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January 25, 2021

TO: Chairman Klein and Members of the Senate Industry, Business, and Labor Committee

FR: Barbara Siegel, Director of Business Services, on behalf of Secretary of State Al Jaeger

RE: SB 2210 - Relating to filing requirements with the Secretary of State

SB 2210 relates to requirements for filings with the Secretary of State's office. The provisions would streamline processes, clarify requirements, and promote consistency among entity and filing types.

In several areas, consistent with many other filings, a form prescribed by the Secretary of State would be required to be used. The forms are available through FirstStop, the Secretary of State's online business and licensing system.

- **Section 1** (page 1, lines 15 – 16) – for an entity changing a registered agent.
- **Section 7** (page 6, lines 13 – 14) – for a farm or ranch completing their annual report. It is currently required for all other entities' annual reports.
- **Section 21** (page 13, lines 30 – 31), **Section 23** (page 14, lines 29 – 30), and **Section 24** (page 15, lines 23 – 25) – for cancelling a fictitious partnership name, trademark, or trade name. Current law requires a prescribed form be used for other filings for these names and marks.

Several sections apply to farm or ranch corporations and limited liability companies under North Dakota Century Code ch. 10-06.1. The proposed changes would clarify provisions and ensure the interests of out-of-state entities are addressed. The changes also enhance consistency among three main sections – general requirements in North Dakota Century Code § 10-06.1-12, initial report requirements in § 10-06.1-15, and annual report requirements in § 10-06.1-17.

- **Section 2** (page 1, lines 23 – 24) – defines the term “operating the farm or ranch.” This clarifies that a physical presence on the farm or ranch is not required to comply with the requirement for operating the farm or ranch. In the United States District Court Order on Motions dated September 21, 2018, Chief Judge Daniel L. Hovland noted: “Despite the Court's finding that the operational requirements do not require a physical presence on the farm, it would be helpful if the Legislature adopted a clarifying definition or otherwise revised the statutory language to make it clear no actual physical presence on the farm is required.”
- **Section 3** (page 2, lines 4 – 11) and **Section 4** (page 2, lines 19 – 27) – address an out-of-state entity converting to or from a farm or ranch.
- **Section 5** (page 3, line 5) – removes the word “domestic” to clarify that out-of-state entities are not excluded. It also adds language to explicitly require entities to own or lease farmland or ranchland in North Dakota, which has been a long-standing practice as recommended by the Attorney General's office (page 4, lines 13 – 14).

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- **Section 6** – regarding the farm or ranch initial report, which is filed with the articles of incorporation, articles of organization, and certificate of authority.
 - corrects an omission of “articles of organization,” as a limited liability company may be a farm or ranch (page 4, line 19).
 - adds certificate of authority language in order to address out-of-state entities (page 4, lines 19 – 21).
 - makes statements regarding engaging in the operation of the farm or ranch, and residing on the farm or ranch, prospective in nature as a farm or ranch is not usually yet in operation at the time of the completion of the initial report (page 5, lines 1 – 2).
 - removes language about whether each shareholder or member depends principally on farming or ranching for a livelihood because the income requirement applies to the corporation or limited liability company and not to the individual shareholder or member and should also be prospective in nature (page 5, lines 2 – 3).
 - clarifies the requirement for providing a land description when land is not yet owned or leased at the time of the filing of the initial report (page 5, lines 9 – 15).
 - adds appropriate income requirements which are prospective in nature (page 5, lines 16 – 20).
- **Section 7** – regarding the farm or ranch annual report:
 - corrects an erroneous cross reference (page 6, line 12).
 - makes technical changes to the management section, and ensures information collected confirm compliance with requirements for management to be actively engaged in operating the farm or ranch (page 7, lines 9 – 15).
 - adds clarifying language with regard to the land description reporting requirement (page 7, line 16).
- **Section 8** (page 8, lines 13 – 14) – adds language to require compliance with requests for information relating to the Attorney General’s annual farm or ranch compliance program.

The due date for the first annual report would be changed for several entity types, to be based upon effective date rather than filing date. This would address situations involving delayed effective dates that cross over calendar years. The language is consistent with current law for corporations.

- **Section 7** (page 6, lines 6 – 11) – for farms or ranches.
- **Section 10** (page 8, lines 25 – 31) – for cooperatives.
- **Section 11** (page 9, lines 12 – 19) – for limited liability companies.
- **Sections 15 and 16** (page 11, lines 3 – 10 and 21 – 28) – for nonprofits.
- **Section 20** (page 13, lines 8 – 14) – for limited partnerships.
- **Section 22** (page 14, lines 6 – 12) – for limited liability partnerships.

Section 9 (page 8, line 20) – removes the requirement for a corporate seal to be included in cooperative mergers and consolidations as cooperatives are not required to have a seal.

Section 12 (page 10, lines 1 – 2 and 10 – 12) – clarifies that only a business limited liability company may organize as a series limited liability company.

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Sections 13 and 14 (page 10, lines 19 – 21 and 29 – 31) – require a nonprofit that is changing its registered agent do so as a separate filing like all other entity types, rather than making the change on its annual report.

Section 17 (page 12, line 13) – requires a mutual insurance holding company resulting from the reorganization of a domestic mutual insurance company and which is not required to have shares, be incorporated as a nonprofit corporation rather than as a business corporation. This is appropriate because a nonprofit corporation, unlike a business corporation, is not required to have shares. This change is being pursued in cooperation with the Insurance Department.

Section 18 (page 12, line 20) – removes the requirement that the patents filed in matters of commissioned cities be kept in a book.

Section 19 (page 12, line 31 – page 13, line 1) – updates the list of home inspector examiners.

Section 25 (page 16, lines 11 – 15) – removes “postmark” language for charitable organization annual reports. This change was made for other entities last legislative session, but did not happen for charitable organizations as the bill it was addressed in was withdrawn for other reasons.