting an application signed by a trustee which includes:
- a. The name of the real estate investment trust which ~~may not be the same or deceptively similar to~~ must be distinguishable in the records of the secretary of state from the name of ~~any other~~ another real estate investment trust registered with the secretary of state, or ~~any~~ corporation,

limited liability company, limited partnership, limited liability partnership, limited liability limited partnership, or any name that is in some manner reserved with the secretary of state, ~~that is a fictitious trade name registered as provided in chapter 45-11, or that is a trade name registered as provided in chapter 47-25, or is a trademark or service mark registered as provided in chapter 47-22,~~ unless ~~there is filed with the secretary of state a written consent of the holder of the similar~~indistinguishable trade name to use the name proposed by the real estate investment trust is filed with the secretary of state. The name may not contain the word "corporation", "company", "incorporated", "limited liability company", or any abbreviation of these words. The secretary of state shall determine whether a name is distinguishable in the secretary of state's records and may adopt rules reasonable or necessary for making these determinations.

- b. The state and date of its formation.
- c. The name, address, and principal place of business of each trustee and officer.
- d. The name of its registered agent as provided in chapter 10-01.1 and, if a noncommercial registered agent, then the address of that noncommercial registered agent in this state.
- e. The address of the principal place of business.
- f. A statement that the secretary of state is appointed the agent of the real estate investment trust for service of process as provided in section 10-01.1-13.

**SECTION 8. AMENDMENT.** Subdivision I of subsection 1 of section 10-36-08 of the North Dakota Century Code is amended and reenacted as follows:

- I. Filing a consent to use of a ~~deceptively similar~~ name, ten dollars.

**SECTION 9. AMENDMENT.** Section 45-10.2-10 of the North Dakota Century Code is amended and reenacted as follows:

**45-10.2-10. Limited partnership name.**

1. The name of each limited partnership as set forth in the certificate of limited partnership:
  - a. Must be expressed in letters or characters used in the English language as those letters or characters appear in the American standard code for information interchange (ASCII) table.
  - b. Must contain without abbreviation the words "limited partnership" or the abbreviation "L.P." or "LP", 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.
  - c. May contain the name of any partner.

- d. May not contain the word "corporation", "company", "incorporated", "limited liability company", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words.
- e. May not contain a word or phrase ~~that indicates~~indicating or ~~implies that~~implying the limited partnership:
  - (1) Is organized for a purpose other than:
    - (a) A lawful purpose for which a limited partnership may be organized under this chapter; or
    - (b) For a purpose stated in its certificate of limited partnership; or
  - (2) May not be organized under this chapter.
- f. ~~May not be the same as or deceptively similar to~~Must be distinguishable in the records of the secretary of state from:
  - (1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the certificate of limited partnership a record in compliance with subsection 3, of:
    - (a) Another limited partnership;
    - (b) A corporation;
    - (c) A limited liability company;
    - (d) A limited liability partnership; or
    - (e) A limited liability limited partnership;
  - (2) A name the right to which is, at the time of the filing of the certificate of limited partnership, reserved in the manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 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;
  - (4) A trade name registered in the manner provided in chapter 47-25; or
  - (5) A trademark or service mark registered in the manner provided in chapter 47-22.
- 2. The secretary of state shall determine whether a limited partnership name is ~~deceptively similar to~~distinguishable in the secretary of state's records from another name for purposes of this chapter and may adopt rules reasonable or necessary for making these determinations.
- 3. If the secretary of state determines a limited partnership name is ~~deceptively similar to~~indistinguishable in the secretary of state's records from another name for purposes of this chapter, then the limited partnership name may not be used unless there is filed with the articles:

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- 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~~ indistinguishable; 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 limited partnership existing on the effective date of this chapter, or a foreign limited partnership authorized to do business in this state on that date, to continue the use of its name.
  5. This section and section 45-10.2-11 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 right to the exclusive use of names or symbols; or
    - b. Derogate the common law or the principles of equity.
  6. A 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 its name, subject to the requirements of subsection 1, the name of any of the 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, 10-32.1-12, 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;
    - e. Holds a trade name registered in the manner provided in chapter 47-25; or
    - f. Holds a trademark or service mark registered in the manner provided in chapter 47-22.
  7. The use of a name by a limited partnership in violation of this section does not affect or vitiate its limited partnership existence. However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the limited partnership from doing business under a name assumed in violation of this section, although its certificate of limited partnership may have been filed with the secretary of state.



8. A limited partnership whose period of existence has expired or that is involuntarily dissolved by the secretary of state as provided in section 45-10.2-108 or 45-10.2-108.1 may reacquire the right to use that name by refiling a certificate of limited partnership pursuant to section 45-10.2-23 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 partnership that cannot reacquire the use of its limited partnership name shall adopt a new limited partnership name that complies with this section by refiling a certificate of limited partnership as provided in section 45-10.2-23; by amending its certificate of limited partnership as provided in section 45-10.2-24; or by reinstating the limited partnership pursuant to section 45-10.2-108. If the new limited partnership name has been adopted for use or reserved by another person, the filing will be rejected unless the filing is accompanied by a written consent or judgment as provided in subsection 3.
9. Subject to section 45-10.2-78, this section applies to ~~any~~a foreign 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.
10. A limited partnership ~~that files~~refiling its certificate of limited partnership with an effective date later than the date of filing as provided in subsection 3 of section 45-10.2-27 shall maintain the right to the name until the effective date.

