

GENERAL PROVISIONS

CHAPTER 54

SENATE BILL NO. 2070

(Legislative Council)

(Interim Judiciary Committee)

(Representatives Brown, Coats, Kretschmar)

TECHNICAL CORRECTIONS ACT

AN ACT to create and enact section 54-34.4-04 of the North Dakota Century Code, relating to correction of the statutory placement of the motion picture development office; to amend and reenact subsection 17 of section 10-19.1-26, subsection 2 of section 10-19.1-50, section 10-19.1-105, subsection 3 of section 10-19.1-116, sections 11-04-07, 15-05-16, 15-38.1-05, subsection 1 of section 15-62.2-01, subsection 6 of section 15-62.3-01, paragraph 3 of subdivision e of subsection 1 of section 19-03.1-36, subsection 4 of section 19-14-03, sections 20.1-02-16.3, 20.1-03-12.1, 21-03-38, subsection 6 of section 23-02.1-20, subsection 13 of section 23-17.2-02, subsection 2 of section 26.1-03-17, subsection 6 of section 26.1-06.1-11, subsection 5 of section 26.1-19-03, sections 26.1-34.1-05, 31-01-16, subdivision d of subsection 3 of section 32-07.1-01, sections 32-19-41, 32-19.1-01, subsection 3 of section 37-15-14.1, sections 37-18.1-01, 39-06-43, subsection 3 of section 41-01-11, subsection 1 of section 41-02.1-76, subsection 1 of section 41-02.1-77, subsection 3 of section 41-03-60, subsection 1 of section 41-09-16, subsection 1 of section 41-09-19, subdivision f of subsection 1 of section 41-09-23, sections 44-11-04, 44-11-07, 48-05-06, 53-09-10, 54-03-25, 54-16-04, subdivision a of subsection 1 of section 54-52-17.4, and section 64-02-20 of the North Dakota Century Code, relating to improper, inaccurate, redundant, missing, or obsolete references; and to repeal chapter 11-02 and sections 4-05.1-14, 27-01-06, and 55-08-01.7 of the North Dakota Century Code, relating to elimination of obsolete provisions for formation of counties from unorganized territory, elimination of an obsolete reference to the Mandan experiment station, elimination of an obsolete provision for trial expense payments by counties, and elimination of an incorrect statutory placement of the motion picture development office.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁹ **SECTION 1. AMENDMENT.** Subsection 17 of section 10-19.1-26 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

17. A corporation may establish committees of the board of directors, elect or appoint persons to the committees, and define their duties as provided

⁹ Section 10-19.1-26 was also amended by section 11 of Senate Bill No. 2343, chapter 103.

in ~~sections~~ section 10-19.1-48 ~~and 10-19.1-49~~ and fix their compensation.

SECTION 2. AMENDMENT. Subsection 2 of section 10-19.1-50 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:
 - a. One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
 - b. Counsel, public accountants, or other persons as to matters that the director reasonably believes are within the person's professional or expert competence; or
 - c. A committee of the board upon which the director does not serve, duly established in accordance with ~~sections~~ section 10-19.1-48 ~~and 10-19.1-49~~ as to matters within its designated authority, if the director reasonably believes the committee to merit confidence.

SECTION 3. AMENDMENT. Section 10-19.1-105 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-105. Methods of dissolution. A corporation may be dissolved:

1. By the incorporators pursuant to section 10-19.1-106;
2. By the shareholders pursuant to sections 10-19.1-107 through ~~10-19.1-113~~ 10-19.1-113.1; or
3. By order of a court pursuant to sections 10-19.1-114 through 10-19.1-122.

SECTION 4. AMENDMENT. Subsection 3 of section 10-19.1-116 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The assets of the corporation or the proceeds resulting from a sale, lease, transfer, or other disposition must be applied in the following order of priority to the payment and discharge ~~or~~ of:
 - a. The costs and expenses of the proceedings, including attorneys' fees and disbursements;
 - b. Debts, taxes, and assessments due the United States, this state and its subdivisions, and other states and their subdivisions, in that order;
 - c. Claims duly proved and allowed to employees under title 65. Claims under this subdivision may not be allowed if the corporation carried workers' compensation insurance, as provided by law, at the time the injury was sustained;

- d. Claims, including the value of all compensation paid in any medium other than money, duly proved and allowed to employees for services performed within three months preceding the appointment of the receiver, if any; and
- e. Other claims duly proved and allowed.

SECTION 5. AMENDMENT. Section 11-04-07 of the North Dakota Century Code is amended and reenacted as follows:

11-04-07. Form of ballot on county seat removal. The ballot to be used at an election for the removal of a county seat ~~shall~~ must be in ~~substantially the following~~ a form:

Shall the county seat of _____ County be removed from
_____ to _____?

Yes ☐
No ☐

that will allow an elector to vote for the existing county seat or a place in the county named in the petition under section 11-04-04.

SECTION 6. AMENDMENT. Section 15-05-16 of the North Dakota Century Code is amended and reenacted as follows:

15-05-16. Reports - State geologist - State ~~chemist~~ department of health and consolidated laboratories. The state geologist or the state ~~food commissioner and chemist~~ department of health and consolidated laboratories, on the request of the board of university and school lands, shall visit any land leased under ~~the provisions~~ of section 15-05-09 and shall make a report ~~thereon~~ of the visit to the board. The state geologist or the state ~~food commissioner and chemist~~ department of health and consolidated laboratories may not receive a fee for making the examination and report but must be paid ~~his~~ necessary expenses incurred in connection therewith.

SECTION 7. AMENDMENT. Section 15-38.1-05 of the North Dakota Century Code is amended and reenacted as follows:

15-38.1-05. Powers of the commission. The commission ~~has the power to~~ may adopt its own rules ~~and regulations~~. In addition to other powers authorized by law and under this chapter, the members of the commission and any factfinder appointed by it, ~~shall have~~, in the performance of their duties, ~~have~~ the powers contained in sections 28-32-09, ~~28-32-10~~, 28-32-11, and 28-32-12.

SECTION 8. AMENDMENT. Subsection 1 of section 15-62.2-01 of the North Dakota Century Code is amended and reenacted as follows:

1. Resident undergraduate students pursuant to section ~~15-10-19~~ 15-10-19.1.

SECTION 9. AMENDMENT. Subsection 6 of section 15-62.3-01 of the North Dakota Century Code is amended and reenacted as follows:

6. "Full-time resident student" means a North Dakota resident, pursuant to section ~~15-10-19~~ 15-10-19.1, who is enrolled at an accredited private

institution in a course of study including at least one hundred eighty instructional hours per semester.

SECTION 10. AMENDMENT. Paragraph 3 of subdivision e of subsection 1 of section 19-03.1-36 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- (3) A conveyance is not subject to forfeiture for a violation of subsection ~~3~~ 6 of section 19-03.1-23 or subsection 3 of section 19-03.2-03.

¹⁰ **SECTION 11. AMENDMENT.** Subsection 4 of section 19-14-03 of the North Dakota Century Code is amended and reenacted as follows:

4. Which does not have printed or written upon the label of each package sold at retail, in type not less than one-fourth the size of the largest type on the package:
 - a. The common name in English of all active ingredients in the order of their predominance in the product;
 - b. A statement of the actual percentage or relative amounts of each ingredient active and inert. In the case of certain products (such as coated medicinal tablets), it may be impractical to state the quantity or proportion of inert ingredients and exemptions must be established by ~~regulations issued~~ rules adopted by the food commissioner and chemist department of health and consolidated laboratories;
 - c. The net contents, by weight, measure, or numerical count of such package;
 - d. The name and principal address of the manufacturer or person responsible for placing such livestock medicine on the market; and
 - e. Complete and explicit directions for use of such medicine.

SECTION 12. AMENDMENT. Section 20.1-02-16.3 of the North Dakota Century Code is amended and reenacted as follows:

20.1-02-16.3. Small and big game habitat restoration trust fund - Advisory committee - Transfer - Continuing appropriation. The small and big game habitat restoration trust fund is established to further farmer-sportsmen relations and to enhance small and big game habitat by providing funds for the leasing of private land to establish or preserve small and big game habitat, food plot development, and to carry out a private land habitat improvement program by entering into cost-sharing agreements with landowners or agencies working on private land to help defray all or a portion of their share of certain federally sponsored conservation practices considered especially beneficial to small and big game. No more than forty acres [~~64-76~~ 16.19 hectares] per owner or operator may be leased under this

¹⁰ Section 19-14-03 was also amended by section 14 of Senate Bill No. 2075, chapter 219.

program. No land may be purchased with small and big game habitat restoration trust fund moneys, and no funds may be used for administrative purposes. The private land habitat improvement program advisory committee shall advise the director concerning expenditures from the small and big game habitat restoration trust fund. The director shall provide staff services to the advisory committee. All members of the advisory committee must be residents of this state and must serve without remuneration. The amount of one hundred thousand dollars must be transferred annually from the game and fish operating fund to the small and big game habitat restoration trust fund. The interest earned by moneys contained in the small and big game habitat restoration trust fund is hereby appropriated as a standing and continuing appropriation for the purposes of this section.

SECTION 13. AMENDMENT. Section 20.1-03-12.1 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-12.1. Habitat restoration stamp required - Use of revenue - No land purchases allowed. A habitat restoration stamp is required for every resident and nonresident general game license for which a stamp fee of three dollars must be charged. The habitat restoration stamp fee is in addition to the annual general game license fee charged pursuant to under section 20.1-03-12. No land may be purchased with habitat restoration stamp moneys. All moneys generated by the habitat restoration stamp program, including the habitat restoration stamp print, the interest earned on the habitat restoration stamp program, the interest earned on any unspent habitat restoration stamp program funds, and any and all other moneys resulting from the habitat restoration stamp program must be placed in the habitat restoration stamp fund and are intended to provide a fund to lease privately owned lands for wildlife habitat. Not more than ten percent of this fund may be used for administrative purposes. All other moneys generated by the habitat restoration stamp program must be used for lease payments. Any moneys generated by the habitat restoration stamp program and not expended during a biennium must be expended for the same purposes during the next biennium. Any land needed for reestablishing the wildlife population and habitat may be leased for periods up to six years, but no more than forty acres [~~16.18~~ 16.19 hectares] in any section [259.00 hectares] of land may be leased for these purposes. Hunting may not be prohibited on these lands. In those judicial districts encompassing the historically prime pheasant range, as determined by the director, fifty percent of the expenditures within that judicial district must be for pheasant restoration and enhancement.

SECTION 14. AMENDMENT. Section 21-03-38 of the North Dakota Century Code is amended and reenacted as follows:

21-03-38. Bond proceeds - Kept in separate fund - Protection of purchaser. All borrowed money must be paid into the treasury of the municipality borrowing it, must be kept there until used, in a fund separate and distinct from all other funds, to be used for the purpose for which it was borrowed and for no other purpose except that such funds may be temporarily invested in securities as are approved by the governing board in accordance with the provisions of section 21-03-43 and as otherwise provided by section 21-03-42, and may be withdrawn only upon order or warrants made payable out of said fund and expressing the purpose for which they were drawn. The purchaser of any bonds issued pursuant to this chapter is not obliged to see to the application of the purchase price thereof, but is protected fully in paying for such bonds by the receipt of the county treasurer or of the officer delivering such bonds ~~as provided by section 21-03-22~~. Income from the temporary investing of receipts from bond issues must be available for use for such purpose as such bond issue was approved or upon resolution of the governing body of the municipality, must be paid into the sinking fund for use in payment of bonds issued.

¹¹ **SECTION 15. AMENDMENT.** Subsection 6 of section 23-02.1-20 of the North Dakota Century Code is amended and reenacted as follows:

6. The provision for entering the name of the father of the fetus on the fetal death certificate and the reporting of out of wedlock fetal deaths concur exactly with those set forth in subdivisions a through e of subsection 4 subsections 4 through 7 of section 23-02.1-13.

¹² **SECTION 16. AMENDMENT.** Subsection 13 of section 23-17.2-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

13. "Long-term care facility" means any nursing facility as defined in 42 U.S.C. 1396r(a), or basic care facility as defined in section 23-09.3-01. The term does not include a facility, as defined by subsection 2 of section ~~25-01.2-02~~ 25-01.2-01, which provides services to developmentally disabled persons.

¹³ **SECTION 17. AMENDMENT.** Subsection 2 of section 26.1-03-17 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. An insurance company, nonprofit health service corporation, health maintenance organization, or prepaid legal service organization subject to the tax imposed by subsection 1 is entitled to a credit against the tax due for the amount of any assessment paid as a member of a comprehensive health association under subsection 4 of section 26.1-08-09 for which the member may be liable for the year in which the assessment was paid, a credit as provided under section 26.1-38.1-10, a credit against the tax due for an amount equal to the examination fees paid to the commissioner under sections 26.1-01-07, 26.1-02-02, ~~26.1-03-19 through 26.1-03-19.6~~, 26.1-03-22, 26.1-17-32, and 26.1-18-27, and a credit against the tax due for an amount equal to the ad valorem taxes, whether direct or in the form of rent, on that proportion of premises occupied as the principal office in this state for over one-half of the year for which the tax is paid. The credits under this subsection must be prorated on a quarterly basis and may not exceed the total tax liability under subsection 1.