**SECTION 10. AMENDMENT.** Subsection 13 of section 45-10.2-109 of the North Dakota Century Code is amended and reenacted as follows:

13. Filing a consent to use a ~~deceptively similar~~ name, ten dollars.

**SECTION 11. AMENDMENT.** Section 45-11-01 of the North Dakota Century Code is amended and reenacted as follows:

**45-11-01. Partnership - Use of fictitious name.**

1. As used in this section, "fictitious name" means a name assumed to identify a partnership and which does not include in its name:
  - a. The true name of each organizational partner;
  - b. The first name and surname of each partner; or
  - c. The surname of each partner, repeating a surname if more than one partner has the same surname.
2. ~~Any~~A partnership transacting business in this state under a fictitious name or under a designation ~~that does not show~~showing the names of the persons interested as partners must file a fictitious name certificate with the secretary of state, together with a filing fee of twenty-five dollars. When a partnership has more than two members, an additional three dollars must be paid for each additional member not to exceed two hundred fifty dollars. A limited partnership or a foreign limited partnership transacting business under a name filed under chapter 45-10.2 and as provided in section 45-11-03 or a partnership transacting business under a name filed under section 45-13-05 is not required to file a fictitious name certificate under this section.
3. The fictitious name:

- a. Must be expressed in letters or characters used in the English language as those letters or characters appear in the American standard code for information interchange (ASCII) table.
- b. May not contain the word "corporation", "company", "incorporated", "limited liability company", or "limited", or an abbreviation of any of those words. This subsection does not preclude the word "limited" from being used in conjunction with the word "partnership".
- c. ~~May not be the same as or deceptively similar to any~~Must be distinguishable in the records of the secretary of state from a name reserved or registered with the secretary of state unless there is filed with the fictitious name certificate a written consent from the holder of the ~~similar~~indistinguishable name to use the proposed name and filing fee of ten dollars, whether domestic or foreign, including:

- (1) ~~Any~~A corporate name;
- (2) ~~Any~~A limited liability company name;
- (3) ~~Any~~A trade name;
- (4) Any other fictitious partnership name;
- (5) ~~Any~~A limited partnership name;
- (6) ~~Any~~A limited liability partnership name;
- (7) ~~Any~~A limited liability limited partnership name; or
- (8) ~~Any~~A trademark or service mark.

- 4. The secretary of state shall determine whether a fictitious partnership name is distinguishable in the secretary of state's records from another name for purposes of this chapter and may adopt rules reasonable or necessary for making these determinations.

**SECTION 12. 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 contain the name of ~~any~~a partner;
  - c. May not contain the word "corporation", "company", "incorporated", "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or ~~any~~an abbreviation of these words;
  - d. May not contain a word 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
  - (2) May not be formed under this chapter; and
- e. ~~May not be the same as, or deceptively similar to~~ Must be distinguishable in the records of the secretary of state from:
- (1) The name, whether foreign and authorized to do business in this state or domestic, unless filed with the statement is a 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, 10-32.1-12, 10-33-11, 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; or
  - (5) A trademark or service mark registered in the manner provided in chapter 47-22.
2. The secretary of state shall determine whether a partnership name is ~~deceptively similar to~~ distinguishable in the secretary of state's records from another name for purposes of this chapter and may adopt rules reasonable or necessary for making these determinations.
3. If the secretary of state determines a partnership name is ~~deceptively similar to~~ indistinguishable in the secretary of state's records from 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~~ indistinguishable; 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.
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 10-19.1-14, 10-32-11, 10-32.1-12, 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.
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.
8. If the period of existence of the partnership is expired or a 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 3. A partnership that cannot reacquire the use of its partnership name shall adopt a new partnership name that complies with this section.

**SECTION 13. AMENDMENT.** Section 45-22-04 of the North Dakota Century Code is amended and reenacted as follows:

**45-22-04. Limited liability partnership - Name.**

1. The name of a limited liability partnership:
  - a. Must be expressed in letters or characters in the English language as those letters or characters appear in the American standard code for information interchange (ASCII) table.
  - b. Must contain 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.

- c. May not contain the word "corporation", "company", "incorporated", "limited liability company", "limited partnership", "limited liability limited partnership", or any abbreviation of these words.
  - d. May not contain a word or phrase ~~that indicates~~indicating or ~~that implies~~that implying the limited liability partnership:
    - (1) Is formed for a purpose other than:
      - (a) A lawful purpose for which a limited liability partnership may be formed under this chapter; or
      - (b) For a purpose stated in its registration; or
    - (2) May not be formed under this chapter.
  - e. ~~May not be the same as or deceptively similar to~~Must be distinguishable in the records of the secretary of state from:
    - (1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the registration a record that complies with subsection 3, 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, 10-32.1-12, 10-33-11, 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;
    - (4) A trade name registered in the manner provided in chapter 47-25; or
    - (5) A trademark or service mark registered in the manner provided in chapter 47-22.
  - 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~~distinguishable in the secretary of state's records from another name for purposes of this chapter and may adopt rules reasonable or necessary for making these determinations.

3. If the secretary of state determines that a limited liability partnership name is ~~deceptively similar to~~indistinguishable in the secretary of state's records from 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~~indistinguishable; 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, 10-32.1-12, 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;
  - e. Holds a trade name registered in the manner provided in chapter 47-25; or
  - f. Holds a trademark or service mark registered in the manner provided in chapter 47-22.
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.
9. A limited liability partnership that files its registration with an effective date later than the date of filing as provided in subsection 9 of section 45-22-03 shall maintain the right to the name until the effective date.

**SECTION 14. 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 expressed in letters or characters used in the English language as those letters or characters appear in the American standard code for information interchange (ASCII) table.
  - b. Must contain 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.