SECTION 18. AMENDMENT. Subsection 6 of section 26.1-06.1-11 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. After demand by the commissioner pursuant to ~~the provisions of~~ sections ~~26.1-03-19~~ 26.1-03-19.1 through ~~26.1-03-21~~ 26.1-03-19.7, or

¹¹ Section 23-02.1-20 was also amended by section 2 of House Bill No. 1058, chapter 243.

¹² Section 23-17.2-02 was also amended by section 2 of House Bill No. 1058, chapter 243, and repealed by section 6 of Senate Bill No. 2460, chapter 254.

¹³ Section 26.1-03-17 was also amended by section 2 of Senate Bill No. 2176, chapter 213.

pursuant to ~~the provisions~~ of this chapter, the insurer has failed to promptly make available for examination any of its own property, books, accounts, documents, or other records, or those of any subsidiary or related company within the control of the insurer, or those of any person having executive authority in the insurer so far as they pertain to the insurer.

SECTION 19. AMENDMENT. Subsection 5 of section 26.1-19-03 of the North Dakota Century Code is amended and reenacted as follows:

5. Employee welfare benefit plans as defined by the ~~Employees~~ Employee Retirement Income Security Act of 1974 [Pub. L. 93-406; 88 Stat. 829].

SECTION 20. AMENDMENT. Section 26.1-34.1-05 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-34.1-05. Continued compliance. The commissioner may require that a corporation possessing a certificate of exemption submit periodically any report the commissioner determines to be desirable or necessary to ascertain compliance with requirements of this chapter. The commissioner, whenever the commissioner determines it to be expedient, may make or cause to be made an examination of the assets and liabilities and other affairs of the corporation as the same pertains to annuity agreements entered into pursuant to this chapter. The reasonable expenses incurred for any such examination must be fixed and paid in accordance with section ~~26.1-03-20~~ 26.1-03-19.6.

SECTION 21. AMENDMENT. Section 31-01-16 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

31-01-16. Compensation and mileage and travel expense of witness. A witness in a civil or criminal case is entitled to receive:

1. A sum of twenty-five dollars for each day necessarily in attendance before the district court or before any other board or tribunal, except municipal court.
2. A sum for mileage and travel expense reimbursement equal to the reimbursement rates provided for state employees in sections 44-08-04 and 54-06-09.

In all criminal cases in district court ~~cases~~, the attorney general shall pay prosecution witness fees and expenses, and the supreme court shall pay other witness fees for indigents and expenses. Prisoners may not be compensated as witnesses under this section.

SECTION 22. AMENDMENT. Subdivision d of subsection 3 of section 32-07.1-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- d. A beneficiary's interest in the profits from the crime must be reduced by the following amount:

- (1) Money paid to the beneficiary ~~from the as crime victim's~~ victims reparations ~~fund~~ under chapter ~~65-13~~ 54-23.4 because of the crime for which the felon was convicted.

- (2) Money paid to the beneficiary by the convicted felon because of a requirement of restitution imposed by a court in connection with the crime for which the felon was convicted.
- (3) Money paid to the beneficiary because of a judgment against the convicted felon based upon the crime for which the felon was convicted.

SECTION 23. AMENDMENT. Section 32-19-41 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32-19-41. Abandoned personal property - Disposal by record title owner. The record title owner of real property sold under judgment of foreclosure or foreclosure by advertisement for which a sheriff's deed has been issued and recorded, or after receipt and recording of a deed in lieu of foreclosure, may retain and dispose of without legal process any personal property left on the real property thirty days after the issuance of a sheriff's deed. If the total estimated value of the personal property is five hundred dollars or more, the record title owner shall make reasonable efforts to notify in writing the mortgagor or person who was entitled to possession of the real property during the redemption period by certified mail at least fifteen days before disposing of the personal property. Service by mail is complete upon mailing. The record title owner is entitled to the proceeds from the sale of the personal property, after all costs incidental to removal, storage, disposal, and sale of the property have been deducted. This section applies only to tracts of land not exceeding forty acres [~~64.76~~ 16.19 hectares].

SECTION 24. AMENDMENT. Section 32-19.1-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32-19.1-01. Mortgage may provide for foreclosure under chapter. The parties to a real estate mortgage upon property involving an area not to exceed forty acres [~~64.76~~ 16.19 hectares] may provide in said mortgage that upon default in the conditions of the mortgage the mortgage may be foreclosed as provided in this chapter.

SECTION 25. AMENDMENT. Subsection 3 of section 37-15-14.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. All moneys received as a result of charging the membership contribution authorized by subsection 1 must be deposited in a special fund in the state treasury to be known as the "veterans' home improvement fund". The fund must be invested by the state investment board in the manner provided in chapter 21-10, and all income received, less amounts deducted pursuant to section ~~21-10-10~~ 21-10-06.2, must be deposited in, or reinvested for the benefit of, the veterans' home improvement fund. Moneys in the veterans' home improvement fund must, subject to and following legislative appropriations, be expended only for expansion of present facilities of the home, for development of new facilities, for enrichment of living conditions, or for additional care for members of the home, as such expansion, development, enrichment, or additional care is deemed necessary by the administrative committee. The office of management and budget shall prepare the warrant-checks.

SECTION 26. AMENDMENT. Section 37-18.1-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

37-18.1-01. Administrative committee on veterans' affairs - Membership - Appointment. There is hereby created an administrative committee on veterans' affairs, which, for purposes of this chapter, must hereinafter be referred to as the committee. The committee must consist of ~~four~~ three ex officio nonvoting members and fifteen voting members. The adjutant general, the center director of the veterans' administration, and the executive director of job service North Dakota are the ex officio nonvoting members who shall serve in an advisory capacity to the committee. On or before June 20, 1971, the American legion, the veterans of foreign wars, the disabled American veterans, the veterans of World War II, Korea, and Vietnam, (amvets), and Vietnam veterans' of America, incorporated, shall each prepare a list containing the names of six persons qualifying as veterans under the provisions of section 37-01-40, for appointment as voting members of the committee. On or before July 1, 1971, the governor shall select fifteen nominees, three from each list, five of whom must be appointed to a term of three years, five of whom must be appointed to a term of two years, and five of whom must be appointed to a term of one year, or until their successors are appointed and qualified. On or before the twentieth day of June in each year, beginning in the year 1972, each of the above-listed nominating organizations shall submit a list containing the names of two persons who qualify as veterans under the provisions of section 37-01-40, to the governor for appointment or reappointment as voting members of the committee. On or before the first day of July in each year, beginning in the year 1972, the governor shall select one nominee from each list, a total of five nominees, to fill expiring terms of voting members of the committee. Each such appointment must be for a term of three years, or until a successor is appointed and qualified. All terms begin on the first day of July and end on the thirtieth day of June in the year specified. In case of the inability or failure of any voting member of the committee to serve, the governor shall appoint another member from a list of two persons qualifying as veterans under the provisions of section 37-01-40, submitted by the nominating organization represented by the member who was unable or failed to serve. Such appointments must be made for the remainder of the unexpired term.

SECTION 27. AMENDMENT. Section 39-06-43 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-06-43. Extension of license suspension or revocation. The director upon receiving a record of the conviction of any person upon a charge of driving a vehicle while the license or driving privileges of the person ~~was~~ were suspended shall extend the period of that suspension for an additional:

1. Like period not to exceed ninety days if the operator's record for the three years preceding the most recent violation of section 39-06-42 or equivalent ordinance shows the person's operator's license or privilege has not been suspended, revoked, or denied for a prior violation of section 39-06-42 or equivalent ordinance;
2. One hundred eighty days if the operator's record for the three years preceding the most recent violation of section 39-06-42 or equivalent ordinance shows the person's operator's license or privilege has been once suspended, revoked, or denied for a prior violation of section 39-06-42 or equivalent ordinance;
3. One year if the operator's record for the three-year period preceding the most recent violation of section 39-06-42 or equivalent ordinance shows the person's operator's license or privilege has been at least twice suspended, revoked, or denied for a prior violation of section 39-06-42 or equivalent ordinance.

If the original suspension was imposed for violation of section 39-08-01 or equivalent ordinance, the director shall extend the period of that suspension for at least six months. If the suspension of driving privileges resulted solely from failure to appear in court or to post and forfeit bond on noncriminal traffic violations, there may be no additional period of suspension. Suspension periods for failure to appear or to post and forfeit bond on noncriminal traffic violations may be for an indefinite duration. If the conviction was upon a charge of driving while a license or driving privileges was revoked, the director may not issue a new license for an additional period of one year from and after the date the person would otherwise have been entitled to apply for a new license. Upon a conviction of a person for violating a restricted license issued under section 39-06.1-11 and in which the underlying suspension was imposed for violating section 39-08-01 or equivalent ordinance or is governed by chapter 39-20, the director shall extend the period of the underlying suspension in accordance with subsection 5 of section 39-06-17.

SECTION 28. AMENDMENT. Subsection 3 of section 41-01-11 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this title (sections 41-01-15 ~~and~~, 41-02-15, ~~and~~ 41-02.1-16). Whether an agreement has legal consequences is determined by the provisions of this title, if applicable; otherwise by the law of contracts (section 41-01-03). (Compare "Contract".)

SECTION 29. AMENDMENT. Subsection 1 of section 41-02.1-76 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided with respect to damages liquidated in the lease agreement (section 41-02.1-52) or determined by agreement of the parties (subsection 3 of section 41-01-02 and section 41-02.1-51), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and disposition is by lease agreement that for any reason does not qualify for treatment under subsection 2 of section 41-02.1-75, or is by sale or otherwise, the lessor may recover from the lessee as damages for a default described in subsection 1 of section ~~41-02.1-70~~ 41-02.1-71 or in subdivision a of subsection 3 of section ~~41-02.1-70~~ 41-02.1-71, or, if agreed, for other default of the lessee accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor; the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement; and any incidental damages allowed under section 41-02.1-78, less expenses saved in consequence of the lessee's default.

SECTION 30. AMENDMENT. Subsection 1 of section 41-02.1-77 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. After default by the lessee under the lease contract as described in subsection 1 of section 41-02.1-71 or subdivision a of subsection 3 of section ~~41-02.1-70~~ 41-02.1-71 or, if agreed, after other default by the lessee, if the lessor complies with subsection 2, the lessor may recover from the lessee as damages:
 - a. For goods accepted by the lessee and not repossessed by or tendered to the lessor, and for conforming goods lost or damaged within a commercially reasonable time after risk of loss passes to the lessee (section 41-02.1-28), accrued and unpaid rent as of the date of entry of judgment in favor of the lessor the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and any incidental damages allowed under section 41-02.1-78, less expenses saved in consequence of the lessee's default; and
 - b. For goods identified to the lease contract if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that effort will be unavailing, accrued and unpaid rent as of the date of entry of judgment in favor of the lessor the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and any incidental damages allowed under section 41-02.1-78, and the lessor will cause an appropriate credit to be provided against any judgment for damages to the extent that the amount of the judgment exceeds the recovery available under section 41-02.1-75 or 41-02.1-76 less expenses saved in consequence of the lessee's default.

SECTION 31. AMENDMENT. Subsection 3 of section 41-03-60 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Subject to subsection 4 3 of section 41-03-61, with respect to an instrument taken for collection by a collecting bank, notice must be given by the bank before midnight of the next banking day following the banking day on which the bank receives the notice of dishonor of the instrument and by any other person within thirty days following the day on which dishonor occurs.

SECTION 32. AMENDMENT. Subsection 1 of section 41-09-16 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Subject to the provisions of section 41-04-22 on the security interest of the collecting bank, section 41-08-36.1 on security interests in securities, and section 41-09-13 on a security interest arising under the ~~chapter~~ chapters on sales and leases, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless all of the following take place:
 - a. The collateral is in the possession of the secured party pursuant to agreement, or the debtor has signed a security agreement that contains a description of the collateral and, in addition, if the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned.

- b. Value has been given.
- c. The debtor has rights in the collateral.

SECTION 33. AMENDMENT. Subsection 1 of section 41-09-19 of the North Dakota Century Code is amended and reenacted as follows:

1. Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith, and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under the chapter on ~~commercial paper~~ negotiable instruments (chapter 41-03). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

SECTION 34. AMENDMENT. Subdivision f of subsection 1 of section 41-09-23 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- f. A security interest of a collecting bank (section 41-04-22) or in securities (section 41-08-36.1) or arising under the ~~chapter~~ chapters on sales and leases (section 41-09-13) or covered in subsection 3.

SECTION 35. AMENDMENT. Section 44-11-04 of the North Dakota Century Code is amended and reenacted as follows:

44-11-04. Special commissioner to hear and take testimony - Suspension of officer. Whenever charges are filed against any officer mentioned in section 44-11-01, the governor shall appoint as a special commissioner a competent person learned in the law to hear and report the testimony for and against the accused and to file ~~his~~ that person's report of ~~said~~ the testimony, to be used on the hearing. ~~Such~~ The testimony must be reduced to writing, and when ~~said~~ the testimony is not taken by a shorthand reporter, each witness shall subscribe ~~his~~ the witness' name to ~~his~~ the witness' testimony when the same is so reduced. ~~The governor, if in his judgment~~ If the governor judges that the best interests of the state ~~shall~~ require it to be done, ~~the governor~~ by written order to be delivered to such officer, may suspend ~~such~~ the accused officer from the performance of duty during the pendency of the hearing. If the governor ~~thus shall suspend~~ suspends the accused, ~~he~~ the governor immediately shall notify the board ~~of~~ or persons authorized to fill a vacancy in ~~such~~ that office, and ~~thereupon~~ such ~~that~~ board or ~~those~~ persons, within five days after receipt of such notice, shall appoint ~~some~~ a competent person to fill ~~such~~ the office and perform the duties thereof ad interim.