- c. May contain the name of any 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 ~~that indicates~~indicating or ~~that implies~~that implying the limited liability limited partnership:
  - (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 be the same as, or deceptively similar to~~Must be distinguishable in the records of the secretary of state from:
  - (1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the certificate a 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, 10-32.1-12, 10-33-11, 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;
  - (4) A trade name registered in the manner provided in chapter 47-25; or
  - (5) A trademark or service mark registered in the manner provided in chapter 47-22.
- 2. The secretary of state shall determine whether a limited liability limited partnership name is ~~deceptively similar to~~distinguishable in the secretary of state's records from another name for purposes of this chapter and may adopt rules reasonable or necessary for making these determinations.
- 3. If the secretary of state determines a limited liability limited partnership name is ~~deceptively similar to~~indistinguishable in the secretary of state's records from 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~~ indistinguishable; 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:
  - 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 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, 10-32.1-12, 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;
  - e. Holds a trade name registered in the manner provided in chapter 47-25; or
  - f. Holds a trademark or service mark registered in the manner provided in chapter 47-22.
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 or 45-10.2-108.1 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.
  9. A limited liability limited partnership that files its certificate of limited liability limited partnership with an effective date later than the date of filing as provided in subsection 1 of section 45-23-05 shall maintain the right to the name until the effective date.

**SECTION 15. AMENDMENT.** Subsection 13 of section 45-23-08 of the North Dakota Century Code is amended and reenacted as follows:

13. Filing a consent to use of a ~~deceptively similar~~ name, ten dollars.

**SECTION 16. AMENDMENT.** Section 47-25-03 of the North Dakota Century Code is amended and reenacted as follows:

**47-25-03. Trade name - Nature.**

1. A trade name:
  - a. Must be expressed in letters or characters used in the English language as those letters or characters appear in the American standard code for information interchange (ASCII) table.
  - b. May not contain the word "company", "corporation", "incorporated", "limited", "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or ~~any~~an abbreviation of any of those words unless the owner of the trade name is a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership as indicated by the words used in the name.
3. ~~May not be the same as or deceptively similar to any~~

- c. Must be distinguishable in the records of the secretary of state from a name reserved or registered with the secretary of state unless there is filed with the registration a written consent from the holder of the similarindistinguishable name to use the proposed name and filing fee of ten dollars, whether domestic or foreign, including:
- a- Any
    - (1) A corporate name;
  - b- Any
    - (2) A limited liability company name;
  - e- (3) Any other trade name;
  - d- Any
    - (4) A fictitious partnership name;
  - e- Any
    - (5) A limited partnership name;
  - f- Any
    - (6) A limited liability partnership name;
  - g- Any
    - (7) A limited liability limited partnership name; or
  - h- Any
    - (8) A trademark or service mark.
4. d. That is a franchise must be accompanied by a written consent from the franchiser.
2. The secretary of state shall determine whether a trade name is distinguishable in the secretary of state's records from another trade name for purposes of this chapter and may adopt rules reasonable or necessary for making these determinations.

**SECTION 17. CONTINGENT EFFECTIVE DATE.** This Act becomes effective upon receipt by the legislative council of the certification by the secretary of state attesting that all necessary administrative rules and information technology components and systems are ready for implementation of this Act.

Approved March 20, 2019

Filed March 21, 2019

## CHAPTER 94

### HOUSE BILL NO. 1045

(Representative Toman)

AN ACT to create and enact subsection 16 to section 9-16-01, section 9-16-19, a new section to chapter 10-19.1, and section 10-32.1-102 of the North Dakota Century Code, relating to electronic transaction definitions, blockchain technology and smart contracts, number of shareholders, and series limited liability companies; to amend and reenact sections 9-16-02, 10-06.1-17, 10-19.1-01, and 10-19.1-01.2, subsection 6 of section 10-19.1-66, subsection 1 of section 10-19.1-73.3, sections 10-19.1-76.3 and 10-19.1-81, subsections 1, 2, and 11 of section 10-19.1-84, subsection 1 of section 10-19.1-110, subsection 2 of section 10-19.1-146, and subsection 2 of section 10-35-28 of the North Dakota Century Code, relating to electronic transactions, filing of an annual report by corporations engaged in farming or ranching, Business Corporation Act definitions, knowledge and notice, share certificates, corporate voting list and voting trusts, acceptance of shareholder act by the corporation, corporate records, corporate dissolution procedure, and the filing of an annual report by a publicly traded corporation; and to provide an effective date.

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

**SECTION 1.** Subsection 16 of section 9-16-01 of the North Dakota Century Code is created and enacted as follows:

16. "Writing" or "written" includes blockchain technology as defined in section 9-16-19.

**SECTION 2. AMENDMENT.** Section 9-16-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **9-16-02. Scope.**

1. Except as otherwise provided in subsection 2 or 3, this chapter applies to electronic records and electronic signatures relating to a transaction.
2. ~~This~~Except as provided in subsection 3, this chapter does not apply to a transaction to the extent the transaction is governed by:
  - a. A law governing the creation and execution of wills, codicils, or testamentary trusts;
  - b. The Uniform Commercial Code other than section 41-01-20 and chapters 41-02 and 41-02.1; and
  - c. Chapters 41-03, 41-04, 41-04.1, 41-05, 41-07, 41-08, or 41-09.
3. Section 9-16-19 applies only to title 10 and transactions governed by chapters 41-02, 41-02.1, and 41-07.

4. This chapter applies to an electronic record or electronic signature otherwise excluded from the application of this chapter under subsection 2 or 3, to the extent it is governed by a law other than those specified in subsection 2 or 3.
- 4.5. A transaction subject to this chapter is also subject to other applicable substantive law.

**SECTION 3.** Section 9-16-19 of the North Dakota Century Code is created and enacted as follows:

**9-16-19. Signatures and records secured through blockchain technology - Smart contracts - Ownership of information - Definitions.**

1. A signature secured through blockchain technology is considered to be in an electronic form and to be an electronic signature.
2. A record or contract secured through blockchain technology is considered to be in an electronic form and to be an electronic record.
3. Smart contracts may exist in commerce. A contract relating to a transaction may not be denied legal effect, validity, or enforceability solely because the contract contains a smart contract term.
4. Notwithstanding title 10 or chapters 41-02, 41-02.1, and 41-07, a person in or affecting interstate or foreign commerce using blockchain technology to secure information the person owns or has the right to use retains the same rights of ownership or use with respect to that information as before the person secured the information using blockchain technology. This subsection does not apply to the use of blockchain technology to secure information in connection with a transaction to the extent the terms of the transaction expressly provide for the transfer of rights of ownership or use with respect to that information.
5. As used in this subsection:
  - a. "Blockchain technology" means distributed ledger technology that uses a distributed, decentralized, shared, and replicated ledger, which may be public or private, permissioned or permissionless, or driven by tokenized crypto economics or tokenless and which is protected with cryptography, is immutable, and auditable and provides an uncensored truth.
  - b. "Smart contract" means an event-driven program, with state, that runs on a distributed, decentralized, shared, and replicated ledger and which can take custody over and instruct transfer of assets on that ledger.

<sup>25</sup> **SECTION 4. AMENDMENT.** Section 10-06.1-17 of the North Dakota Century Code is amended and reenacted as follows:

**10-06.1-17. Annual report - Contents - Filing requirements.**

Before April sixteenth of each year, every corporation engaged in farming or ranching after June 30, 1981, and every limited liability company engaged in farming or ranching shall file with the secretary of state an annual report signed as provided in

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<sup>25</sup> Section 10-06.1-17 was also amended by section 1 of Senate Bill No. 2326, chapter 92.

subsection 5458 of section 10-19.1-01 if a corporation and subsection 47 of section 10-32.1-02 if a limited liability company. If the corporation or limited liability company is in the hands of a receiver or trustee, it must be signed on behalf of the corporation or limited liability company by the receiver or trustee. An annual report in a sealed envelope postmarked by the United States postal service before the date provided in this section or an annual report in a sealed packet with a verified shipment date by any other carrier service before the date provided in this section meets the filing date requirement. An annual report must include the following information with respect to the preceding calendar year:

1. The name of the corporation or limited liability company.
2. The name of the registered agent of the corporation or limited liability company as provided in chapter 10-01.1 and, if a noncommercial registered agent, the address of the registered office of the corporation or limited liability company in this state.
3. With respect to each corporation:
  - a. A statement of the aggregate number of shares the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
  - b. 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.
4. With respect to each shareholder or member:
  - a. The name and address of each, including the names and addresses and relationships of beneficiaries of trusts and estates which own shares or membership interests;
  - b. The number of shares or membership interests or percentage of shares or membership interests owned by each;
  - c. The relationship of each;
  - d. A statement of whether each is a citizen or permanent resident alien of the United States; and
  - e. A statement of whether at least one is an individual residing on or operating the farm or ranch.
5. With respect to management:
  - a. If a corporation, then the names and addresses of the officers and members of the board of directors; or
  - b. If a limited liability company, then the names and addresses of the managers and members of the board of governors.
6. A statement listing the acreage [hectarage] and location listed by section, township, range, and county of all land in the state owned or leased by the corporation or limited liability company and used for farming or ranching. The statement must also designate which, if any, of the acreage [hectarage] is

leased from or jointly owned with any shareholder or member and list the name of the shareholder or member with that acreage [hectarage].

7. A statement of the percentage of the annual average gross income of the corporation or limited liability company which has been derived from farming or ranching operations over the previous five years or for each year of existence if less than five years.
8. A statement of the percentage of gross income of the corporation or limited liability company derived from nonfarm rent, nonfarm royalties, dividends, interest, and annuities during the period covered by the report.
9. A corporation engaged in farming which fails to file an annual report is subject to the penalties for failure to file an annual report as provided in chapter 10-19.1, except that the penalties must be calculated from the date of the report required by this section.
10. A limited liability company engaged in farming which fails to file an annual report is subject to the penalties for failure to file an annual report as provided in chapter 10-32.1, except that the penalties must be calculated from the date of the report required by this section.

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

**10-19.1-01. Definitions.**

For purposes of this chapter, unless the context 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 foreign or domestic organization acquiring the ownership interests of another foreign or domestic organization participating in an exchange.
3. "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.
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.

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- b. In the case of a foreign corporation, the term includes all records serving a similar function required to be filed with the secretary of state or other officer of the state of incorporation of the foreign corporation.
- 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~~provides 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.
  - 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 of governors in the case of a limited liability company.
  - 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.
  - 10. "Class", when used with reference to ownership interests, means a category of ownership interests that differs in designation or one or more rights or preferences from another category of ownership interests of the organization.
  - 11. "Closely held corporation" means a corporation that does not have more than thirty-five shareholders.
  - 12. "Constituent corporation" means a corporation or a foreign corporation that:
    - a. In a merger, is either the surviving corporation or a foreign or domestic corporation that is merged into the surviving organization; or
    - b. In an exchange, is either the acquiring corporation or a foreign or domestic corporation whose shares are acquired by the acquiring organization.
  - 13. "Constituent organization" means an organization 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.
16. "Corporation" or "domestic corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by this chapter.
17. "Data address" means the string of alphanumeric characters on a distributed or other electronic network or database which may be accessed only by knowledge or possession of a private key to facilitate or record transactions on the distributed or other electronic network or database.
18. "Director" means a member of the board.
- ~~18-19.~~ "Distribution" means a direct or indirect transfer of money or other property, other than its own shares, with or without consideration, or an incurrence or issuance of indebtedness, by a corporation to any of its shareholders in respect of its shares, and may be in the form of a dividend, an interim distribution, or a distribution in liquidation, or as consideration for the purchase, redemption, or other acquisition of its shares, or otherwise.
- ~~19-20.~~ "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.
- ~~20-21.~~ "Domestic organization" means an organization created under the laws of this state.
- ~~21-22.~~ "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- ~~22-23.~~ "Electronic communication" means any form of communication, not directly involving the physical transmission of paper, including a process of communication which uses a distributed or other electronic network or database, or 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.
- ~~23-24.~~ "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
- ~~24-25.~~ "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and signed or adopted by a person with the intent to sign the record.
- ~~25-26.~~ "Filed with the secretary of state" means, except as otherwise permitted by law or rule:

- a. That a 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 did then:
  - (1) Record the actual date on which the record was filed, and if different the effective date of filing; and
  - (2) Record the record in the office of the secretary of state.

26-27. "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.

27-28. "Foreign limited liability company" means a limited liability company organized under laws other than the laws of this state for a purpose for which a limited liability company may be organized under chapter 10-32.1.

28-29. "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.

29-30. "Good faith" means honesty in fact in the conduct of an act or transaction.

30-31. "Governing body" means for an organization that is:

- a. A corporation, its board of directors;
- b. A limited liability company, its board of governors; or
- c. Any other organization, the body selected by its owners that has the ultimate power to determine the policies of the organization and to control its policies.

31-32. "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 10-32.1;
  - (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.

32-33. "Identity" means the name of a shareholder or the data address for which the shareholder has knowledge or possession of the private key uniquely associated with the data address.

34. "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.

33-35. "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.

34-36. "Limited liability company" or "domestic limited liability company" means a limited liability company, other than a foreign limited liability company, organized under or governed by chapter 10-32.1.

35-37. "Network signature" means a string of alphanumeric characters which when broadcasted by a shareholder to the data address's corresponding distributed or other electronic network or database provides reasonable assurances to a corporation that the shareholder has knowledge or possession of the private key uniquely associated with the data address.

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

36-39. "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:
- (1) 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;
  - (2) When an electronic transmission has been made to a data address provided by the shareholder; or
  - (3) When electronically transmitted to the shareholder in a manner by which the shareholder has consented, when directed to the shareholder.
- 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 deposited with a nationally recognized overnight delivery service for overnight delivery or, if overnight delivery to the person is not available, for delivery as promptly as practicable to the person at an address designated by the person or at the last-known address of the person;
  - (3) When handed to the person;
  - (4) 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;
  - (5) 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; or
  - (6) 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 given by deposit for delivery when deposited for delivery as provided in paragraph 2 of subdivision c, after having made sufficient arrangements for payment by the sender.
  - f. Is deemed received when it is given.

37-40. "Officer" means an individual who is eighteen years of age or more who is:

- a. Elected, appointed, or otherwise designated as the president, the treasurer, or any other officer pursuant to section 10-19.1-52; or
- b. Deemed elected as an officer pursuant to section 10-19.1-56.

38-41. "Organization":

- a. Means, whether domestic or foreign, a corporation, limited liability company, general partnership, limited partnership, limited liability partnership, limited liability limited partnership, or any other person subject to a governing statute; but
- b. Excludes:
  - (1) ~~Any~~A 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; and
  - (2) ~~Any~~A nonprofit limited liability company, whether a domestic nonprofit limited liability company which is organized under chapter 10-36 or a foreign nonprofit limited liability company which is organized in another jurisdiction.

39-42. "Originating records" 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.

40-43. "Outstanding shares" means all shares duly issued and not reacquired by a corporation.

41-44. "Owners" means the holders of ownership interests in an organization.

42-45. "Ownership interests" means for a domestic or foreign organization that 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;
- f. A limited liability limited partnership, its partnership interests; or
- g. Any other organization, its governance or transferable interests.

43-46. "Parent" of a specified organization means an organization that directly, or indirectly through related organizations, owns more than fifty percent of the voting power of the ownership interests entitled to vote for directors or other members of the governing body of the specified organization.

44-47. "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.

45-48. "Publicly held corporation" means a corporation that has a class of equity securities registered pursuant to section 12 of the Securities Exchange Act of 1934 [15 U.S.C. 78L], or is subject to section 15(d) of the Securities Exchange Act of 1934 [15 U.S.C. 78o(d)].

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. "Record of shareholders" means a record administered by or on behalf of a corporation and which records the identity of all the corporation's shareholders and the number and class of shares held by each shareholder in accordance

with section 10-19.1-84. The term includes a record of all issuances and transfers of shares of a corporation at the discretion of the corporation;

51. "Registered office" means the place in this state designated in a corporation's articles of incorporation or in a foreign corporation's certificate of authority as the registered office.
- 48-52. "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 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
  - 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.
- 49-53. "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.
- 50-54. "Security" has the meaning given in section 10-04-02.
- 51-55. "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.
- 52-56. "Share" means one of the units, however designated, into which the shareholders' proprietary interests of the shareholder in a corporation are divided.
- 53-57. "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 or the owner of a private key uniquely associated with a data address that facilitates or records the sending and receiving of shares.
- 54-58. "Signed" means:
- That the signature of a person, which may be a facsimile affixed, engraved, by network signature, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the record, is placed on a record with the present intention to authenticate that record; and
  - With respect to a record required by this chapter to be filed with the secretary of state, that:

(1) The 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 record are communicated by a method or medium of communication acceptable by the secretary of state.