SECTION 36. AMENDMENT. Section 44-11-07 of the North Dakota Century Code is amended and reenacted as follows:

44-11-07. Removal from office upon hearing - Filling vacancy. If upon a hearing the charges are sustained, the governor forthwith shall make an order in writing removing the accused officer from ~~his~~ the office, and shall cause a copy ~~thereof~~ of the order to be delivered to the accused and one copy to be delivered to the board ~~of~~ or persons having the authority to fill a vacancy in ~~such~~ that office. Thereupon ~~such~~ that board or person, within five days thereafter, shall appoint ~~some~~ a competent person to fill ~~such~~ the office and perform the duties thereof, unless the

accused, prior to the final hearing, had been suspended as provided by this chapter, and an ad interim appointment made. In such case the person appointed to ~~such~~ the office ad interim shall continue until the expiration of the term for which the accused was elected or appointed.

SECTION 37. AMENDMENT. Section 48-05-06 of the North Dakota Century Code is amended and reenacted as follows:

48-05-06. Alcoholic beverages and drugs in charitable institutions prohibited. Every person who shall take, send, or introduce any alcoholic beverage or controlled substance into any of the buildings or upon any of the premises of any charitable institution of this state, or of any county, or city thereof, except upon the express authority of the physician or chief executive officer of such institution, given in writing, is guilty of a class A misdemeanor. As used in this section, "controlled substance" ~~shall be as defined~~ has the meaning provided in subsection 4 of section 19-03.1-01, and shall include includes counterfeit substances as defined in ~~subsection 5 of section 19-03.1-01.~~

SECTION 38. AMENDMENT. Section 53-09-10 of the North Dakota Century Code is amended and reenacted as follows:

53-09-10. Effect of modified comparative negligence fault. Notwithstanding section ~~9-10-07~~ 32-03.2-02, any person is, consistent with the provisions of this chapter, barred from recovery for loss or damage resulting from a risk inherent in the sport of skiing, and likewise is so barred where it is established that a person has knowingly exposed ~~himself or herself~~ oneself to the real or potential hazards of a situation.

¹⁴ **SECTION 39. AMENDMENT.** Section 54-03-25 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-03-25. Introduction of bills and amendments - Actuarial impact statement. Beginning December 1, 1992, a legislative measure affecting workers' compensation benefits or premium rates may not be prefiled for introduction or introduced in either house of the legislative assembly unless ~~job service North Dakota~~ the workers compensation bureau has reviewed the measure and has determined whether the measure will have an actuarial impact on the workers' compensation fund. If the ~~job service North Dakota~~ workers compensation bureau determines that the measure will have an actuarial impact on the fund, the measure may not be prefiled or introduced unless accompanied by an actuarial impact statement prepared, at the expense of the ~~job service North Dakota~~ workers compensation bureau, by the actuary employed by the ~~job service North Dakota~~ workers compensation bureau. No amendment affecting workers' compensation benefits or premium rates may be attached to any legislative measure unless the amendment is accompanied by either a statement prepared by the ~~job service North Dakota~~ workers compensation bureau, stating that the amendment is not expected to have any actuarial impact on the workers' compensation fund, or an actuarial impact statement prepared, at the expense of the ~~job service North Dakota~~ workers compensation bureau, by the actuary employed by the ~~job service North Dakota~~ workers compensation bureau.

¹⁴ Section 54-03-25 was also amended by section 1 of House Bill No. 1253, chapter 628.

¹⁵ **SECTION 40. AMENDMENT.** Section 54-16-04 of the North Dakota Century Code is amended and reenacted as follows:

54-16-04. May order transfer of moneys between funds - Order may draw from state treasury. Whenever it is made to appear to the emergency commission by an itemized, verified petition of any board, commission, or officer authorized to expend public funds, and after receiving information from the director of the office of management and budget, that an emergency exists, the emergency commission shall assume that an emergency exists and may order money transferred from one fund to another fund belonging to or appropriated ~~from~~ for the same institution or board or the same state enterprise, or in an extremity may authorize money to be drawn from the state treasury to meet the emergency until such time as the legislative assembly can make an appropriation available therefor. The term "emergency" is limited to calamities or unforeseen happenings subsequent to the time such appropriation was made and which were clearly not within the contemplation of the legislative assembly and the governor.

SECTION 41. Section 54-34.4-04 of the North Dakota Century Code is created and enacted as follows:

54-34.4-04. North Dakota motion picture development office - Advisory board. The North Dakota motion picture development office is a part of the tourism department. The office shall promote North Dakota as a location for shooting films, television shows, documentaries, and commercials, and shall provide technical expertise to persons desiring to use the state as a filming location. The director of the tourism department shall appoint staff necessary to fulfill the functions and duties of the office and shall appoint an advisory board of no more than ten members to assist in advising the office and to provide technical expertise to offer prospective film companies seeking locations and advice. The board shall serve without compensation, except reimbursement for actual and necessary expenses at the same rate as allowed other state officers, to be paid from funds available to the office within the limits of legislative appropriations.

¹⁶ **SECTION 42. AMENDMENT.** Subdivision a of subsection 1 of section 54-52-17.4 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. Active employment in the armed forces of the United States, except as provided in subsection ~~3~~ 4, for up to four years of credit.

SECTION 43. AMENDMENT. Section 64-02-20 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

64-02-20. Expenses. The commission may purchase supplies and equipment and may incur necessary expenses in carrying out the provisions of this title within legislative appropriations made for such purpose. Traveling expenses are allowed employees as provided in section ~~54-06-10~~ 54-06-09.

¹⁵ Section 54-16-04 was also amended by section 5 of Senate Bill No. 2032, chapter 507, and section 2 of Senate Bill No. 2288, chapter 508.

¹⁶ Section 54-52-17.4 was also amended by section 6 of Senate Bill No. 2172, chapter 527.

¹⁷ **SECTION 44. REPEAL.** Chapter 11-02 and sections 27-01-06 and 55-08-01.7 of the North Dakota Century Code and section 4-05.1-14 of the 1993 Supplement to the North Dakota Century Code are repealed.

Approved March 17, 1995

Filed March 20, 1995

¹⁷ Section 4-05.1-14 was also amended by section 25 of House Bill No. 1027, chapter 120.

CHAPTER 55

SENATE BILL NO. 2344

(Senators W. Stenehjem, Langley, G. Nelson)
(Representatives Kliniske, Kretschmar, Mahoney)

PROFESSIONAL ASSOCIATIONS AND LIMITED
LIABILITY PARTNERSHIPS

AN ACT to create and enact four new subsections to section 1-01-49 and sections 10-31-02.2, 10-31-03.2, 10-31-07.3, and chapter 45-22 of the North Dakota Century Code, relating to limited liability partnerships; to amend and reenact sections 5-01-01, 5-02-02, subsection 22 of section 10-09.1-01, sections 10-31-01, 10-31-02, 10-31-02.1, 10-31-03, 10-31-03.1, 10-31-04, 10-31-05, 10-31-06, 10-31-07, 10-31-07.2, 10-31-08, 10-31-09, 10-31-10, 10-31-11, 10-31-12, 10-31-13, 10-31-13.1, 10-31-14, and subsection 32 of section 10-32-02 of the North Dakota Century Code, relating to professional associations; to repeal sections 1-01-28, 10-19.1-07, and 10-32-03 of the North Dakota Century Code, relating to the definition of person and the reservation of legislative power; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁸ SECTION 1. Four new subsections to section 1-01-49 of the North Dakota Century Code are created and enacted as follows:

"Individual" means a human being.

"Organization" includes a foreign or domestic association, business trust, corporation, enterprise, estate, joint venture, limited liability company, limited liability partnership, limited partnership, partnership, trust, or any legal or commercial entity.

"Partnership" includes a limited liability partnership registered under chapter 45-22.

"Person" means an individual, organization, government, political subdivision, or government agency or instrumentality.

¹⁹ SECTION 2. AMENDMENT. Section 5-01-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-01-01. Definitions. In this title:

¹⁸ Section 1-01-49 was also amended by section 2 of House Bill No. 1027, chapter 120, and section 1 of Senate Bill No. 2343, chapter 103.

¹⁹ Section 5-01-01 was also amended by section 1 of House Bill No. 1143, chapter 73; section 1 of Senate Bill No. 2198, chapter 74; and section 2 of Senate Bill No. 2243, chapter 103.

1. "Alcohol" means neutral spirits distilled at or above one hundred ninety degrees proof, whether or not such product is subsequently reduced, for nonindustrial use.
2. "Alcoholic beverages" means any liquid suitable for drinking by human beings, which contains one-half of one percent or more of alcohol by volume.
3. "Beer" means any malt beverage containing more than one-half of one percent of alcohol by volume.
4. "Distilled spirits" means any alcoholic beverage that is not beer, wine, sparkling wine, or alcohol.
5. "Licensed premises" means the premises on which beer, liquor, or alcoholic beverages are normally sold or dispensed and must be delineated by diagram or blueprint which must be included with the license application or the license renewal application.
6. "Liquor" means any alcoholic beverage except beer.
7. "Microbrew pub" means a brewer that brews twenty-five or fewer barrels of beer per week and sells beer produced or manufactured on the premises for consumption on or off the premises, or serves beer produced or manufactured on the premises for purposes of sampling the beer.
8. "Organization" means a domestic or foreign corporation, general partnership, limited partnership, and limited liability partnership.
9. "Sparkling wine" means wine made effervescent with carbon dioxide.
- 9+ 10. "Wine" means the alcoholic beverage obtained by fermentation of agricultural products containing natural or added sugar or such beverage fortified with brandy and containing not more than twenty-four percent alcohol by volume.

²⁰ SECTION 3. AMENDMENT. Section 5-02-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-02-02. Qualifications for license. No retail license may be issued to any person unless the applicant files a sworn application, accompanied by the required fee, showing the following qualifications:

1. The applicant, other than ~~corporate an organization~~, must be a legal resident of the United States and a resident of ~~the~~ this state of ~~North Dakota~~ and be a person of good moral character.
2. If applicant is a:

²⁰ Section 5-02-02 was also amended by section 3 of Senate Bill No. 2343, chapter 103.

a. A corporation, ~~the~~ then:

- (1) The manager of the licensed premises and the officers; and directors; ~~and stockholders~~ must be legal residents of the United States and persons of good moral character; and
- (2) The shareholders:
 - (a) Who are individuals, must be legal residents of the United States and of good moral character; and
 - (b) Which are organizations, must meet the requirements of this section for applicants which are organizations.

Corporate applicants must first be properly registered with the secretary of state.

b. A limited liability company, then:

- (1) The manager of the licensed premises and the managers and governors must be legal residents of the United States and of good moral character.
- (2) The members:
 - (a) Who are individuals, must be legal residents of the United States and of good moral character; and
 - (b) Which are organizations, must meet the requirements of this section for applicants that are organizations.
- (3) The applicant must first be properly registered with the secretary of state.

c. A limited partnership, then:

- (1) The manager of the licensed premises must be a legal resident of the United States and of good moral character.
- (2) The general partners and limited partners:
 - (a) If individuals, must be legal residents of the United States and of good moral character; and
 - (b) If organizations, must meet the requirements of this sections for applicants that are organizations.
- (3) The applicant must first be properly registered with the secretary of state.

d. A general partnership, then:

- (1) The manager of the licensed premises must be a legal resident of the United States and of good moral character; and
- (2) The partners:

- (a) Who are individuals, must be legal residents of the United States and of good moral character; and
 - (b) Which are organizations, must meet the requirements of this section for applicants that are organizations.
- e. A limited liability partnership, then:
 - (1) The manager of the licensed premises must be a legal resident of the United States and of good moral character; and
 - (2) The partners:
 - (a) Who are individuals, must be legal residents of the United States and of good moral character; and
 - (b) Which are organizations, must meet the requirements of this section for applicants that are organizations.

Limited liability partnership applicants must first be properly registered with the secretary of state.

- 3. The applicant or manager must not have been convicted of an offense determined by the attorney general to have a direct bearing upon an applicant's or manager's ability to serve the public as an alcoholic beverage retailer; or, following conviction of any offense, is determined not to be sufficiently rehabilitated under section 12.1-33-02.1.
- 4. The building in which business is to be conducted must meet local and state requirements regarding the sanitation and safety.
- 5. The applicant for a state license must have first secured a local license.
- 6. The attorney general, or local governing body, may require the applicant to set forth such other information in the application as necessary to enable them to determine if a license should be granted.
- 7. The applicant may not have any financial interest in any wholesale alcoholic beverage business.

²¹ **SECTION 4. AMENDMENT.** Subsection 22 of section 10-19.1-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 22. "Organization" means a domestic or foreign corporation, limited liability company, partnership, limited partnership, limited liability partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity.

²¹ Section 10-19.1-01 was also amended by section 4 of Senate Bill No. 2343 chapter 103.

SECTION 5. AMENDMENT. Section 10-31-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-31-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Create" means to form an organization by:
 - a. Incorporating a professional corporation;
 - b. Organizing a professional limited liability company; or
 - c. Registering a professional limited liability partnership.
2. "Executive" means an officer or a director of a professional corporation, a manager or a governor of a professional limited liability company, or a partner of a professional limited liability partnership.
3. "Owner" means a shareholder of a professional corporation, a member of a professional limited liability company, or a partner of a limited liability partnership.
4. "Foreign professional association organization" means a professional association organization that is incorporated or organized created under laws other than the laws of this state for purposes for which a professional association organization may be organized created under this chapter.
2. "Professional association" or "association" means:
 - a. A professional corporation that is incorporated under this chapter;
or
 - b. A professional limited liability company that is organized under this chapter.
- 3- 5. "Professional corporation" or "corporation" means a corporation which that is incorporated under this chapter for the sole and specific purpose of rendering professional service and which has as its shareholders only individuals who themselves are duly licensed or otherwise legally authorized within this state to render the same professional service as the corporation or nonlicensed employees as provided in section 10-31-07.1.
- 4- 6. "Professional limited liability company" or "limited liability company" means a limited liability company which that is organized under this chapter for the sole and specific purpose of rendering professional service and which has as its members only individuals who themselves are duly licensed or otherwise legally authorized within this state to render the same professional service as the association limited liability company or nonlicensed employees as provided in section 10-31-07.2.
7. "Professional organization" or "organization" means:
 - a. A professional corporation that is incorporated under this chapter;

- b. A professional limited liability company that is organized under this chapter; or
 - c. A professional limited liability partnership that is registered under this chapter.
8. "Professional limited liability partnership" or "limited liability partnership" means a limited liability partnership that is registered under this chapter for the sole and specific purpose of rendering professional service and has as its partners only individuals who are licensed or otherwise legally authorized within this state to render the same professional service as the limited liability partnership or nonlicensed employees as provided in section 10-31-07.1.
- 5+ 9. "Professional service" means the personal service to the public which requires a license as a condition precedent to the rendering of such service and which prior to the passage of this chapter could not be performed by a corporation or, limited liability company, or a limited liability partnership.

SECTION 6. AMENDMENT. Section 10-31-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-31-02. Articles of incorporation.

- 1. One or more individuals may incorporate a professional ~~association~~ organization in the form of a corporation for the practice of a profession by filing articles of incorporation with the secretary of state. ~~Such The~~ articles of incorporation shall must meet the requirements of chapter 10-19.1 and; ~~in addition thereto;~~ contain the following:
 - 1+ a. The profession to be practiced through the professional corporation; and
 - 2+ b. The names and residence addresses of all of the original shareholders; ~~directors; and officers~~ of the professional corporation.
- 2. At the time ~~such the~~ the articles of incorporation are filed with the secretary of state, ~~there shall the professional corporation also be filed shall file~~ a certificate by from the regulating board of the profession involved that each of the directors and shareholders of voting shares, if any, is ~~duly~~ licensed to practice such the profession.

SECTION 7. AMENDMENT. Section 10-31-02.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-31-02.1. Articles of organization.

- 1. Two or more individuals may organize a professional ~~association~~ organization in the form of a limited liability company for the practice of a profession by filing articles of organization with the secretary of state. ~~Such The~~ articles of organization shall must meet the requirements of chapter 10-32, and; ~~in addition thereto;~~ must contain the following:
 - 1+ a. The profession to be practiced through the professional limited liability company; and

- 2- b. The names and residence addresses of all of the original members; ~~governors, and managers~~ of the professional limited liability company.
2. At the time ~~such~~ the articles of organization are filed with the secretary of state, ~~there shall the professional limited liability company also be filed shall file~~ a certificate ~~by from~~ the regulating board of the profession involved that each of the governors and members, if any, is ~~duly~~ licensed to practice ~~such~~ the profession.

SECTION 8. Section 10-31-02.2 of the North Dakota Century Code is created and enacted as follows:

10-31-02.2. Registration.

1. Two or more individuals may register a professional organization in the form of a limited liability partnership for the practice of a profession by filing a registration with the secretary of state. The registration must meet the requirements of chapter 45-22, and contain the following:
- a. The profession to be practiced through the professional limited liability partnership; and
- b. The names and residence addresses of all of the original partners of the professional limited liability partnership.
2. At the time the registration is filed with the secretary of state, the professional limited liability partnership also shall file a certificate from the regulating board of the profession involved that each of the partners is licensed to practice the profession.

SECTION 9. AMENDMENT. Section 10-31-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-31-03. Applicability of North Dakota Business Corporation Act chapters 10-19.1, 10-22, and 10-23. The North Dakota Business Corporation Act shall be applicable Chapters 10-19.1, 10-22, and 10-23 apply to a professional associations which are organized organization that is created in the form of corporations a corporation and which shall enjoy enjoys the powers and privileges and be is subject to the duties, restrictions, and liabilities of other corporations except where inconsistent with the letter and purpose of this chapter. This chapter shall take takes precedence in the event of any conflict with the provisions of the North Dakota Business Corporation Act chapters 10-19.1, 10-22, and 10-23.

SECTION 10. AMENDMENT. Section 10-31-03.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-31-03.1. Applicability of North Dakota Limited Liability Company Act chapter 10-32. The North Dakota Limited Liability Company Act shall be applicable Chapter 10-32 applies to a professional associations which are organized organization that is created in the form of a limited liability company and which shall enjoy enjoys the powers and privileges and be is subject to the duties, restrictions, and liabilities of other limited liability companies except where inconsistent with the letter and purpose of this chapter. This chapter shall take takes precedence in the event of any conflict with the provisions of the North Dakota Limited Liability Company Act chapter 10-32.

SECTION 11. Section 10-31-03.2 of the North Dakota Century Code is created and enacted as follows:

10-31-03.2. Applicability of chapter 45-22. Chapter 45-22 applies to a professional organization that is created in the form of a limited liability partnership and enjoys the powers and privileges and is subject to the duties, restrictions, and liabilities of other limited liability partnerships except where inconsistent with the letter and purpose of this chapter. This chapter takes precedence in the event of any conflict with chapter 45-22.

SECTION 12. AMENDMENT. Section 10-31-04 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-31-04. Purpose for which ~~incorporated or organized~~ created.

1. A professional ~~association~~ organization may be ~~incorporated or organized~~ created pursuant to the ~~provisions~~ of this chapter only for the purpose of rendering one specific type of professional service and services ancillary thereto and ~~shall to or for the purpose of rendering two or more kinds of professional services that are specifically authorized to be practiced in combination under the licensing laws of each of the professional services to be practiced by a licensed individual or partnership of licensed individuals and ancillary services. This subsection does not preclude an organization created pursuant to this chapter from rendering more than one specific type of professional service if the services rendered are set forth in chapters 43-03 and 43-19.1 or if the services rendered are set forth in chapters 43-26 and 43-40.~~
2. A professional organization may not engage in any business other than rendering the professional service for which it was incorporated or organized created to render. However, a professional association organization may own real and personal property necessary or appropriate for rendering the type of professional services it was incorporated or organized created to render and may invest its funds in real estate mortgages, stocks, bonds, membership interests, and any other type of investment. This statute shall not preclude an association incorporated or organized pursuant to the provisions of chapter 10-31 from rendering more than one specific type of professional service if the services rendered are such as are set forth in chapters 43-03 and 43-19.1.

SECTION 13. AMENDMENT. Section 10-31-05 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-31-05. Name.

1. The name of a professional ~~association~~ organization:
 - a. In the form of a corporation ~~organized~~ incorporated under this chapter ~~shall must~~ contain the word "~~chartered~~", "~~limited~~" or the abbreviation "~~Ltd.~~"; or "~~professional corporation~~" or the abbreviation "~~P.C.~~";
 - (1) The word "chartered";
 - (2) The word "limited" or the abbreviation "Ltd.";

- (3) The words "professional corporation" or either the abbreviation "P.C." or the abbreviation "PC", either of which may be used interchangeably for all purposes authorized by chapter 10-31, including real estate matters, contracts, and filings with the secretary of state; or
 - (4) The words "professional association" or either the abbreviation "P.A." or the abbreviation "PA", either of which may be used interchangeably for all purposes authorized by chapter 10-31, including real estate matters, contracts, and filings with the secretary of state.
 - b. In the form of a limited liability company organized under this chapter shall must contain the word "professional limited liability company", or the abbreviation "P.L.C.":
 - (1) The words "professional limited liability company";
 - (2) The abbreviations "P.L.C." or "PLC", either of which may be used interchangeably for all purposes authorized by chapter 10-31 including real estate matters, contracts, and filings with the secretary of state; or
 - (3) The abbreviations "P.L.L.C." or "PLLC", either of which may be used interchangeably for all purposes authorized by chapter 10-31 including real estate matters, contracts, and filings with the secretary of state.
 - c. In the form of a limited liability partnership registered under this chapter shall contain:
 - (1) The words "professional limited liability partnership"; or
 - (2) The abbreviations "P.L.L.P." or "PLLP", either of which may be used interchangeably for all purposes authorized by chapter 10-31 including real estate matters, contracts, and filings with the secretary of state.
2. The use of the word "company", "corporation", "incorporated", "limited liability company", "limited liability partnership", or any other word, abbreviation, affix, or prefix indicating that it is a corporation ~~or~~, limited liability company, or limited liability partnership in the name of an ~~association incorporated or organized~~ organization created under this chapter, other than the words and abbreviations set forth in subsection 1, is ~~specifically~~ prohibited.

SECTION 14. AMENDMENT. Section 10-31-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-31-06. ~~Officers, directors, shareholders, managers, governors, and members~~ Executives and owners.

1. No ~~person individual~~ may be simultaneously a ~~director, shareholder, governor, or member~~ an executive or owner of more than one professional ~~association~~ organization.

2. A professional ~~association~~ organization in the form of a corporation which has only one shareholder need have only one director, who ~~shall~~ must be ~~such~~ the shareholder. That ~~person~~ individual also ~~shall~~ also serve as the president and treasurer of the corporation. The other officers of the corporation need not be licensed or otherwise legally authorized in the same field of endeavor as the president.
3. A retired ~~person~~ individual may not continue as a ~~director, officer, shareholder, governor, manager, or member~~ an executive or owner of a professional ~~corporation~~ organization.

SECTION 15. AMENDMENT. Section 10-31-07 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-31-07. Issuance and transfer of shares. A professional ~~association~~ organization in the form of a corporation may issue its shares only to ~~persons~~ individuals who are duly licensed to render the same specific professional services as those for which the corporation was incorporated or as provided by section 10-31-07.1. A shareholder may voluntarily transfer shares in a professional corporation only to the corporation or a ~~person~~ to an individual owning or eligible to own the same type of shares as the ~~person~~ individual making the transfer. ~~Any~~ The issuance of any shares issued in violation of this section are null and is void. The voluntary transfer of any shares ~~transferred~~ in violation of this section is ~~null~~ and void. No ~~shares~~ share may be transferred upon the books of the professional corporation or issued by the professional corporation until there is presented to and filed with the corporation a certificate ~~by~~ from the regulating board stating that the ~~person~~ individual to whom the transfer is to be made or the ~~shares~~ share issued is duly licensed to render the same specific professional services as those for which the corporation was ~~organized~~ incorporated.

SECTION 16. AMENDMENT. Section 10-31-07.2 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-31-07.2. Issuance and transfer of membership interests. A professional ~~association~~ organization in the form of a limited liability company may issue membership interests only to ~~persons~~ individuals who are duly licensed to render the same specific professional services as those for which the company was organized. A member may voluntarily transfer membership interests in a professional limited liability company only to the professional limited liability company or a ~~person~~ to an individual owning or eligible to own a membership interest. ~~Any~~ The reflection of any membership interests issued in the required records of the professional limited liability company in violation of this section are null and is void. The voluntary transfer of any membership interests ~~transferred~~ in violation of this section is ~~null~~ and void. No membership ~~interests~~ interest may be ~~transferred upon the books of the professional limited liability company or issued by~~ reflected in the required records of the professional limited liability company until there is presented to and filed with the limited liability company a certificate ~~by~~ from the regulating board stating that the ~~person~~ individual to whom the transfer is to be made or the membership ~~interests~~ interest issued is duly licensed to render the same specific professional services as those for which the limited liability company was organized.

SECTION 17. Section 10-31-07.3 of the North Dakota Century Code is created and enacted as follows:

10-31-07.3. Issuance and transfer of partnership interests. A professional organization in the form of a limited liability partnership may issue partnership

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

SECTION 18. AMENDMENT. Section 10-31-08 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-31-08. Professional services through officers, managers, employees, agents. No ~~association organized or incorporated~~ organization created under this chapter may render professional services except through its ~~officers, managers executives,~~ employees, and agents who are ~~duly~~ licensed to render ~~such~~ professional services in this state. However, this provision shall not be interpreted to include in In this section the term "employee"; as used herein, clerks, secretaries, bookkeepers, nurses, technicians, or other assistants does not include a clerk, secretary, bookkeeper, nurse, technician, or assistant, who are is not usually and ordinarily considered by custom and practice to be rendering professional services to the public for which a license or other legal authorization is required in connection with the profession practiced by a particular professional ~~association~~ organization.

SECTION 19. AMENDMENT. Section 10-31-09 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-31-09. Professional relationship preserved - Liability of ~~shareholders and members~~ owners - Professional regulation.