55-59. "Subscriber" means a person that subscribes for shares in a corporation, whether before or after incorporation.

56-60. "Subsidiary" of a specified organization means an organization having more than fifty percent of the voting power of its ownership interests entitled to vote for directors, governors, or other members of the governing body of the organization owned directly, or indirectly, through related organizations, by the specified organization.

57-61. "Surviving corporation" means the domestic or foreign corporation resulting from a merger which:

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

58-62. "Surviving organization" means the organization resulting from a merger which:

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

59-63. "Vote" includes authorization by written action.

60-64. "Written action" means:

- a. A written record signed by all of the persons required to take the action; or
- b. The counterparts of a written 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 6. AMENDMENT.** Section 10-19.1-01.2 of the North Dakota Century Code is amended and reenacted 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 3639 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 3639 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 3639 of section 10-19.1-01.
6. Except as otherwise provided in subsection 7 and except as otherwise provided in subsection 3639 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 7. AMENDMENT.** Subsection 6 of section 10-19.1-66 of the North Dakota Century Code is amended and reenacted as follows:

6. Unless uncertificated shares are prohibited by the articles or bylaws, a corporation may provide that some or all of any or all classes and series of the corporation's shares will be uncertificated shares.
  - a. The action by the corporation provided in this subsection does not apply to shares represented by a certificate until the certificate is surrendered to the corporation.
  - b. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall ~~send~~give to the new shareholder the information required by this section to be stated on certificates.
  - c. The information required under this section is not required to be ~~sent~~given to the new shareholder by a publicly held corporation that adopted a system of issuance, recordation, and transfer of the corporation's shares by electronic or other means not involving the issuance of certificates if the system complies with federal law.
  - d. Except as otherwise expressly provided by statute, the rights and obligations of the holders of certificated and uncertificated shares of the same class and series are identical.

**SECTION 8. AMENDMENT.** Subsection 1 of section 10-19.1-73.3 of the North Dakota Century Code is amended and reenacted as follows:

1. After fixing a record date for notice of and voting at a meeting, a corporation shall prepare an alphabetical ~~or numerical~~ list of the ~~names~~identities of all its shareholders entitled to notice and to vote. The list must show ~~the address and~~

- a. The number of shares each shareholder is entitled to vote at the meeting;
- b. Each shareholder's physical mailing address, if the identity of a shareholder on the list consists of the shareholder's name; and
- c. Each shareholder's authorized means of receipt for electronic transmissions, if the identity of a shareholder on the list consists of the shareholder's data address.

**SECTION 9.** A new section to chapter 10-19.1 of the North Dakota Century Code is created and enacted as follows:

**Number of shareholders.**

1. The following identified as a shareholder in a corporation's current record of shareholders constitutes one shareholder:
  - a. Three or fewer co-owners;
  - b. A corporation, partnership, trust, estate, or other entity;
  - c. The trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account; or
  - d. One data address.
2. Shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe the names represent the same person.

**SECTION 10. AMENDMENT.** Section 10-19.1-76.3 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-76.3. Acceptance of shareholder act by the corporation.**

1. If the name or network signature signed on a vote, consent, waiver, or proxy appointment corresponds to the record name or data address 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.
2. Unless the articles or bylaws provide otherwise, if the name or network signature signed on a vote, consent, waiver, or proxy appointment does not correspond to the record name or data address 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 or network signature signed purports to be that of an officer, manager, or agent of the organization;
  - b. The name or network signature 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 or network signature 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 or network signature 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 or network signature signed purports to be the name or data address 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 to doubt the validity of the signature on it or the authority of the signatory to sign for the shareholder.
  4. The corporation or its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section is not liable in damages to the shareholder for the consequences of the acceptance or rejection.
  5. Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

**SECTION 11. AMENDMENT.** Section 10-19.1-81 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-81. Voting trusts.**

1. Shares in a corporation may be transferred to a trustee pursuant to written agreement, for the purpose of conferring on the trustee the right to vote and otherwise represent the beneficial owner of those shares for a period not exceeding ten years, except that if the agreement is made in connection with an indebtedness of the corporation, the voting trust may extend until the indebtedness is discharged. Unless otherwise specified in the agreement, the voting trust may be terminated at any time by the beneficial owners of a majority of the voting power of the shares held by the trustee. A signed original of the agreement must be filed with the corporation.
2. When a voting trust agreement is signed, the trustee shall prepare a list of the identities of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust. The list must include each shareholder's:
  - a. Physical mailing address, if the identity of a shareholder on the list consists of the shareholder's name; or
  - b. Authorized means of receipt for electronic transmissions, if the identity of a shareholder on the list consists of the shareholder's data address.

3. Unless otherwise provided in the trust agreement, if there are two or more trustees, the manner of voting is determined as provided in subsection 5 of section 10-19.1-73.2.

**SECTION 12. AMENDMENT.** Subsection 1 of section 10-19.1-84 of the North Dakota Century Code is amended and reenacted as follows:

1. A corporation shall keep, at the corporation's principal executive office or at another place or places within the United States determined by the board, a share register not more than one year old, containing the ~~name and address~~identities of each shareholder and, in alphabetical or numerical order by class of shares showing the number and classes of shares held by each shareholder.
  - a. The list must include each shareholder's:
    - (1) Physical mailing address, if the identity of a shareholder on the list consists of the shareholder's name; or
    - (2) Authorized means of receipt for electronic transmissions, if the identity of a shareholder on the list consists of the shareholder's data address.
  - b. A record of shareholders may show both the shareholder's name and data address.
  - c. A corporation shall also keep, at the corporation's principal executive office or at another place or places within the United States determined by the board, a record of the dates on which certificated or uncertificated shares were issued.