1. This chapter does not modify any law applicable to the relationship between a person furnishing professional service and a person receiving ~~such~~ professional service, including liability arising out of ~~such the~~ professional service, and including the confidential relationship between the person rendering the professional service and the person receiving ~~such the~~ professional service, if any, and all confidential relationships previously enjoyed under the laws of this state or hereinafter enacted ~~shall~~ must remain inviolate.
2. Subject to the ~~foregoing provisions~~ subsection 1, nothing contained herein shall render a ~~director, officer, shareholder, governor, manager, member~~ in this section renders an executive, owner, or employee of a professional ~~association~~ organization personally liable in tort for any act in which that ~~person individual~~ has not personally participated or in contract for any contract which that ~~person individual~~ executes on behalf of a professional ~~association~~ organization within the limits of that ~~person's individual's~~ authority.
3. Nothing in this chapter ~~shall restrict~~ restricts or ~~limit~~ limits in any manner the authority and duty of the regulating boards for the licensing of an individual ~~persons~~ rendering professional services.

4. No professional ~~association~~ organization may do any act ~~which that~~ is prohibited to be done by any individual ~~person~~ licensed to practice the profession which the professional ~~association~~ organization is ~~incorporated or organized~~ created to render.

SECTION 20. AMENDMENT. Section 10-31-10 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-31-10. Legal disqualification. If any ~~officer, director, shareholder, manager, governor, or member~~ executive or owner of a professional ~~association~~ organization becomes legally disqualified to render a professional service within this state or accepts employment or is elected to a public office that, pursuant to existing law, is a restriction or limitation upon rendering of professional service, that ~~person~~ individual shall sever all employment with or financial interest in ~~such the~~ professional association ~~forthwith~~ organization. A professional ~~association's~~ organization's failure to comply or require compliance with this ~~provision~~ section is a ground for the forfeiture of its right to render professional service as a professional ~~association~~ organization pursuant to ~~the provisions~~ of this chapter.

SECTION 21. AMENDMENT. Section 10-31-11 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-31-11. Disposition of shares, membership interests, or partnership interests on death or disqualification.

1. With respect to a professional ~~association~~ organization in the form of a corporation:
 - a. The articles of incorporation may provide for the purchase or redemption of the shares of any shareholder upon the death or disqualification of ~~such the~~ shareholder, or the same may be provided for in the bylaws or by private agreement. In the absence of a provision for the same in the articles of incorporation or the bylaws or by private agreement, the corporation ~~shall have~~ has an option to purchase the shares of a deceased shareholder or a shareholder no longer qualified to own shares in such corporation within six months after the death or disqualification of the shareholder; ~~as the case may be~~.
 - b. The option price for ~~such the~~ shares ~~shall~~ must be the book value as of the end of the month immediately preceding the death or disqualification of the shareholder unless otherwise specified in the articles of incorporation, bylaws, or by private agreement. Book value ~~shall~~ must be determined from the books and records of the professional corporation in accordance with the regular method of accounting used by ~~such the~~ corporation.
 - c. ~~In the event~~ If the corporation fails to exercise ~~such the~~ option, the shares of the deceased or disqualified shareholder may be sold to any ~~person~~ duly individual licensed or otherwise legally authorized to render the same professional service as that for which the corporation was ~~organized~~ incorporated.
 - d. A disqualified shareholder, or the estate of a deceased shareholder, may continue to hold shares of the corporation during said option period and for a reasonable period thereafter, pending transfer to

another ~~duly~~ licensed or otherwise legally authorized ~~person individual~~, but ~~shall may~~ not be authorized to participate in any decisions concerning the performance of professional service.

2. With respect to a professional ~~association~~ organization in the form of a limited liability company:
 - a. The articles of organization may provide for the purchase or redemption of the membership interest of any member upon the death or disqualification of ~~such the~~ member, or the same may be provided for in the operating agreement ~~or, the~~ member-control agreement, ~~or by private agreement~~. In the absence of a provision for the same in the articles of organization, the operating agreement ~~or, the~~ member-control agreement, ~~or by private agreement~~, the limited liability company ~~shall have~~ has an option to purchase the membership interest of a deceased member or a member no longer qualified to own a membership interest in ~~such the~~ limited liability company within six months after the death or disqualification of the member; ~~as the case may be~~.
 - b. The option price for such membership interest ~~shall~~ must be the book value as of the end of the month immediately preceding the death or disqualification of the member unless otherwise specified in the articles of organization, ~~the~~ operating agreement, ~~or the~~ member-control agreement, ~~or by private agreement~~. Book value ~~shall must~~ be determined from the books and records of the limited liability company in accordance with the regular method of accounting used by ~~such the~~ limited liability company.
 - c. ~~In the event~~ If the limited liability company fails to exercise ~~such the~~ option, the membership interest of the deceased or disqualified member may be sold to any ~~person duly individual~~ licensed or otherwise legally authorized to render the same professional service as that for which the limited liability company was organized.
 - d. A disqualified member, or the estate of a deceased member, may continue to hold a membership ~~interests of interest in~~ the limited liability company during ~~said the~~ option period and for a reasonable period thereafter, pending transfer to another ~~duly~~ licensed or otherwise legally authorized ~~person individual~~, but ~~shall may~~ not be authorized to participate in any decisions concerning the performance of professional service.
3. With respect to a professional organization in the form of a limited liability partnership:
 - a. The partnership agreement may provide for the purchase or redemption of the partnership interest of any partner upon the death or disqualification of the partner, or the same may be provided for by private agreement. In the absence of a provision for the same in the partnership agreement or by private agreement, the limited liability partnership has an option to purchase the partnership interest of a deceased partner or a partner no longer qualified to own a partnership interest in the limited liability partnership within six months after the death or disqualification of the partner.

- b. The option price for the partnership interest must be the book value as of the end of the month immediately preceding the death or disqualification of the partner unless otherwise specified in the partnership agreement or by private agreement. Book value must be determined from the books and records of the limited liability partnership in accordance with the regular method of accounting used by the limited liability partnership.
- c. If the limited liability partnership fails to exercise the option, the partnership interest of the deceased or disqualified partner may be sold to any individual licensed or otherwise legally authorized to render the same professional service as that for which the limited liability partnership was registered.
- d. The disqualified partner, or the estate of a deceased partner, may continue to hold a partnership interest in the limited liability partnership during the option period and for a reasonable period thereafter, pending transfer to another licensed or otherwise legally authorized individual, but may not participate in any decisions concerning the performance of professional service.

SECTION 22. AMENDMENT. Section 10-31-12 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-31-12. Death of last or only shareholder - Amendment of articles of incorporation - Involuntary dissolution.

1. In the event of the death of the last or only shareholder of a professional corporation whose shares pass to heirs by intestate succession, to devisees under a last will and testament, or otherwise pass by operation of law to ~~a person or persons~~ an individual not legally qualified to render the professional services which the professional corporation was ~~organized~~ incorporated to perform, the heirs, devisees, or personal representative of ~~such the~~ deceased shareholder, within six months after the date of death of ~~such the~~ last or only shareholder, may amend the articles of incorporation to provide that ~~such the~~ corporation ~~shall~~ must continue as a general corporation under ~~the North Dakota Business Corporation Act~~ chapters 10-19.1, 10-22, and 10-23.
2. The death of the last or only shareholder of a professional corporation and the failure of the heirs, devisees, or personal representative to make ~~such an~~ amendment within six months after ~~such the~~ death ~~shall be~~ is a ground for the involuntary dissolution of the professional corporation.
3. When notified of ~~such the~~ facts, the secretary of state shall ~~forthwith~~ certify ~~such~~ immediately the facts to the attorney general who shall ~~immediately~~ take immediate appropriate action to dissolve the professional corporation.

SECTION 23. AMENDMENT. Section 10-31-13 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-31-13. Annual reports - Renewal.

1. With respect to a professional ~~association~~ organization in the form of a corporation:

- a. Each corporation incorporated under this chapter shall file with the secretary of state an annual report at the time specified for the filing of ~~such reports~~ the report by the ~~North Dakota Business Corporation Act chapters 10-19.1, 10-22, and 10-23~~ giving the name and residence addresses of all officers, directors, and shareholders of ~~such the~~ corporation as of the thirtieth day of June next preceding the filing of ~~such the~~ report.
 - b. Attached to this report ~~shall must~~ be a form certifying that all of ~~such~~ directors and shareholders of voting shares are ~~duly~~ licensed to render the same specific professional services as those for which the corporation was ~~organized incorporated~~. This certificate ~~shall must~~ be ~~made~~:
 - (1) Made on ~~such~~ a form as ~~shall be~~ prescribed and furnished by the secretary of state; ~~shall be signed~~;
 - (2) Signed by the president or vice president and attested by the secretary or assistant secretary of the corporation; ~~and sworn~~;
 - (3) Sworn to before a notary public by the ~~persons individuals~~ executing the certificate; and ~~accompanied~~
 - (4) Accompanied by a the filing fee of twenty dollars payable to the secretary of state. ~~No other fees shall be charged therefor prescribed in chapter 10-23.~~
 - c. A copy of ~~such the~~ certificate ~~shall must~~ be filed at the same time with the regulatory board ~~which that~~ licenses the shareholders described in the certificate ~~and no~~. No filing fee shall may be charged by the regulatory board ~~for such filing~~.
 - d. ~~The A~~ regulatory ~~boards board~~ issuing the licenses described in a license under section 10-31-01 ~~are hereby authorized and directed to shall issue the certificates a certificate required by in~~ section 10-31-02. ~~Such certificates shall~~ The certificate must be on forms ~~as a form~~ prescribed and furnished by the secretary of state. The regulatory ~~boards board~~ may charge and collect a fee not to exceed twenty dollars per ~~person so individual~~ certified to be ~~duly~~ licensed by ~~such the~~ regulating board.
2. With respect to a professional ~~association~~ organization in the form of a limited liability company:
 - a. Each limited liability company organized under this chapter shall file with the secretary of state an annual report at the time specified for the filing of ~~such reports~~ the report by the ~~North Dakota Limited Liability Company Act chapter 10-32~~ giving the name and residence address of all managers, governors, and members of ~~such association the organization~~ as of the thirtieth day of June next preceding the filing of ~~such the~~ report.
 - b. Attached to this report ~~shall must~~ be a form certifying that all ~~such~~ governors and members holding voting membership interests are ~~duly~~ licensed to render the same specific professional services as

those for which the limited liability company was organized. This certificate ~~shall must~~ be made:

- (1) Made on ~~such~~ a form as ~~shall be~~ prescribed and furnished by the secretary of state; ~~shall be signed~~;
- (2) Signed by the president and attested by the secretary of the limited liability company; ~~and sworn~~;
- (3) Sworn before a notary public by the ~~persons~~ individuals executing the certificate; and ~~accompanied~~;
- (4) Accompanied by a the filing fee of fifty dollars payable to the secretary of state. No other fees shall be charged therefor prescribed in section 10-32-180.

- c. A copy of ~~such the~~ certificate ~~shall must~~ be filed at the same time with the regulatory board ~~which that~~ licenses the members described in the certificate ~~and no~~. No filing fee ~~shall may~~ be charged by the regulatory board ~~for such filing~~.
- d. ~~The A regulatory boards board issuing the licenses described in a license under section 10-31-01 are authorized and directed to shall issue the certificates a certificate required by in section 10-31-02. Such certificates shall The certificate must be on forms a form prescribed and furnished by the secretary of state. The regulatory boards board may charge and collect a fee not to exceed twenty dollars per person so individual certified to be duly licensed by the regulatory board.~~

3. With respect to a professional organization in the form of a limited liability partnership:

- a. The renewal registration filed with the secretary of state pursuant to chapter 45-22 must include the name and residence address of all partners of the organization as of the thirtieth day of June next preceding the filing of the renewal registration.
- b. Attached to the renewal registration must be a form certifying that all partners holding voting partnership interests are licensed to render the same specific professional services as those for which the limited liability partnership was registered. This certificate shall be:
 - (1) Made on a form prescribed and furnished by the secretary of state;
 - (2) Signed by two managing partners of the limited liability partnership;
 - (3) Sworn before a notary public by the individuals executing the certificate; and
 - (4) Accompanied by the filing fee prescribed in section 45-22-22.

- c. A copy of the certificate must be filed at the same time with the regulatory board that licenses the partners described in the certificate. No filing fee may be charged by the regulatory board.
- d. A regulatory board issuing a license under section 10-31-01 shall issue a certificate required in section 10-31-02. The certificate must be on a form prescribed and furnished by the secretary of state. The regulatory board may charge and collect a fee not to exceed twenty dollars per individual certified to be licensed by the regulating board.

SECTION 24. AMENDMENT. Section 10-31-13.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-31-13.1. Foreign professional ~~associations~~ organizations - Practice in North Dakota the state.

1. A foreign professional ~~association~~ organization may practice a profession in this state only through ~~shareholders, directors, officers, members, governors, managers~~ executives, owners, employees, and agents who are licensed to practice the profession in this state. The provisions of this chapter with respect to the practice of a profession by a professional ~~association~~ organization apply to a foreign professional ~~association~~ organization.
2. The certificate of authority of a foreign professional ~~association~~ organization may be revoked by the secretary of state as provided for in this chapter, if the foreign professional ~~association~~ organization fails to comply with ~~any provisions of~~ this chapter.
3. This chapter ~~shall~~ does not be construed to prohibit the practice of a profession in this state by an individual who is a ~~shareholder, director, officer, member, governor, manager~~ an executive, owner, employee, or agent of a foreign professional ~~association~~ organization, if the individual could lawfully practice the profession in this state in the absence of any relationship to a foreign professional ~~association~~ organization.
4. This section ~~shall apply~~ applies regardless of whether ~~or not~~ the foreign professional ~~association~~ organization is authorized to practice a profession in this state.