**SECTION 13. AMENDMENT.** Subsection 2 of section 10-19.1-84 of the North Dakota Century Code is amended and reenacted as follows:

2. A corporation shall keep, at its principal executive office or at another place or places within the United States determined by the board, and, if its principal executive office or any such other place is outside of this state, shall make available at its registered office or at its principal executive office within this state within ten days after receipt by an officer of the corporation of a written demand for them made by a person described in subsection 4 or 5, originals or copies of:
  - a. Records of all proceedings of shareholders for the last three years;
  - b. Records of all proceedings of the board for the last three years;
  - c. Its articles and all amendments currently in effect;
  - d. Its bylaws and all amendments currently in effect;
  - e. Financial statements required by section 10-19.1-85 and the financial statement for the most recent interim period prepared in the course of the operation of the corporation for distribution to the shareholders or to a governmental agency as a matter of public record;
  - f. Reports made to shareholders generally within the last three years;

- g. A statement of the ~~names~~identities and usual business addresses of its directors and principal officers;
- h. Voting trust agreements and beneficial interests owner's list described in section 10-19.1-81;
- i. Shareholder control agreements described in section 10-19.1-83; and
- j. A copy of agreements, contracts, or other arrangements or portions of them incorporated by reference under subsection 8 of section 10-19.1-10.

**SECTION 14. AMENDMENT.** Subsection 11 of section 10-19.1-84 of the North Dakota Century Code is amended and reenacted as follows:

11. The records maintained by a corporation, including its share register, financial records, and minute books, may ~~utilize any information storage technique~~be retained on, or by means of, or be in the form of any information storage device or method, including, ~~for example, punched holes, printed or magnetized spots, or microimages, even though that makes them illegible visually, if for any one or more distributed or other electronic networks or databases provided the records are retained in written form or in another form that can be converted accurately and into written form~~ within a reasonable time, ~~into a form that is legible visually and whose contents are assembled by related subject matter to permit convenient use by people in the normal course of business. A corporation shall convert any of the records referred to in subsection 4 upon the request of a person entitled to inspect them, and the expense of the conversion shall be borne by the person who bears the expense of copying pursuant to subsection 10. A copy of the conversion is admissible in evidence, and must be accepted for all other purposes, to the same extent as the existing or original records would be if they were legible visually.~~

**SECTION 15. 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 ~~3639~~ of section 10-19.1-01.

<sup>26</sup> **SECTION 16. AMENDMENT.** Subsection 2 of section 10-19.1-146 of the North Dakota Century Code is amended and reenacted as follows:

2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as provided in subsection ~~5458~~ of section 10-19.1-01. If the corporation or foreign corporation is in the hands of a receiver or trustee, it must be signed on behalf

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<sup>26</sup> Section 10-19.1-146 was also amended by section 5 of Senate Bill No. 2326, chapter 92.

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

**SECTION 17.** Section 10-32.1-102 of the North Dakota Century Code is created and enacted as follows:

**10-32.1-102. Series of members, managers, transferable interests or assets - General powers of series - Governing authority - Distributions - Termination of series.**

1. An operating agreement may establish or provide for the establishment of a designated series of members, managers, transferable interests, or assets that:
  - a. Has separate rights, powers, or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations; or
  - b. Has a separate business purpose or investment objective.
2. A series established in accordance with subsection 1 may carry on any business, purpose, or activity, whether or not for profit, which is not prohibited by this chapter.
3. Subject to subsection 4, if an operating agreement establishes or provides for the establishment of a particular series:
  - a. The debts, obligations, or other liabilities of the particular series, whether arising in contract, tort, or otherwise, are enforceable against the assets of the series only and not against:
    - (1) The assets of the limited liability company generally or any other series thereof; or
    - (2) A member of the limited liability company.
  - b. The debts, obligations, or other liabilities of the limited liability company generally or any other series thereof, whether arising in contract, tort, or otherwise, are not enforceable against the assets of the particular series.
4. The limitations on liabilities in subsection 3 apply if:
  - a. The records for the particular series accounting for the assets of the series are separately maintained from the records accounting for the assets of the limited liability company or any other series thereof. Records that reasonably identify the assets of a particular series, including by specific listing, category, type, quantity, computational or allocational formula or procedure such as a percentage or share of assets, or by any other method in which the identity of the assets is objectively determinable, is deemed to account for the assets of the particular series separately from the assets of the limited liability company or any other series thereof.
  - b. The operating agreement specifically provides for the limitations on liabilities; or

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- c. Notice of the limitations on liabilities of the particular series is included in the articles of organization. Notice is sufficient whether or not the limited liability company has established or referenced any particular series in the notice.
5. This section, an operating agreement, or articles of organization may not restrict:
- a. A series or limited liability company on behalf of a series from agreeing in the operating agreement or otherwise that any debt, obligation, or other liability of the limited liability company generally or any other series thereof is enforceable against the assets of the series;
  - b. A limited liability company from agreeing in the operating agreement or otherwise that any debt, obligation, or other liability of a series is enforceable against the assets of the limited liability company generally; or
  - c. Notwithstanding section 10-32.1-26, a member or manager from agreeing in the operating agreement or otherwise to be personally liable for any debt, obligation, or other liability of a series.
6. A series established under this section may, in its own name, contract, hold title to assets including real, personal and intangible property, grant liens and security interests, and sue or be sued. A series may:
- a. Have separate rights, powers, or duties with respect to specified property or obligation of the limited liability company or profit and loss associated with any specified property or obligation;
  - b. Carry on a lawful purpose regardless of whether for profit, except for the purpose of acting as a financial institution or acting as an insurer; or
  - c. Hold assets directly or indirectly, including in the name of the series or the name of the limited liability company.
7. An operating agreement that establishes or provides for the establishment of a series may:
- a. Provide for classes or groups of members or managers of the series having the relative rights, powers, and duties specified in the operating agreement;
  - b. Provide for and specify the future creation of additional classes or groups of members or managers of the series having the relative rights, powers, and duties as may be established, including rights, powers, and duties senior to existing classes and groups of members or managers of the series;
  - c. Provide for the taking of an action, including the amendment of the operating agreement, without the vote or approval of a member, manager, class, or group of members or managers of the series;
  - d. Provide that a member, class, or group of members of a series do not have voting rights; and