SECTION 25. AMENDMENT. Section 10-31-14 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-31-14. ~~Citation~~ - Construction. This chapter ~~shall be known and may be cited as the North Dakota Professional Association Act, and shall must be so construed as to~~ effectuate its general purpose of making available to professional ~~persons~~ individuals the benefits of the corporate form and, the benefits of the limited liability company form, and the benefits of the limited liability partnership form.

²² **SECTION 26. AMENDMENT.** Subsection 32 of section 10-32-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32. "Organization" means a domestic or foreign limited liability company, corporation, partnership, limited partnership, limited liability partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity.

SECTION 27. Chapter 45-22 of the North Dakota Century Code is created and enacted as follows:

45-22-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Address" means mailing address. In the case of a registered office or principal executive office, the term means the office address, which may not be a post-office box.
2. "Domestic limited liability partnership" means a general partnership that is organized under the laws of this state with a registration or a renewal registration in effect and which is not a foreign limited liability partnership.
3. "Filed with the secretary of state" means that a signed original of a document, together with the fees provided in section 45-22-23, has been delivered to the secretary of state and has been determined by the secretary of state to conform to law.
4. "Foreign limited liability partnership" means a limited liability partnership:
 - a. Which is organized under laws other than the laws of this state for a purpose or purposes for which a limited liability partnership may be organized under this chapter;
 - b. With a registration or renewal registration in effect; and
 - c. Which continuously maintains its limited liability partnership status in its jurisdiction of origin during all periods of registration and renewal registration.
5. "General partnership" means an association of two or more persons to carry on as coowners of a business for profit formed under North Dakota law, predecessor law, or comparable law of another jurisdiction.
6. "Limited liability partnership" and "partnership" mean either:
 - a. A domestic limited liability partnership; or
 - b. A foreign limited liability partnership.

²² Section 10-32-02 was also amended by section 46 of Senate Bill No. 2343, chapter 103.

7. "Managing partners" means the partners charged with the management of the limited liability partnership and if no partners are so specifically designated, then all partners.
8. "Notice" is given to a limited liability partnership or to a partner of the partnership when in writing and mailed or delivered to the partnership or the partner at the registered office or principal executive office of the partnership.
 - a. In all other cases, "notice" is given to a person:
 - (1) When mailed to the person at an address designated by the person or at the last known address of the person; or
 - (2) When handed to the person; or
 - (3) When left at the office of the person with a clerk or other person in charge of the office; or
 - (a) If there is no one in charge, when left in a conspicuous place in the office; or
 - (b) If the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion then residing therein.
 - b. Notice by mail is given when deposited in the United States mail with sufficient postage affixed.
 - c. Notice is deemed received when it is given.
9. "Originally registered" and "original registration" refers to the jurisdiction in which the limited liability partnership status of the foreign limited liability partnership was created.
10. "Principal executive office" means an office where the limited liability partnership conducts business. If the limited liability partnership has no office from which it conducts business, then the term means the registered office of the partnership.
11. "Register" means the act of filing with the secretary of state which causes:
 - a. A domestic limited liability partnership to be created; or
 - b. A foreign limited liability partnership to be authorized to transact business in this state.
12. "Registered office" means the place in this state designated as the registered office of the limited liability partnership.
13. "Registration" means the document which, when filed with the secretary of state, causes:
 - a. A domestic limited liability partnership to be created; or

- b. A foreign limited liability partnership to be authorized to do business in this state.
- 14. "Renewal registration" means the document by which the status of a domestic limited liability partnership or a foreign limited liability partnership is extended for an additional one-year period.
- 15. "Signed" means that the signature of a person has been placed on a document, as provided in subsection 39 of section 41-01-11, and, with respect to a document required by this chapter to be filed with the secretary of state, means that the document has been signed by a person authorized to do so by this chapter or by a resolution approved by the affirmative vote of the required proportion or number of partners. A signature on a document not required by this chapter to be filed with the secretary of state may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, or in any other manner reproduced on the document.

45-22-03. Registration.

- 1. In determining whether the underlying general partnership necessary for registration as a domestic limited liability partnership has been formed, the rules set forth in section 45-14-01 apply.
- 2. A limited liability partnership must have in effect and filed with the secretary of state a registration that complies with this section.
 - a. For one year from its date of filing, the registration of:
 - (1) A domestic limited liability partnership establishes its status as a domestic limited liability partnership; and
 - (2) A foreign limited liability partnership authorizes it to transact business in this state.

Unless a renewal registration is properly filed with the secretary of state, the registration is subject to revocation by the secretary of state as provided in section 45-22-16.

- b. The limited liability partnership may file a renewal registration that complies with this section no earlier than sixty days before the expiration of the one-year period.
 - (1) A limited liability partnership registration may be renewed for successive one-year periods.
 - (2) A proper renewal registration extends the registration of a limited liability partnership for another one-year period, measured from the end of the previous one-year period.
 - (3) Unless a renewal registration is properly filed with the secretary of state, the registration shall be subject to revocation by the secretary of state as provided in section 45-22-16.
- 3. A registration or renewal registration must contain:

a. With respect to a domestic limited liability partnership:

- (1) The name of the domestic limited liability partnership.
- (2) The nature of the business to be transacted in this state.
- (3) The address of the principal executive office of the domestic limited liability partnership.
- (4) The address of the registered office of the domestic limited liability partnership and the name of its registered agent at that address.
- (5) The name and address of each managing partner.
- (6) An acknowledgment that the status of limited liability partnership will automatically expire, unless the partnership files a proper renewal registration.
- (7) An acknowledgment that other jurisdictions, including other jurisdictions that have limited liability partnership statutes, may not provide any limited liability shield or may not provide as broad a limited liability shield as does this chapter.

b. With respect to a foreign limited liability partnership:

- (1) The name of the foreign limited liability partnership and, if different, the name under which it proposes to transact business in this state.
- (2) The jurisdiction of its original registration.
- (3) The date on which the foreign limited liability partnership expires in the jurisdiction of its origin.
- (4) The nature of the business to be transacted in this state.
- (5) The address of the principal executive office of the foreign limited liability partnership.
- (6) The address of the registered office of the foreign limited liability partnership and the name of its registered agent at that address.
- (7) The name and address of each managing partner.
- (8) An acknowledgment that the status of limited liability partnership in this state will automatically expire:
 - (a) Unless the foreign limited liability partnership files a proper renewal registration; and
 - (b) Unless the foreign limited liability partnership continuously maintains its limited liability partnership status in its jurisdiction of origin.

- c. The registration must be accompanied by payment of the fees provided in section 45-22-22 together with a certificate of good standing or certificate of existence authenticated by the registering officer of the state or country where the foreign limited liability partnership is originally registered and the consent of the designated registered agent for service of process to serve in that capacity.
- 4. An original of the registration or renewal registration must be filed with the secretary of state.
 - a. If the secretary of state finds that the registration or renewal registration conforms to law and that the fees provided in section 45-22-22 have been 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 or renewal registration was false when made or becomes inaccurate after the registration or renewal registration is filed, making the registration or renewal registration false or inaccurate in any respect:
 - (1) The limited liability partnership or foreign limited liability partnership shall file promptly with the secretary of state an amended or corrected registration or renewal registration; and
 - (2) With respect to foreign limited liability partnerships:
 - (a) In the case of a change in its name, a certificate to that effect authenticated by the proper officer of the state or country under the laws of which the foreign limited liability partnership is originally registered; or
 - (b) 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 state or country under the laws of which the foreign limited liability partnership is originally registered.
 - [2] It is not necessary for any foreign limited liability partnership, which is the surviving organization in a merger, to procure either 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 it is authorized to transact in this state.
 - c. With respect to renewals:

- (1) A renewal registration received by the secretary of state in a sealed envelope postmarked by the United States postal service on or before the lapse, or a renewal registration in a sealed packet with a verified shipment date by any other carrier service on or before the lapse, and properly addressed to the secretary of state is deemed to be in compliance with the requirement for timely delivery.
- (2) The secretary of state must file the renewal registration if the renewal registration conforms to the requirements of this section.
- (3) If the renewal registration does not conform, the registration must be returned to the limited liability partnership for any necessary corrections. If the corrected renewal registration is filed after the lapse date, but within thirty days after it is returned for correction, the penalties for failure to file the renewal registration within the time required do not apply.
- (4) Each limited liability partnership that fails or refuses to file its renewal registration on or before the lapse date of a registration, must pay an additional late renewal fee as provided in section 45-22-22.
- d. The secretary of state may destroy any registrations and renewal registrations which have been on file for seven years.
5. A managing partner must be separately registered with the secretary of state at the time of the registration of a limited liability partnership whenever that managing partner is either a domestic or foreign:
 - a. Corporation;
 - b. Limited liability company;
 - c. Limited partnership;
 - d. Limited liability partnership; or
 - e. General partnership using a fictitious name.
6. With respect to a domestic limited liability partnership:
 - a. A general partnership's decision to file a registration is an ordinary matter that may be decided by a majority of the partners.
 - b. The decision to withdraw or not renew a registration may be undertaken only with the consent of all of the partners.
7. A general partnership that registers as a limited liability partnership is not deemed to have dissolved as a result of the registration.

45-22-04. Name.

1. The name of a limited liability partnership:

- a. Must be in the English language or in any other language, expressed in English letters or characters.
 - b. Must contain the words "limited liability partnership" or either the abbreviation "L.L.P." or the abbreviation "LLP", either of which abbreviations can be used interchangeably for all purposes authorized by this chapter, including real estate matters, contracts, and filings with the secretary of state, or any other words or abbreviations as may be authorized or required under the laws of the jurisdiction of original registration.
 - c. May not contain a word or phrase that indicates or implies that it is formed for a purpose other than one or more business purposes for which a partnership may be formed under North Dakota law.
 - d. May not be the same as, or deceptively similar to, the name of a domestic or foreign corporation, limited liability company, limited partnership or limited liability partnership, whether for profit or nonprofit, authorized to do business in this state, or a name the right to which is, at the time of formation, reserved in the manner provided in section 45-22-05 or is a fictitious name registered with the office of the secretary of state in the manner provided in chapter 45-11 or is a trade name registered with the office of the secretary of state in the manner provided in chapter 47-25, unless there is filed with the registration:
 - (1) The written consent of the domestic or foreign corporation, limited liability company, limited partnership, limited liability partnership or partnership authorized to do business in the state having a deceptively similar name or the holder of a reserved name or registered trade name to use the deceptively similar name; or
 - (2) 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.
2. The secretary of state shall determine whether a name is "deceptively similar" to another name for purposes of this section.
 3. 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, trade marks, 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.

4. The use of a name by a limited liability partnership in violation of this section does not affect or vitiate its limited liability partnership existence. 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 its registration may have been filed with the secretary of state.
5. 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, whether or not the name is the same under which it is authorized in its jurisdiction of original registration.
 - b. A fictitious name certificate must be filed as provided in chapter 45-11 when registering under a name other than the name as authorized in the jurisdiction of original registration.

45-22-05. Reserved name.

1. The exclusive right to the use of a limited liability partnership name otherwise permitted by section 45-22-04 may be reserved by any person.
2. The reservation is made by filing with the secretary of state a request that the name be reserved together with the fees provided in section 45-22-22.
 - a. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months.
 - b. The reservation may be renewed for successive twelve-month periods.
3. The right to the exclusive use of limited liability partnership name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee together with the fees provided in section 45-22-22.
4. The right to the exclusive use of a limited liability partnership name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of cancellation together with the fees provided in section 45-22-22.

45-22-06. Failure to use required name. If a person purports to enter into a contract or other undertaking on behalf of a limited liability partnership and does not disclose to the other party that part of the limited liability partnership's name that complies with subsection 1 of section 45-22-04, then that person is personally liable on the contract or undertaking, unless that person can show in making the contract or accepting the undertaking that the other party did not rely on the partnership being an ordinary general partnership. Any partner of a limited liability partnership who consents to a person not making the disclosure described in this

section is also personally liable on the contract or undertaking, unless that partner can make the showing described in this section.

45-22-07. Unauthorized assumption of limited liability partnership powers - Liability. A person who assumes to act as a limited liability partnership without a registration or renewal registration in effect is jointly and severally liable for all debts and liabilities incurred or arising as a result.

45-22-08. Limited liability partnership shield. A partner of a limited liability partnership is not, merely on account of this status, personally liable for anything chargeable to the partnership under sections 45-15-05 and 45-15-06, or for any other debts or obligations of the limited liability partnership, if the charge, debt, or obligation arose or accrued while the partnership had a registration or renewal registration in effect. A registration or renewal registration remains in effect until revoked by the secretary of state pursuant to section 45-22-16. This section does not limit or impair the right of the limited liability partnership or its partners to make claims against any particular partner on the grounds that the particular partner:

1. Has, in its capacity as a partner, breached a duty to the limited liability partnership or to the other partners; or
2. Is obligated to contribute so that partners share losses of capital according to section 45-16-01 and share the liabilities stated in subsections 2 and 3 of section 45-20-07.

45-22-09. Piercing the limited liability shield. With respect to piercing the limited liability partnership shield:

1. Except as provided in subsection 2, the case law that states the conditions and circumstances under which the corporate veil or limited liability shield of a corporation may be pierced under North Dakota law also applies to limited liability partnerships, taking into account the differences between corporations and partnerships.
2. The use of informal procedures or arrangements for the management and for the conduct of business is not a ground for piercing the limited liability shield of the limited liability partnership.

45-22-10. Liability of partners for illegal distributions. With respect to the liability of partners for illegal distributions:

1. A partner who receives a distribution from a limited liability partnership that would have been in violation of section 10-19.1-92 had the limited liability partnership been a corporation with a board of directors is liable to the limited liability partnership, its receiver, or other person winding up its affairs, but only to the extent that the distribution received by the partner exceeded the amount that properly could have been paid under section 10-19.1-92.
2. An action may not be commenced under this section more than two years from the date of the distribution.

45-22-11. Registered office and agent.

1. A limited liability partnership continuously shall maintain a registered office in this state. A registered office need not be the same as the

principal place of business or the principal executive office of the limited liability partnership.

2. A limited liability partnership shall designate a registered agent in its registration.
 - a. The registered agent may be an individual residing in this state, a domestic corporation, a domestic limited liability company, or a domestic limited liability partnership, or a foreign corporation, foreign limited liability company, or foreign limited liability partnership authorized to transact business in this state.
 - b. The registered agent must maintain a business office that is identical with the registered office.
 - c. Proof of the registered agent's consent to serve in that capacity must be filed with the secretary of state, together with the fees provided in section 45-22-22.

45-22-12. Change of registered office or agent.

1. A limited liability partnership may change its registered office, change its registered agent, or state a change in the name of its registered agent, by filing with the secretary of state, along with the fees provided in section 45-22-22, a statement containing:
 - a. The name of the limited liability partnership.
 - b. If the address of its registered office is to be changed, the new address of its registered office.
 - c. If its registered agent is to be designated or changed, the name of its new registered agent.
 - d. If the name of its registered agent is to be changed, the name of its registered agent as changed.
 - e. A statement that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.
 - f. A statement that the change of registered office or registered agent was authorized by resolution of the partnership.
2. A registered agent may resign by filing with the secretary of state a written notice of resignation, including a statement that a signed copy of the notice has been given to the limited liability partnership at its principal executive office, or to a legal representative of the limited liability partnership. The appointment of the agent terminates thirty days after the notice is filed with the secretary of state.
3. If the business address or name of a registered agent changes, the agent shall change the address of the registered office or name of the registered agent, as the case may be, of each limited liability partnership represented by that agent by filing with the secretary of state a statement as required in subsection 1, except that it need be signed only by the

registered agent, need not be responsive to subdivision c or f of subsection 1 and must state that a copy of the statement has been mailed to each of those limited liability partnerships or to the legal representative of each of those limited liability partnerships.

45-22-13. Voluntary withdrawal of status.

1. A partnership may end its status as a limited liability partnership at any time by filing a withdrawal statement with the secretary of state.
2. The withdrawal statement must contain:
 - a. With respect to a domestic limited liability partnership:
 - (1) The name of the domestic limited liability partnership.
 - (2) A statement that the domestic limited liability partnership is withdrawing its current registration.
 - (3) An acknowledgment by the domestic limited liability partnership that the withdrawal ends its limited liability partnership status.
 - b. With respect to a foreign limited liability partnership:
 - (1) The name of the foreign limited liability partnership.
 - (2) The jurisdiction of its original registration.
 - (3) A statement that the foreign limited liability partnership is not transacting business in this state.
 - (4) A statement that the foreign limited liability partnership surrenders its authority to transact business in this state and is withdrawing its current registration.
 - (5) An acknowledgment by the foreign limited liability partnership that the withdrawal ends its foreign limited liability partnership status in this state.
 - (6) A statement that the foreign limited liability partnership revokes the authority of its registered agent in this state to accept service of process and consents that service of process based upon any cause of action arising in this state during the time the foreign limited liability partnership was authorized to transact business in this state may be made on the foreign limited liability partnership by service upon the secretary of state.
 - (7) A post-office address to which a person may mail a copy of any process against the foreign limited liability partnership.
3. The withdrawal statement may state a delayed withdrawal date, if that date is before the expiration date of the current registration. If the withdrawal statement does not state an effective date, then the statement is effective when filed.

4. If the foreign limited liability partnership is not the surviving organization in a merger or termination, then the filing with the secretary of state of a certificate to that effect authenticated by the proper officer of the state or country under the laws of which the foreign limited liability partnership is originally registered constitutes a valid withdrawal statement.

45-22-14. Filing after dissolution.

1. A dissolved limited liability partnership may continue its status as a limited liability partnership through termination either by:
 - a. Continuing to file annual renewal registrations until termination; or
 - b. Filing a final renewal registration that, in addition to providing the information required by subsection 3 of section 45-22-03:
 - (1) States that the partnership is dissolved and is winding up its affairs.
 - (2) Identifies the cause of the dissolution.
 - (3) States that the renewal registration is the final renewal registration and will remain in effect until termination.
2. A final renewal registration that complies with subdivision b of subsection 1 must not contain the statement required in:
 - a. Paragraph 6 of subdivision a of subsection 3 of section 45-22-03 in the case of a domestic limited liability partnership; or
 - b. Paragraph 8 of subdivision b of subsection 3 of section 45-22-03 in the case of a foreign limited liability partnership.
3. When the dissolved limited liability partnership has wound up its affairs, it shall file with the secretary of state a termination notice, together with the fees provided in section 45-22-22. The termination notice must:
 - a. Contain:
 - (1) The name of the limited liability partnership.
 - (2) A statement that the limited liability partnership has dissolved and wound up its affairs.
 - (3) A statement that the limited liability partnership is terminated.
 - b. Be signed by one former managing partner who has not wrongfully dissolved the partnership.

45-22-15. Limited liability after dissolution. With respect to limited liability after dissolution:

1. Subject to section 45-22-14, the limited liability shield described in sections 45-22-08 and 45-22-09 continues in full force for the dissolved

limited liability partnership regardless of any dissolution, winding up, and termination.

2. If a limited liability partnership dissolves and its business is continued by a successor general partnership under section 45-20-02, then the limited liability described in sections 45-22-08 and 45-22-09 also applies to that successor limited liability partnership until the expiration of the registration that the dissolved limited liability partnership had in effect under section 45-22-03 at the moment of dissolution. The successor general partnership may at any time file its own registration under section 45-22-03.

45-22-16. Revocation of registration.

1. The registration of a limited liability partnership may be revoked by the secretary of state upon the occurrence of any of these events:
 - a. The limited liability partnership has failed:
 - (1) To appoint and maintain a registered agent as required by this chapter;
 - (2) To file a report upon any change in the name or business address of the registered agent;
 - (3) To file any required amendment to its registration; or
 - (4) To file a renewal registration as provided in subsection 2 of section 45-22-04.
 - b. A misrepresentation or mistake has been made in any material matter in any registration, report, affidavit, or other document submitted by the limited liability partnership pursuant to this chapter.
2. The secretary of state may not revoke the registration of a limited liability partnership unless:
 - a. The secretary of state has given the limited liability partnership at least sixty days' notice of the reason for the pending revocation by mail addressed to its registered office or, if the limited liability partnership fails to appoint and maintain a registered agent in this state, then addressed to its principal executive office; and
 - b. During the sixty-day period, the limited liability partnership has failed:
 - (1) To appoint and maintain a registered agent as required by this chapter;
 - (2) To file the report of change regarding the name or business address of the registered agent;
 - (3) To file the required amendment to its registration;

- (4) To file a renewal registration as provided in subsection 2 of section 45-22-04; or
 - (5) To correct the misrepresentation or mistake.
3. Upon the expiration of the sixty-day period without the limited liability partnership having cured the reason for the pending revocation set forth in the notice, the registration is revoked. The secretary of state shall note the revocation in the records of the secretary of state and shall give notice of the revocation to the limited liability partnership. Notice by the secretary of state must be mailed to the last registered agent at the last registered office of record. If the limited liability partnership failed to appoint and maintain a registered office in this state, then to its principal executive office.

45-22-17. Service of process on a limited liability partnership.

1. A process, notice, or demand required or permitted by law to be served on a limited liability partnership may be served either on the registered agent of the limited liability partnership or on any responsible person found at the registered office of the limited liability partnership or on the secretary of state as provided in this section.
2. If neither the registered agent nor a responsible person can be found at the registered office and if a responsible person affiliated with the limited liability partnership cannot be found at the principal place of business in this state, the secretary of state is the agent of the limited liability partnership on whom the process, notice, or demand may be served.
 - a. The return of the sheriff, or affidavit of a person not a party, that no registered agent or responsible person may be found at either the registered office or at the principal place of business of the limited liability partnership in this state is conclusive evidence that the limited liability partnership has no registered agent or responsible person at its registered office or at its principal place of business in this state.
 - b. Service on the secretary of state of any process, notice, or demand is deemed personal service on the limited liability partnership and may be made by filing with the secretary of state one original and two copies of the process, notice, or demand together with the fees provided in section 45-22-22.
 - c. The secretary of state immediately shall forward, by certified mail addressed to the limited liability partnership at its registered office or at its principal place of business in this state, a copy of the process, notice, or demand.
 - d. Service on the secretary of state is returnable in not less than thirty days, notwithstanding, a shorter period specified in the process, notice, or demand.
3. The secretary of state shall maintain a record of every process, notice, and demand served on the secretary of state under this section, including the date of service and the action taken with reference to it.

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

45-22-18. Foreign limited liability partnership governing law. The laws of the jurisdiction under which a foreign limited liability partnership is originally registered govern its organization and its internal affairs. A foreign limited liability partnership may not be denied registration to transact business in this state by reason of any difference between those laws and the laws of this state. A foreign limited liability partnership holding a valid registration in this state has the same, but no greater, rights and privileges as a domestic limited liability partnership. The registration does not authorize the foreign limited liability partnership to exercise any of its powers for purposes that a domestic limited liability partnership is forbidden by law to exercise in this state.

45-22-19. Transacting business and obtaining licenses and permits by a foreign limited liability partnership. No foreign limited liability partnership may transact business in this state or obtain any license or permit required by this state until the partnership has registered with the secretary of state.

45-22-20. Transaction of business by a foreign limited liability partnership without registration.

1. A foreign limited liability partnership transacting business in this state may not maintain any cause of action in any court of this state until the partnership has registered with the secretary of state.
2. The failure of a foreign limited liability partnership to register with the secretary of state does not impair the validity of any contract or act of the foreign limited liability partnership or prevent the foreign limited liability partnership from defending any claim for relief in any court of this state.
3. A foreign limited liability partnership, by transacting business in this state without having registered with the secretary of state, appoints the secretary of state as its agent upon whom any notice, process, or demand may be served.
4. All persons who assume to act as a foreign limited liability partnership without registration are jointly and severally liable for all debts and liabilities incurred or arising in this state as a result.

45-22-21. Transactions by a foreign limited liability partnership not constituting the transaction of business.

1. The following activities of a foreign limited liability partnership, among others, do not constitute transacting business within the meaning of this chapter:
 - a. Maintaining, defending, or settling any proceeding.
 - b. Holding meetings of its partners or carrying on any other activities concerning its internal affairs.
 - c. Maintaining bank accounts.

- d. Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited liability partnership's own partnership interests or maintaining trustees or depositories with respect to those partnership interests.
 - e. Selling through independent contractors.
 - f. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts.
 - g. Creating or acquiring indebtedness, mortgages, and security interests in real or personal property.
 - h. Securing or collecting debts or enforcing mortgages, and security interests in property securing the debts.
 - i. Holding, protecting, renting, maintaining, and operating real or personal property in this state so acquired.
 - j. Selling or transferring title to property in this state to any person.
 - k. Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like manner.
- 2. As used in this section, the term "transacting business" has no effect on personal jurisdiction under the North Dakota Rules of Civil Procedure.
 - 3. For purposes of this section, any foreign limited liability partnership that owns income-producing real or tangible personal property in this state, other than property exempted under subsection 1, is considered transacting business in this state.
 - 4. This section does not apply in determining the contracts or activities that may subject a foreign limited liability partnership to service of process or taxation in this state or to regulation under any other law of this state.

45-22-22. Fees and charges.

- 1. The secretary of state shall charge and collect for:
 - a. Filing a registration, twenty-five dollars. When there are more than two managing partners, an additional three dollars must be paid for each additional managing partner not to exceed two hundred fifty dollars.
 - b. Filing a renewal registration, twenty-five dollars.
 - c. Late filing of a renewal registration after the lapse of a registration, twenty dollars. This fee is in addition to the renewal registration fee.
 - d. Filing a statement of correction, or amended registration, twenty-five dollars.

- e. Filing an application to reserve a name, ten dollars.
 - f. Filing a notice of transfer of a reserved name, ten dollars.
 - g. Filing a cancellation of reserved name, ten dollars.
 - h. Filing a consent to use of name, ten dollars.
 - i. Filing a statement of change of address of registered office or change of registered agent or both, ten dollars.
 - j. Filing a statement of change of address of registered office by registered agent, ten dollars for each limited liability partnership affected by such change.
 - k. Filing a registered agent's consent to serve in such capacity, ten dollars.
 - l. Filing a resignation as registered agent, ten dollars.
 - m. Filing a notice of withdrawal, ten dollars.
 - n. Filing a certificate of fact stating a merger of a foreign limited liability partnership registered with the secretary of state, fifty dollars.
 - o. Filing any other statement of a limited liability partnership, ten dollars.
 - p. Filing any process, notice, or demand for service, twenty-five dollars.
2. The secretary of state shall charge and collect for:
- a. Furnishing a copy of any document, instrument, or paper relating to a limited liability partnership, one dollar for every four pages, or fraction thereof.
 - b. A certificate certifying a copy or reciting facts related to a limited liability partnership, twenty dollars.
 - c. Each page of any document or form sent by electronic transmission, one dollar.
- 45-22-23. Powers - Enforcement - Penalty - Appeal.
- 1. The secretary of state shall administer this chapter.
 - 2. The secretary of state may propound to any limited liability partnership subject to this chapter and to any partner, any interrogatory reasonably necessary and proper to ascertain whether the partnership has complied with this chapter.
 - a. Any interrogatory must be answered within thirty days after mailing, or within any additional time fixed by the secretary of state.