- e. Grant to all or certain identified members, managers, class, or group of members or managers of the series the right to vote on a matter separately or with all or any class or group of members or managers of the series. Voting by members or managers may be on a per capita, number, financial interest, class, group, or other basis.
8. The management of a series is vested as follows:
- a. In the members of the series pursuant to subsection 2 of section 10-32.1-39. A member shall cease to be a member of a series upon the divestment of all the member's transferable interests of the series. The fact a person ceases to be a member of a particular series must not by itself cause the person to cease to be a member of the limited liability company or any other series thereof or cause the termination of the series, regardless of whether the person was the last remaining member of the series; or
  - b. If the operating agreement provides for the management of the series in whole or in part by a manager, the management must be vested in one or more managers who must be chosen as provided in the operating agreement and who must hold the offices and have the responsibilities as specified in the agreement. A manager ceases to be a manager of a series as provided in an operating agreement and subject to subdivision e of subsection 3 of section 10-32.1-39. The fact a person ceases to be a manager of a particular series must not by itself cause the person to cease to be a manager of the limited liability company or any other series thereof.
9. Notwithstanding section 10-32.1-30 and subject to subsections 10 and 12, if a member of a series becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a creditor of the series with respect to the distribution. An operating agreement may provide for the establishment of a record date for allocations and distributions associated with a series.
10. Notwithstanding subsection 1 of section 10-32.1-31, a limited liability company may make a distribution with respect to a series established under this section unless the total assets of the series after the distribution would be less than the sum of its total liabilities plus the amount that would be needed, if the series were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon winding up and termination of members whose preferential rights are superior to those of the persons receiving the distribution. A member that receives a distribution knowing the distribution was made in violation of this subsection is personally liable to the series for the amount of the distribution.
- a. This subsection does not affect an obligation or liability of a member under an agreement or other applicable law for the amount of a distribution, except an action under this subsection must be subject to subsection 5 of section 10-32.1-32.
  - b. For purposes of this subsection, "distribution" does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefits program.

11. Subject to section 10-32.1-51, a series established under this section may be terminated and its affairs wound up without causing the dissolution of the limited liability company. The termination of the series does not affect the limitations on liabilities of the series as provided in subsection 3. A series is terminated and its affairs must be wound up upon the occurrence of any of the following:
  - a. The dissolution of the limited liability company under section 10-32.1-51;
  - b. The time or happening of events specified in the operating agreement;
  - c. The vote or consent of members of the series who own more than two-thirds of the interests in the profits of the series; or
  - d. On application by a member or manager of the series, the entry of a court order terminating the series on the grounds the series is not reasonably practicable to carry on the purposes of the series in conformity with the operating agreement.
12. A person winding up the affairs of a series may, in the name of the limited liability company and for and on behalf of the limited liability company and the series, take any action with respect to the series as authorized by section 10-32.1-51. The person shall provide for the claims and obligations of the series and distribute the assets of the series as provided in section 10-32.1-54. Any action taken in accordance with this subsection does not affect the liability of members and does not impose liability on a liquidating trustee appointed in accordance with this subsection. Notwithstanding section 10-32.1-51, the following persons may wind up the affairs of a series:
  - a. A manager of the series who has not wrongfully terminated the series;
  - b. If the series has no manager who qualifies under subdivision a, the members of the series or a person approved by the members;
  - c. The members who own more than fifty percent of the interests in the profits of the series; or
  - d. On application of a member or manager of the series or a personal representative or assignee of the member or manager, and upon cause shown, a court or a liquidating trustee appointed by the court.
13. A foreign limited liability company doing business in this state and governed by an operating agreement that establishes or provides for the establishment of a designated series of members, managers, transferable interests, or assets shall state the following on its certificate of authority:
  - a. That the operating agreement of the foreign limited liability company establishes or provides for the establishment of series having separate rights, powers, or duties with respect to specified property or obligations of the foreign limited liability company or profits and losses associated with specified property or obligations;
  - b. If any debt, obligation, or other liability of any particular series, whether arising in contract, tort, or otherwise, is enforceable against the assets of

the particular series only and not against the assets of the foreign limited liability company generally or any other series thereof; and

c. If any debt, obligation, or other liability of the foreign limited liability company generally or any other series thereof, whether arising in contract, tort, or otherwise, is enforceable against the assets of the particular series.

14. The secretary of state may adopt rules reasonable and necessary to address requirements related to the secretary of state for registration and continuing existence of the series limited liability companies established under this section.

**SECTION 18. AMENDMENT.** Subsection 2 of section 10-35-28 of the North Dakota Century Code is amended and reenacted as follows:

2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as provided in subsection 5458 of section 10-19.1-01, the articles or the bylaws, or by a resolution approved by the affirmative vote of the required proportion or number of the directors. If the publicly traded corporation is in the hands of a receiver or trustee, it must be signed on behalf of the publicly traded corporation by the receiver or trustee. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years.

**SECTION 19. EFFECTIVE DATE.** Section 17 of this Act becomes effective on July 1, 2020.

Approved April 24, 2019

Filed April 24, 2019