The answers to the interrogatory must be full and complete and be made in writing and under oath.

b. If an interrogatory is directed:

- (1) To an individual, it must be answered by that individual; or
- (2) To a limited liability partnership, it must be answered by a managing partner.

c. The secretary of state need not file any document to which an interrogatory relates until the interrogatory has been answered, and not then if the answers disclose that such document is not in conformity with this chapter.

d. The secretary of state shall certify to the attorney general, for any action the attorney general determines appropriate, any interrogatory and answers which disclose a violation of this chapter.

e. Each managing partner of a limited liability partnership who fails or refuses within the time provided by this section to answer truthfully and fully every interrogatory propounded to that person by the secretary of state is guilty of an infraction.

f. Any interrogatory propounded by the secretary of state and the answers are not open to public inspection under section 44-04-18. The secretary of state may not disclose any facts or information obtained from an interrogatory except insofar as may be permitted by law or insofar as is required for evidence in any criminal proceedings or other action by this state.

3. If the secretary of state rejects any document required by this chapter to be approved by the secretary of state before the document may be filed, the secretary of state, within ten days after receipt of the document, shall give written notice of the rejection to the person who delivered the document, specifying the reasons for rejection. That person may appeal to the district court of the county in which the registered office of the limited liability partnership is, or is proposed to be, situated by filing with the clerk of such court a petition setting forth a copy of the document sought to be filed and a copy of the written rejection of the document by the secretary of state. The court shall try the matter de novo. The court shall either sustain the action of the secretary of state or direct the secretary of state to take any action the court determines proper.

4. If the secretary of state revokes the registration of any foreign limited liability partnership, pursuant to section 45-22-16, the partnership may appeal to district court of the county where the registered office of the partnership in this state is situated by filing with the clerk of such court a petition setting forth a copy of its registration and a copy of the notice of revocation given by the secretary of state. The court shall try the matter de novo. The court shall either sustain the action of the secretary of state or direct the secretary of state to take any action the court determines proper.

45-22-24. Certificates and certified copies to be received in evidence.

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

45-22-25. Forms to be furnished by the secretary of state. All renewal registrations must be made on forms prescribed and furnished by the secretary of state. Upon request, the secretary of state shall furnish forms for all other documents to be filed in the office of the secretary of state. However, the use of these documents, unless otherwise specifically required by law, is not mandatory.

45-22-26. Audit reports and audit of limited liability partnerships receiving state subsidies for production of alcohol or methanol for combination with gasoline. Any limited liability partnership that produces agricultural ethyl alcohol or methanol within this state and which receives a production subsidy from the state, whether in the form of reduced taxes or otherwise, shall submit an annual audit report, prepared by a certified public accountant based on an audit of all records and accounts of the limited liability partnership, to the legislative audit and fiscal review committee. The audit must be submitted within ninety days of the close of the taxable year of the limited liability partnership. Upon request of the legislative audit and fiscal review committee, the state auditor shall conduct an audit of the records and accounts of any limited liability partnership required to submit an annual report under this section.

45-22-27. Foreign trade zones.

1. As used in this section, unless the context otherwise requires:
 - a. "Act of Congress" means the Act of Congress approved June 18, 1934, entitled an act to provide for the establishment, operation, and maintenance of foreign trade zones and ports of entry of the United States, to expedite and encourage foreign commerce and for other purposes, as amended, and commonly known as the Foreign Trade Zone Act of 1934 [48 Stat. 998; 19 U.S.C. 81a et seq.].
 - b. "Private limited liability partnership" means a limited liability partnership, one of the purposes of which is to establish, operate, and maintain a foreign trade zone by itself or in conjunction with a public corporation.
 - c. "Public corporation" means this state, any political subdivision of this state, any public agency of this state or any political subdivision of this state, or any corporate instrumentality of this state.
2. Any private limited liability partnership or public corporation may apply to the proper authorities of the United States for a grant of the privilege of establishing, operating, and maintaining foreign trade zones and foreign trade subzones and to do all things necessary and proper to carry into effect the establishment, operation, and maintenance of such

zones, in accordance with the Act of Congress and other applicable laws and rules.

SECTION 28. If House Bill No. 1110 does not become effective, section 45-22-02 of the North Dakota Century Code is created and enacted as follows:

45-22-02. Applicability of chapter 45-05. In any case not provided for in this chapter, chapter 45-05 governs. If any provision of this chapter conflicts with chapter 45-05, that provision of this chapter takes precedence.

SECTION 29. If House Bill No. 1110 is approved by the fifty-fourth legislative assembly and becomes effective, section 45-22-02 of the North Dakota Century Code is created and enacted as follows:

45-22-02. Applicability of chapters 45-13 through 45-21. In any case not provided for in this chapter, chapters 45-13 through 45-21 govern. If any provision of this chapter conflicts with chapters 45-13 through 45-21, that provision of this chapter takes precedence.

²³ **SECTION 30. REPEAL.** Sections 1-01-28 and 10-19.1-07 of the North Dakota Century Code and section 10-32-03 of the 1993 Supplement to the North Dakota Century Code are repealed.

SECTION 31. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 22, 1995
Filed March 23, 1995

²³ Section 1-01-28 was also repealed by section 80 of Senate Bill No. 2343, chapter 103.

CHAPTER 56**SENATE BILL NO. 2071**

(Legislative Council)

(Interim Legislative Management Committee)

(Senators Wogsland, G. Nelson)

(Representatives Martinson, Oban)

EFFECTIVE DATES OF LEGISLATION

AN ACT to create and enact a new section to chapter 1-02 of the North Dakota Century Code, relating to effective dates of legislation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 1-02 of the North Dakota Century Code is created and enacted as follows:

Effective dates of legislation - Rules of construction. In determining the effective date of any law enacted by the legislative assembly, a "measure" includes the entire contents of a legislative act, unless the legislative assembly specifically provides within the act that only a portion of the act is an emergency, appropriation, or tax measure. Unless a different date is specified in a measure, the measure takes effect on July first after its filing with the secretary of state if:

1. Any portion of the measure provides an appropriation for support and maintenance of state departments and institutions; or
2. Any portion of the measure:
 - a. (1) Provides for an enforced contribution for public purposes which is not dependent upon the will or consent of the person taxed;
 - (2) Imposes a fee for any purpose; or
 - (3) Authorizes a public official or entity to determine the level of a fee for any purpose; and
 - b. Changes any statutory factor that determines the amount of a taxpayer's liability for the contribution or fee, including a full or partial exemption or credit.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved February 7, 1995
Filed February 8, 1995

CHAPTER 57**SENATE BILL NO. 2293**

(Senator Mushik)
(Representative Coats)

GOLD STAR MOTHERS' DAY

AN ACT to create and enact a new section to chapter 1-03 of the North Dakota Century Code, relating to the designation of Gold Star Mothers' Day.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 1-03 of the North Dakota Century Code is created and enacted as follows:

Gold Star Mothers' Day. Each year the governor shall issue a proclamation designating the last Sunday of September as Gold Star Mothers' Day in honor of mothers whose sons or daughters served and died in the line of duty in the armed forces of the United States of America or its allies, or died as a result of injury sustained in such service.

Approved March 7, 1995

Filed March 7, 1995

CHAPTER 58**SENATE BILL NO. 2338**

(Senators Holmberg, Traynor)

RECORDED INSTRUMENT VALIDATION

AN ACT to amend and reenact section 1-04-01 of the North Dakota Century Code, relating to validation of recorded instruments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 1-04-01 of the North Dakota Century Code is amended and reenacted as follows:

1-04-01. Execution, acknowledgment, filing, and recording legalized. The execution, acknowledgment, filing, and recording of all deeds, leases, mortgages, assignments, satisfactions, and other written instruments ~~in writing~~ affecting the title to real property in this state, in good faith made, taken, or certified ~~prior to January 1, 1953,~~ and which have been filed or recorded in the proper counties of this state; hereby for a period of five years or more, are declared to be legal and valid for all purposes, anything in the laws of ~~the this state of North Dakota,~~ or of any other state, territory, or country at the time of ~~such the~~ execution, acknowledgment, filing, or recording to the contrary notwithstanding.

Approved April 11, 1995

Filed April 12, 1995

CHAPTER 59

HOUSE BILL NO. 1100

(Representative Olson)

(At the request of the Governor)

CAPITOL ARTS AND HISTORIC PRESERVATION
ADVISORY COMMITTEE REPEALED

AN ACT to amend and reenact sections 1-08-04.1, 48-10-01, and 48-10-03 of the North Dakota Century Code, relating to duties of the council on the arts and membership and duties of the capitol grounds planning commission; to repeal chapter 48-11 of the North Dakota Century Code, relating to the capitol arts and historic preservation advisory committee; and to transfer the balance of the capitol arts and historic preservation advisory committee special operating fund to the general fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 1-08-04.1 of the North Dakota Century Code is amended and reenacted as follows:

1-08-04.1. State property having historical or artistic significance - Responsibilities of state historical board and council on the arts - Review and advice on property for exhibition. Except for the board of higher education and state institutions under the jurisdiction of the board, every state official or entity that, on behalf of the state, holds, acquires, or receives property having historical or artistic significance shall document and inventory that property on forms furnished by the state historical board. One copy of the completed form must be retained in the office of that official or entity and one copy must be filed with the state historical board. The information filed with the board must include a description of the property, the identity of the donor if acquired by gift, the date the property was acquired or received, any conditions on acceptance of the property if given by gift, and appropriate evidence of ownership. The information must also indicate whether the property is intended for permanent or long-term exhibition on the capitol grounds or in public areas in the state capitol. With respect to property intended for permanent or long-term exhibition on the capitol grounds or in public areas in the state capitol, the state historical board shall notify the state council on the arts. The council on the arts shall advise the capitol grounds planning commission with respect to permanent or long-term exhibition of such property on the capitol grounds or in public areas in the capitol. ~~The council on the arts shall advise the capitol arts and historic preservation advisory committee with respect to permanent or long-term exhibition of such property in public areas in the state capitol.~~ Prior to transfer of ownership or other disposal of property documented and inventoried under this section, that property must be offered to the state historical board for inclusion in its historical collections.

SECTION 2. AMENDMENT. Section 48-10-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

48-10-01. Capitol grounds planning commission. The capitol grounds planning commission consists of the lieutenant governor as chairman and eight other members selected biennially ~~in a manner~~ as provided in this section. The governor shall appoint two ~~citizen~~ citizens, one licensed architect, and one representative from

the state historical society as members, the president of the senate shall appoint ~~three~~ two senators as members, and the speaker of the house of representatives shall appoint ~~three~~ two representatives as members. Appointment to the commission is for a term of two years. Legislative and citizen members of the planning commission are entitled to per diem payments and expenses in such amount and in the same manner as provided by law for members of the legislative council.

SECTION 3. AMENDMENT. Section 48-10-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

48-10-03. Powers and duties of the commission - Authority to accept gifts. The capitol grounds planning commission shall confer with the state council on the arts with respect to the artistic value of monuments, memorials, or works of art to be constructed on the capitol grounds and with qualified consultants retained by it to select sites for buildings, facilities, monuments, memorials, or works of art to be constructed on the capitol grounds. The commission shall develop and modify long-term plans for the development of the capitol grounds. The commission shall approve or disapprove the basic style and exterior construction of any building, facility, monument, memorial, or work of art constructed on the capitol grounds. Except as otherwise provided by this section, the commission has exclusive authority to accept or reject gifts of any type or class of property for exterior placement on the capitol grounds or for the improvement of the exterior construction of any building or facility on the capitol grounds. No construction or placement of an item on the capitol grounds may be undertaken without the approval of the commission, unless the construction or placement is authorized by the legislative assembly. If the legislative assembly by law or resolution authorizes the construction or placement of an item on the capitol grounds, the commission shall approve the site, basic style, and exterior construction of the item within a reasonable period of time.

The commission shall advise the director of the office of management and budget and the legislative council on matters relating to the physical and aesthetic features of the interior of all buildings on the capitol grounds. The commission must be called in and shall meet whenever major interior changes, including new construction, remodeling, or renovation of any kind are proposed or considered for the buildings or facilities on the capitol grounds. The commission must be consulted before the purchase or installation of furniture or fixtures in public areas of the capitol and other buildings on the capitol grounds. The commission shall perform any other duties as may be prescribed by law.

SECTION 4. REPEAL. Chapter 48-11 of the 1993 Supplement to the North Dakota Century Code is repealed.

SECTION 5. TRANSFER. The state treasurer shall transfer the balance of the capitol arts and historic preservation advisory committee special operating fund to the state general fund on July 1, 1995. After June 30, 1995, the state treasurer shall deposit in the state general fund any moneys that would otherwise be deposited in the capitol arts and historic preservation advisory committee special operating fund.

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